

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 24 of 2021

In the matter of an application under 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
River Place Condominium (MCST No. 2543)

Between

Lisa Marie Lip Ka Ai

... Applicant

And

Lee Meng Teck Victor

... Respondent

GROUND OF DECISION

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Between

Lisa Marie Lip Ka Ai

... Applicant

And

Lee Meng Teck Victor

... Respondent

29 July 2021

17 September 2021

Coram:	Mr Raymond Lye	(Deputy President)
	Mr Loh Kwi Leong	(Member)
	Mdm Siti Habibah Siraj	(Member)

INTRODUCTION

1. The **Applicant, Lisa Marie Lip Ka Ai** is the subsidiary proprietor (**SP**) of #XXX, in the development known as River Place Condominium.
2. The **Respondent** is the subsidiary proprietor (**SP**) of #XXX, in the development known as River Place Condominium.
3. The Applicant applied under **section 101(1)(a), 101(8)(a) and 101(8)(b) of Building Maintenance and Strata Management Act (the Act)** in connection with water seepage. The Applicant seeks to ascertain the source of the water leakage into her unit, rectification and repair as well as damages.

4. The Applicant is the SP of and resides at #XXX. The Respondent owns #XXX which is immediately above the Applicant's unit and tenanted at the material time. This is a water leakage case that should have been resolved early if the Respondent and/or his attorney Martin Lee ("ML") had paid proper attention to the Applicant's complaints and dealt with it seriously from the outset. It is also a cautionary tale that if a subsidiary proprietor chooses to delegate and leave matters relating to his or her property to an attorney/representative, the said proprietor remains legally responsible for what the attorney/representative does or does not do and for any legal repercussions that follow. A subsidiary proprietor will do well to take a personal interest in the issues that affect his or her property, especially if the managing agent and/or neighbours have been trying to get in touch with regards to any complaints, and to follow up closely on the actions of the attorney/representative.

Background

5. The Applicant's case is that there is water leakage from the Respondent's unit to her unit since 2019, first to her bedroom and then to her living room, which have not been fixed to-date. It is the Applicant's case that the Applicant and the managing agent of the condominium (MA) had been attempting to establish contact with the Respondent/ML from September 2019 on the issue of the bedroom leak. The Respondent apparently engaged contractors to deal with it but refused to repair the hole in the Applicant's bedroom ceiling, even though the quote for repair was only \$150. In July 2020 the Applicant discovered leakage in her living room and promptly informed the MA to get in touch with the Respondent/ML from August 2020 onwards but there was no response until after the MA had informed ML that they were recommending the Applicant to take her case to the STB. For the first time on 4 December 2020 (after 4 months) ML contacted the Applicant via text message to say he was looking after all affairs in relation to #XXX. ML engaged contractors to do grouting work at the Applicant's unit on 7 December 2020. They patched up the Applicant's living room ceiling but not the bedroom despite the Applicant's request as they were not instructed to do so. There is no evidence that any rectification work was done to the Respondent's unit to address any root cause of the leaks.
6. However, the leak in the living room returned and worsened the next month in January 2021. The Applicant's evidence is that the Respondent's contractor told the Applicant that the leak is from the Respondent's unit, but they were not told to address that and only did grouting work at the Applicant's unit. Again, attempts were made to contact ML, who blamed it on the Applicant and his contractors for not doing a proper job, and even asked the Applicant to contact his contractor directly. When the MA informed ML that the Applicant would

apply to the STB if the Respondent did not respond, ML encouraged her to do so as he intended to take legal action against his contractor.

Service of STB'S Application and Mediation Notices

7. On the issue of service of the application form and the notices for mediation, although the form stated the Jalan Rabu address, the Applicant had also served the same by registered post to the Respondent's River Valley address, which the Respondent had acknowledged at trial as his residence and mailing address. He says he had received the MCST's quarterly billings at this River Valley address, but not the application form. In any event, section 129(5)(b)(i) BMSMA provides that where any notice or other document is sent by post, it is deemed to have been duly served on or given to the person to whom it is addressed as follows, even if the notice or document is returned undelivered, on the 3rd working day after the day the notice or document was posted, if sent by prepaid registered post.
8. On the mediation sessions, the Board had also sent the notices via courier to the Respondent's unit at #XXX, which was tenanted. The Respondent did not attend both mediation sessions as ML claims the tenant informed him late. The Applicant says it was in fact ML who had forgotten to collect the same from the tenant. In the Board's view, it does not lie in the mouth of any SP who has chosen to tenant out the unit to blame the tenant for any delay in the receipt of notices or correspondence.
9. On the facts, the Board finds that both the application form and notices for mediation were validly served. Due to the non-attendance of the Respondent at the second mediation session on 22 April 2021, the Board gave directions for the matter to proceed to arbitration hearing. As stated above, both mediation sessions were wasted without good cause on the part of the Respondent.
10. The Board also notes that Affidavits of Evidence-in-Chief (AEICs) were due on 31 May 2021. ML informed the Applicant on 9 May 2021 that until she withdraws her "legal route" the Respondent will not be able to proceed any further. The Board finds that this clearly meant that the Respondent will not be doing anything about the water leakage issues until she withdraws her STB application. This is clearly unreasonable on the facts of this case. As there was no response from the Respondent on dealing with the leaks, the Applicant appointed her expert on 12 May 2021 (YMW). The Board notes there were proposals from both sides, some of which were made on a without prejudice basis, but parties were ultimately unable to come to an agreement. AEICs were exchanged on 28 June 2021 as parties had asked for time to try to settle prior to that. The Board was informed on 28 July 2021 that the leaks into the Applicant's living room was not resolved and that trial was going ahead on liability and quantum.

The Arbitration Hearing and Partial Settlement

11. The arbitration hearing commenced on 29 July 2021. A final attempt at settlement was made at the parties' request, and the Board stood down for this purpose but there was no settlement, and the trial commenced at 11.05am on both liability and quantum. After the examination-in-chief of the Applicant had been completed, Respondent's counsel informed that Board that they were conceding on liability and will contest the trial on costs and damages. Parties entered into an order by consent as per the orders sought by the Applicant at paras 7(a) and (b) of the Applicant's Opening Statement, with some amendments. In brief, the Respondent agrees to carry out repairs to rectify the inter-floor leakage from the Respondent's unit into the Applicant's unit and to rectify the damage in the Applicant's unit.

Quantum and Costs Hearing

12. On the facts the Board agrees with the Applicant that there was undue delay on the part of the Respondent/ML in responding to and sincerely resolving the water leakage into the Applicant's unit, in particular the living room. The Board finds that the Applicant had been reasonable in her conduct and requests with the MA and ML. We are unable to agree that she had filed her application with the Board in a hurry as many months had passed without resolution.
13. On the other hand, it is clear that the facts establish the Respondent had relied almost entirely on his attorney ML, who is also his father, to deal with this matter. The evidence shows that ML did not deal with the complaint with any expedition at all, and when he did appoint contractors, he only instructed them to do piecemeal or patch-up jobs like grouting work to the ceiling of the Applicant's unit instead of dealing with the source of the leaks from the Respondent's unit. As for the Respondent, he did not take any personal interest in the leakage complaint even though he was aware of it. Despite leaving it to ML, the Respondent did not check with ML nor followed-up with him on the matter as he was busy. At trial, he said he was in fact angry with his father for not settling the issue. The Respondent makes much out of the fact that ML was in hospital for a knee operation in Nov 2020 and then on medical leave in Dec 2020 and Jan 2021, and therefore the Applicant should cut him some slack for this period. However, the Respondent continued to pass the MCST's letters to ML to handle the issue during this period instead of dealing with it himself. He conceded that he continued to do so even though ML couldn't move about, as *"This was just contacting contractors. He can still use his hands to type and call to arrange the contractors"*.
14. The Board finds on the facts that the Respondent/ML had not conducted themselves reasonably prior to the STB application and in the lead-up to the order by consent. The Board also notes that despite the clear terms of the order by consent for the Respondent to

“immediately” carry out the said rectification works, the Respondent had refused to do so when the trial ended on 29 July 2021 and elected to delay the same until after the Board’s decision today, even though today’s decision would have no effect on the terms of the order by consent.

The Board’s Decision

15. On the facts, it cannot be denied that the prolonged and continuing leakages affected the Applicant’s use and enjoyment of her apartment, especially considering the work from home requirements during Covid. The question is one of degree. The Applicant claims \$6,000 for inconvenience, anxiety and loss of enjoyment. As the Applicant continued to reside in the unit throughout the leaks, the Board finds that a reasonable sum would be \$2,000. The Board is also of the view that the need for alternative accommodation during the repair is not made out as even though the Applicant’s unit is a single bedroom unit, it is not a “shoebox” apartment where any localized repair may make the unit as a whole uninhabitable, being 74.14sq m in size. The Board notes from the evidence of the damage to the Applicant’s unit that the repair required is not extensive, with most of the repairs having to be done at the Respondent’s unit.
16. The issue of costs is at the discretion of the Board. Having conceded liability after commencement of trial, and on the basis that costs would normally follow the event, the Board is of the view that on the facts, reasonable costs would be due to the Applicant for the work and preparation up to that stage. The Board finds that the Applicant’s expert fees were reasonably incurred at the time and would order payment of the sum of \$6,800 as per the relevant invoices of YMW. As regards the rest of the trial on quantum and costs which took the rest of the day, the Board notes that the Applicant has been largely successful, with the Board not agreeing with the Respondent’s closing submissions that the Applicant had incurred unnecessary costs by filing the STB application, that no legal costs or expert’s fees nor loss of enjoyment is due to the Applicant.
17. Taking into account the fact that liability was conceded only on the day of trial, the relative conduct of the parties and bearing in mind the Board’s opening remarks above, the Board is of the view that it would be reasonable for the Respondent to pay the Applicant legal costs in the sum of \$7,000 plus disbursements of \$1697.36 as well as the full costs of transcription.
18. It was recorded at the arbitration hearing on 29 July 2021 that the order by consent shall form part of the orders this Board makes. As such, the Board orders as follows, by the consent of the Applicant and Respondent as to item (i) and (ii) and by the decision of the Board as to items (iii) to (v) below:

- (i) The Respondent shall at his own cost, engage a licensed contractor to immediately carry out the necessary repairs to rectify the inter-floor water seepage from the Respondent's Unit into the Applicant's Unit. Respondent shall at his own cost arrange for a 24-hr water ponding test to be carried out to ensure that the water leakage is properly rectified.
- (ii) The Respondent shall thereafter at his own cost, take steps to rectify the damage to the Applicant's Unit caused by the water seepage to the satisfaction of the Applicant. The said rectification works shall include works necessary to fix the gaping hole in the ceiling of the bedroom, the water damage to the false ceiling in the living room, and replace the damaged laminate flooring in the living room at a rate of \$2.80/psf for the areas affected. For the avoidance of doubt, the contractor engaged by the Respondent shall provide temporary protection of the Applicant's furniture/fittings by covering up the same with dust sheeting or other protective cover whilst the works are being carried out. The Respondent's contractor shall also clean up and clear up/dispose of the debris in the Applicant's Unit upon completion of the rectification works.
- (iii) The Respondent to pay the Applicant the sum of \$2,000 as damages for inconvenience, anxiety and loss of enjoyment;
- (iv) The Respondent to pay the Applicant the sum of \$6,800 as reimbursement of the Applicant's expert fees; and
- (v) The Respondent to pay the Applicant the sum \$7,000 as legal costs plus disbursements of \$1,697.36 and the full costs of transcription fees.

Dated this 17th day of September 2021

MR RAYMOND LYE
Deputy President

MR LOH KWI LEONG
Member

MDM SITI HABIBAH SIRAJ
Member

Ms Melissa Leong (M/s Bayfront Law LLC) for the Applicant
Mrs Jessie Ho-Thong (M/s JHT Law Corporation) for the Respondent