

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 8 of 2019

In the matter of an application under Section **101** of the Building Maintenance and Strata Management Act in respect of the development known as **The Balmoral** (The MCST Plan No. 1374)

Between

Raman Dhir

... Applicant

And

The MCST Plan No. 1374

... Respondent

GROUND OF DECISION

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... Respondent

1 July 2019

2 July 2019

31 July 2019

Coram: Mr Seng Kwang Boon (Deputy President)

 Mr Kong Mun Kwong (Member)

 Mr Tony Tay Chye Teck (Member)

BACKGROUND

1. The Balmoral is a 31-year-old development located at 20 Balmoral Park, Singapore 259849. This development comprised 81 residential units of three different unit-types:
 - (a) a single 10-storey tower block with 3 penthouses
 - (b) two 4-storey blocks of 2-level maisonettes; and
 - (c) two blocks of 4 storey townhouses. The townhouses are standalone and adjoined to each other along certain parts of the side walls.
2. The Applicant is the subsidiary proprietor of a stand-alone 4-storey townhouse unit located at Block 20 #01-06.
3. The Respondent is the Management Corporation of the development.
4. There were leakages of water within the Applicant's unit at various locations. The Applicant took the position that those leakages originated from "common property" areas and took his case against the Management Corporation to the Small Claims Tribunals. The Applicant's case was ordered to be discontinued by the Registrar of the Small Claims Tribunals on the ground that his case was outside the jurisdiction of the Tribunals with liberty to appeal to the Referee. The Applicant did not file an appeal but brought his case to the Strata Titles Board ("STB") instead.

THE APPLICANT'S CASE

5. In his application to the Strata Titles Board, the Applicant sought the following orders, namely that it is the responsibility of the MCST-1374 The Balmoral to: -
 - (a) maintain and repair the roof of the townhouse;
 - (b) make all external walls waterproof;
 - (c) look after and maintain glass awning;
 - (d) reimburse him for repairs done including external ceiling and termites treatment;
and
 - (e) reimburse him the total costs of \$5000/- for expenses, travel to and from London plus small claims court.

6. The Applicant testified that the various water leakages into his unit were:
 - (a) from the RC flat roof above the property, through the walls and down into the stairwell and the parts of the property;
 - (b) from the same RC flat roof above the property, through the walls and under a balcony at the 4th storey;
 - (c) from various fixed window panels in the property which ran from the 2nd to the 4th stories of the property;
 - (d) from the awning over the entrance of the property; and
 - (e) termite damage to the property as a result of the various leakages.
7. The Applicant claimed that the RC flat roof, the fixed windows and the awning are “common properties” and the Management Corporation are responsible for their repairs and the damages caused by the water leakages originating from these areas.
8. The Applicant testified that around 2016 and 2017 there were significant water leakages in his unit at various locations. He wrote to the MCST via many e-mails complaining of leakages “from the lower part of the external walls which is not gravel is just a thin layer of cement and that is probably causing the problem”, “from lower wall facing the main entrance...”, “from windows around the four semi-circular steps”, “from external ceiling”, “from electrical sockets” and many other places. The MCST was dragging their feet and did not respond to his complaints as there were some disputes over whose responsibility it was to do the repairs. He had to do repairs as and when necessary using his own contractors. His agent Richard Jany Road Estate Pte Ltd wrote to the MCST... “it seems that you expect us to carry out various ‘witchhunt’ to determine the source of the water penetration...”
9. The Applicant said that he did not engage any expert to investigate and determine the source(s) of these leakages. He submitted various photographs, videos, invoices, and quotations for ad-hoc repairs in his unit and concluded that the source(s) of the various leakages was/were from the three areas he alleged to be “common properties” and the MCST are therefore liable.

THE RESPONDENT’S CASE

10. The Respondent denied that these three areas, namely the RC flat roof, the fixed windows, and the glass awning are “common properties”.
11. They also submitted that there was no expert report on where the various water leakages originated from. The various photographs, invoices/quotation, videos are not helpful. M3 Multi Services Pte Ltd (“M3”) report contained only their observation and the recommendation for repairs. They are not experts but contractors. The Respondent therefore, submitted that the Applicant had failed to make out his case against MCST for the damages claimed.

12. The Respondent's witness Kalachelvam (R1) the site manager testified that during a joint inspection with the Applicant's representative Mr Chin, he did not notice any water leakages on the ceiling of the RC flat roof, but there was water ponding on the RC flat roof then.

ISSUES TO BE DETERMINED

13. The issues before the Board are:

(1) whether these 3 areas are common properties under the Building Maintenance and Strata Management Act Cap. 30C ("the Act"). i.e.

- (a) the RC flat roof;
- (b) the fixed window panels; and
- (c) the curved aluminium awning with polycarbonate cover (The Awning).

(2) whether the source(s) of the various water leakages in the Applicant's unit that caused the alleged damages to the Applicant's property originated from the 3 areas.

14. Common property under the Act prior to the amendment in 2017 is defined as follows in Section 2(1):

"Common Property", subject to subsection 9 means –

(1) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —

- (a) not comprised in any lot or proposed lot in that strata title plan; and
- (b) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots;

(2) in relation to any other land and building, such part of the land and building —

- (a) not comprised in any non-strata lot; and
- (b) used or capable of being used or enjoyed by occupiers of 2 or more non strata lots within that land or building; or

15. Section 2(9) of the Act states as follows: -

"(9) For the purposes of this Act —

- (a) all windows of a lot, proposed lot or non-strata lot that are located on any exterior wall of the lot, proposed lot or (as the case may be) non-strata lot, being either louvres, casement windows, sliding windows or windows with any movable part, shall be part of the lot, proposed lot or (as the case may be) non-strata lot and not common property; and

- (b) all other windows of a lot, proposed lot or non-strata lot that are located on any exterior wall of the lot, proposed lot or (as the case may be) non-strata lot shall be common property, unless otherwise described in a strata title plan”.

Are the 3 structures common properties?

The RC Flat Roof

16. The whole of the 4th storey of the Applicant’s unit is, in fact an open flat roof deck with balconies and flower boxes and is delineated in black lines in the strata title plan. (black lines indicate the strata boundary of the 4th storey).
17. The 4th storey is the roof of the entire unit of the townhouse. It is part of the total strata area of the unit. R4 had confirmed this.
18. The only access to the 4th storey from the 3rd storey is via an internal private staircase. The area around this staircase landing is enclosed and covered by the small RC flat roof with a usable space on it. This is the RC flat roof in issue. This RC flat roof is delineated in red in the strata title plan and the usable area is not part of the total strata area of the unit.
19. According to witness Low Lee Luang (“R4”) a practising registered surveyor, black lines indicates strata boundaries and red lines denote building and other details.
20. According to R4, the enclosed red area covered by the RC flat roof is within the 4th storey strata boundary.
21. The usable space on the RC flat roof is currently being used by the Applicant to install his air conditioner condensers and some electrical boxes and cables for his exclusive use.

The Awning

22. R4 testified that this awning was drawn as outside the strata boundary of the 3rd storey in the strata title plan. She clarified that she had personally inspected the site and saw that this awning did not reach anywhere near the 3rd storey. She confirmed that this awning is physically within the strata boundary of the 1st storey and serves also as a cover for the main entrance concrete structure of the 1st storey.

The Windows

23. It is not disputed that the glass panels in the lot are windows with no movable parts.
24. The photographs of the unit tendered showed quite clearly that these windows are located on some exterior walls of the lot.

THE BOARD'S VIEW

The RC Flat Roof

25. The ordinary meaning of roof is, “the structure that covers or forms the top of a building” according to the Oxford Advanced Learning Dictionary. The roof of the Applicant’s unit is in fact the whole of the 4th storey as it forms the top and covers the whole of the townhouse unit.
26. The “RC flat roof” is not a roof. It is only a feature within the strata boundary of the 4th storey and covers the small enclosed area beneath it. It serves only the Applicant’s townhouse unit and no other unit. It is for his exclusive use. The usable area on it is used by the Applicant for installing items for his exclusive use only. It is accessible only from the 3rd storey within the Applicant’s unit.
27. Although it was delineated in red lines and not black lines, the Board notes that other features such as balconies, flower boxes, private internal staircases, wash areas and others within the unit were also similarly delineated in red lines.
28. The Board is of the view that the “RC flat roof” is not a roof. It is, together with the staircase, a main feature of the unit and is comprised in the Applicant’s lot in the strata title plan. The RC flat roof feature is for his own exclusive use. It is not common property.

The Awning

29. The Board accepts R4’s evidence that this feature sits within the strata boundary of the 1st storey of the Applicant’s unit. It is situated between the 1st level and the 2nd level. It is not a roof nor a window. It is simply a fixed feature that extends from within the unit and covers the main entrance of the 1st storey.
30. It serves only the Applicant’s unit and no other unit. It is for his exclusive use. The Board finds this feature is also comprised in the Applicant’s lot in the strata title plan. It is not common property.

The Windows

31. From the photographs and the strata title plan tendered, it is clear that the windows are located on the exterior walls of the lot. The Board is of the view that the fixed windows come within the definition of all other windows in subsection 9 of section 2 of the Act. They are common properties.

Termites

32. There is no evidence adduced to show termite damage to the Applicant’s property except a quotation for treatment.

THE BOARD'S FINDING

33. Without the benefit of an expert's report on tracing where the various leakages originated from, the Board is unable to make a finding on the evidence adduced that the various leakages in the Applicant's unit originated from the three areas i.e.
- (a) the RC flat roof;
 - (b) The Awning; and
 - (c) the fixed windows.
34. The Board finds that the RC flat roof and The Awning are not common properties as the 1st limb of S2(1) BMSMA of the definition is not satisfied and the two features are for the exclusive use of the Applicant and serves only his unit.
35. The Board finds the fixed window panels are common properties under S2(9) of the Act.

THE BOARD'S ORDER

36. The Applicant's claims for damages and disbursements are dismissed.
37. The responsibility to maintain the fixed windows and keep them in good repair lies with the MCST as in all other common properties.
38. Costs to the Respondent fixed at \$18,000 including disbursements.

Dated this 31st day of July 2019

MR SENG KWANG BOON
Deputy President

MR KONG MUN KWONG
Member

MR TONY TAY CHYE TECK
Member

Mr Daniel Chen (Lee & Lee) for the Applicant.
Ms Hui Choon Wai (Wee Swee Teow LLP) for the Respondent.