

**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** (MCST No. **1374**)

Between

**Raman Dhir**

... Applicant

And

**The Management Corporation Strata Title  
Plan No. 1374**

... Respondent

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**GROUND OF DECISION**

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Plan No. 1374**

... Respondent

Coram:                      Mr. Seng Kwang Boon                      (Deputy President)  
                                    Mr. Kong Mun Kwong                      (Member)  
                                    Mr. Tony Tay Chye Teck                      (Member)

**BACKGROUND**

- 1     The Applicant's claims against the Respondent are for damages to the various locations in his townhouse unit Block 20, #XXX located at The Balmoral Park Singapore. The Applicant is also claiming for reimbursements for repairs he had done to those places.
- 2     The Applicant's claims filed with the Strata Titles Board ("the Board") are stated as follows:

*"It is the responsibility of the Respondent to: -*

*(a) Maintain and repair the roof of the townhouse.*

*(b) Make all external walls waterproof*

*(c) Look after and maintain the glass awning*

*(d) Reimburse the Application for repairs done including external ceiling and termites treatment*

*(e) Reimburse expenses etc. including Small Claims Tribunal costs [of] \$5,000 which includes travel costs from London.”*

3 The Applicant’s allegation was that the damages to his unit were all caused by water seepages from the common areas *i.e* the RC flat roof, the Fixed Window Panels and the Polycarbonate Awning located in his unit.

4 At the first hearing, the Board found that the Fixed Window Panels were common property but the RC Flat Roof and the Polycarbonate Awning were not. The Applicant’s claims for damages and reimbursements were dismissed.

5 On appeal, the High Court found that the RC Flat Roof and the Polycarbonate Awning are common properties. The High Court ordered a rehearing and reconsideration with the following direction:

*“... the STB is to consider the application of the presumption under s 101(8) of the BMSMA in coming to its decision on Mr Dhir’s claim based on the evidence placed before the STB.”<sup>1</sup>*

## **SECTION 101(8) – THE PRESUMPTION**

6 Section 101(8) of the Building Maintenance and Strata Management Act (Cap. 30C, 2008 Rev Ed) (“BMSMA”) provides 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,*

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<sup>1</sup> *Raman Dhir v MCST Plan No 1374* [2020] SGHC 19, at para 57.

*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.”*

- 7 At the Parliamentary Debate in 2004 under the heading “*Statutory presumption of liability for inter-floor leakages*”, it was stated that “... *the Committee is agreeable to the proposal that ... attributes a rebuttable presumption of liability to the upper floor unit owner for such cases that are handled by the STB...* ” and “... *this presumption of liability will make upper floor unit owners more responsive to lower unit owners...* ”.<sup>2</sup>
- 8 Clearly, the intention of the presumption under s 101(8) is for the resolving of inter-floor leakages more expeditiously.

#### **IS SECTION 101(8) APPLICABLE TO THE RC FLAT ROOF**

- 9 Although the presumption is intended for inter-floor leakages, on a plain reading of the section, the Board is of the view that it may be applicable to a situation such as the RC Flat Roof.
- 10 However, in respect of the evidence of dampness, moisture or water penetration on the ceiling of the interior of the RC Flat Roof immediately below, the only evidence produced by the Applicant was his own allegation. He produced no photographs and reports in support.
- 11 The Board notes that for all the other various damages, the Applicant had produced photographs and reports in support. The photographs produced by the Applicant purportedly showing the ceiling of the RC Flat Roof was actually the ceiling of the bedroom/bathroom situated at the 3<sup>rd</sup> storey of his unit directly below not the RC Flat Roof but the fourth storey. The 4<sup>th</sup> storey is a concrete open roof deck which is the private property of the Applicant..
- 12 There is the evidence of a witness called Kalai, the development’s Condominium Manager. He stated that at a joint inspection on 22 June 2018, he did not see any sign of water seepages at the “4<sup>th</sup> level enclosed area”. This would be directly below the RC Flat Roof ceiling.
- 13 The Applicant claimed that he had painted the ceiling of the RC Flat Roof when Kalai

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<sup>2</sup> Respondent’s Written Submissions, Annex B, at columns 931 to 932.

said he did not see any sign of seepages. The Board notes that at the time of the joint inspection, the water ponding on top of the RC Flat Roof complained of by the Applicant had not been repaired. It was repaired by the Applicant some six months or so after the joint inspection. To paint over the damaged ceiling before the water ponding was repaired did not seem credible.

- 14 On a balance of probabilities based on the evidence placed before the Board, it finds that all the conditions of s 101(8) were not satisfied.
- 15 The presumption under s 101(8) is therefore not applicable to the RC Flat Roof in the circumstances of this case.

### **IS SECTION 101(8) APPLICABLE TO THE POLYCARBONATE AWNING**

- 16 On a plain reading of s 101(8), the Board is of the view that this section is not applicable nor is it intended to be applicable to an architectural feature like a polycarbonate awning covering the private area of the Applicant's unit. The intent of the presumption is for the inter-floor leakages previously stated.

### **IS SECTION 101(8) APPLICABLE TO THE FIXED WINDOW PANELS**

- 17 On a plain reading of this section, it does not apply to lateral seepages *i.e.* through windows or walls.
- 18 The Board is therefore of the view that s 101(8) is not applicable to the Fixed Window Panels in this case.

### **FINDINGS**

- 19 The Board finds that s 101(8) is not applicable to the RC Flat Roof, the Fixed Window Panels and the Polycarbonate Awning.
- 20 On the evidence placed before the Board, it is unable, on a balance of probabilities, to make a finding that the various leakages in the Applicant's unit that caused all the alleged damages originated from the three areas *i.e.* the RC Flat Roof, the Fixed Window Panels and the Polycarbonate Awning.
- 21 However, the Board finds that there were evidence of water ponding on the RC Flat Roof and some leakages in the Polycarbonate Awning. As these structure/feature were found

to be common properties, any repairs to the defects will have to be borne by the Respondent.

- 22 The Board finds that because of some disagreements between the Applicant and the Respondent causing some delays, the Applicant had little choice but to proceed to repair the defects at his own cost. The Respondent cannot now quibble over the amounts actually paid by the Applicant for these repairs.

### **THE BOARD'S ORDERS**

- 23 The Board orders as follows: -

- (1) The Respondent will reimburse the Applicant a sum of \$11,080 for the repairs done to the RC Flat Roof upon production of official receipt(s) of actual amount paid.
- (2) The Respondent will reimburse the Applicant a sum of \$4,900 for repair done on the Awning upon production of official receipt(s) of actual amount paid.
- (3) Any repairs to the Fixed Window Panels will be paid by the Respondent.
- (4) The Applicant's claims for damages are dismissed.

### **COSTS**

- 24 At the first hearing, the Applicant was successful in his claim that the Fixed Window Panels was common property. On appeal, the High Court ruled that the RC Flat Roof and the Polycarbonate Awning were also common properties. The Applicant did not succeed in his claims for damages.
- 25 In the rehearing/reconsideration ordered by the High Court, the Applicant was successful in the reimbursement of the of the sums he had paid out for rectifying the defects at the common properties but did not succeed again in his claims for damages.
- 26 The Board is of the view that it will be just and reasonable to order that each party pay its own costs both at the first hearing and the re-hearing. As for the interlocutory hearing, the Applicant has submitted that a fixed sum of \$750 be paid to the Respondent. The Board is of the view that this is reasonable.

**ORDER ON COSTS**

27 The Board orders as follows: -

- (1) Each party pays its own costs for both the first hearing and the re-hearing.
- (2) The Applicant to pay the Respondent a sum of \$750 for the interlocutory hearing.

Dated this 29<sup>th</sup> day of July 2020

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Mr. Seng Kwang Boon  
Deputy President

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Mr. Kong Mun Kwong  
Member

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Mr. Tony Tay Chye Teck  
Member

Ms. Carolyn Tan Beng Hui (M/s Tan & Au LLP) for the Applicant.

Ms. Hui Choon Wai (M/s Wee Swee Teow LLP) for the Respondent.