

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 29 of 2022

In the matter of an application under section(s)
101 of the Building Maintenance and Strata Management
Act in respect of the development known as **MOUNT
FABER LODGE** (MCST Plan No. 841)

Between

Vivien Chong Ee Mei

...Applicant

And

Chew Wee Heong (*deceased*) and Woon Lai Leng

... Respondents

FOUNDATIONS OF DECISION

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... Respondents

20 September 2022 and 21 September 2022

21 October 2022

Coram:	Ms Lee Lay See	(Deputy President)
	Ms Hazel Tang	(Member)
	Mr Tony Tay	(Member)

INTRODUCTION

1. The Applicant, Vivien Chong Ee Mei, is the subsidiary proprietor of 27 Mount Faber Road, #01-20, Mount Faber Lodge, Singapore 099200 (“**Applicant’s Unit**”).
2. The Respondents, Chew Wee Heong (deceased) and Woon Lai Leng are the subsidiary proprietors of 27 Mount Faber Road, #03-20, Mount Faber Lodge, Singapore 099200 (“**Respondents’ Unit**”).

3. The Respondents' Unit is directly above the Applicant's Unit. According to the Applicant, as Mount Faber Lodge is a "*split-level development*", based on the stacking nature of both units, the living room and balcony of Respondents' Unit is directly above the master bedroom of the Applicant's Unit, and the kitchen of Respondents' Unit is directly above the second bedroom of Applicant's Unit¹.
4. For the avoidance of doubt, even if not specifically mentioned in the summary of the parties' cases in the following sections herein, all of the parties' submissions and arguments have been carefully considered by the Board in reaching its decisions.

ORDERS SOUGHT

5. The Applicant brings this application ("**Application**") pursuant to Section 101(1)(a) of the Building Maintenance and Strata Management Act 2004 ("**BMSMA**") to seek the following orders²:

"1) To order unit #03-20 respondents to make rectification to his unit to resolve the water seepage in my unit #01-20.

2) To order Unit #03-20 to pay all my costs in relation to the resolution of the water seepage to my unit including but not limited to all costs incurred in pursuing the resolution of my dispute at STB, any claims made against me by my tenants, any loss of rental, any costs of replacing any damaged properties or restoring the interior design of my unit, etc. The actual cost will be provided following the complete rectification of the water seepage problem."

6. Before the commencement of the hearing, the Applicant sought and was granted leave to amend the orders sought as follows³:

"1) To order the Respondents to make rectifications to unit #03-20 to resolve the water seepages in the master bedroom, second bedroom, and living room of the Applicant's unit #01-20.

2) To order the Respondents to pay all of the Applicant's damages and costs arising out of or in connection with the water seepages in the Applicant's master bedroom, second bedroom, and living room

¹ Form 8 submitted by the Applicant dated 30 March 2022, Section E, page 4.

² Form 8, Section D, page 4.

³ Applicant's Interlocutory Application to amend Application or other document furnished to a Board ("Form 11") dated 5 August 2022.

including, but not limited to, the loss of rental, claims made by the Applicant's tenant against the Applicant, repairing or replacing damaged properties and areas of the Applicant's unit, all STB fees, building surveyor's fees, legal fees, and expenses. The Applicant reserves the right to provide the full extent of damages and costs incurred at the conclusion of this Application."

APPLICANT'S CASE

7. According to the Applicant, the water seepage from the Respondents' Unit into the Applicant's Master Bedroom's ceiling and walls first occurred in late 2014 or early 2015 and had persisted through the years.
8. The Applicant therefore filed an application with Strata Titles Boards on 4 April 2022. After 2 failed mediation attempts, the matter proceeded to two (2) days of hearings.
9. The Applicant submits that the Wavescan Micro Holographic Imaging technology ("Wavescan") images from the Wavescan technology produced by the Applicant's expert, Mr Chin Cheong ("**Mr Chin**") during the joint inspection conducted on 26 and 27 July 2022 with the Respondents' expert Mr Alexander Arditti ("**Mr Arditti**") clearly shows there is water seepage in the Applicant's ceiling.
10. The Applicant submits that the presumption under Section 101(8)(a) BMSMA therefore applies and Respondents have failed to rebut this presumption.
11. The Applicant also avers that during the joint water ponding test of 27 July 2022, there is active water seepage of the fluorescent-dyed water clearly egressing from the brickwork column in the Master Bedroom and Living Room. The Applicant opined that the water leaked from the Respondent's balcony into the brickwork column causing water saturation within the column and water would egress into the Master Bedroom and living room. This can be seen from the Wavescan images showing the presence of water within the brickwork column, as submitted by the Applicant.
12. The Applicant seeks damages for the following:
 - a. Extensive paint debonding and damages: \$1,050.00
 - b. Replacement of water heaters: \$ 999.00
 - c. Housing agent fees: \$ 6,099.00 and \$ 5,644.00
 - d. Replacement of aircon compressor and bracket: \$ 2,450.00
 - e. Replacement of termite infested door: \$ 1,050.00

RESPONDENTS' CASE

13. The Respondents oppose the Applicant's Application on the basis that the presumption under Section 101(8)(a) BMSMA does not apply as the Applicant did not show dampness, moisture or water penetration on the ceiling.
14. The Respondents take the position that the photographs relied on by Applicant alleging damage from ceiling onto the floor are irrelevant as they were taken in October 2020 and January 2021. The Respondents submit that these photos, at best, show past damage, but do not show dampness/moisture/water penetration on the ceiling of the master bedroom.
15. According to the Respondents, the blue dyed stains are irrelevant as there is no evidence that it came from the water ponding tests in January 2021. Neither parties' experts investigated the blue-dyed stains.
16. Furthermore, no fluorescent-dyed stains, which was used for the joint water ponding test in July 2022, was detected in the same area as the alleged blue-dyed stains. Both experts confirmed that the joint water ponding test in July did not show water seepage from the Respondents' balcony to the Applicants' Unit. In fact, neither expert sighted fluorescent-dyed stains within the Applicant's Unit.
17. The Respondents further submit that the Wavescan images are static and limited to specific areas that Mr Chin selected. They do not show the origins of water or a flow, but at best pockets of water at certain locations.
18. The Respondents also highlight that the Applicant's own expert Mr Chin confirmed that there was no water seepage in the 2nd bedroom.
19. The Respondents also emphasize there is no evidence of water seepage in the living room, which is in any event on the 1st floor and not immediately below the Respondents' Unit.
20. Respondents submit that even if they are found liable, damages should be nominal as the Applicant had failed to prove them.

BOARD'S FINDINGS

21. The issues before the Board are as follows:
 - a. Whether the statutory presumption under Section 101(8)(a) applies in view of the allegations of water seepage in the Applicant’s unit which is situated directly below the Respondents’ Unit;
 - b. If so, whether the Respondents had rebutted the statutory presumption; and if not, whether the Applicant had nevertheless established that the alleged water seepages at the master bedroom, second bedroom, and living room of the Applicant’s Unit were caused by a defect in Respondents’ Unit; and
 - c. What damages, if any, should the Applicant be entitled to.
22. The Board will examine each of these issues below.
 - a. *Whether the presumption under Section 101(8)(a) applies*
23. The presumption under Section 101(8)(a) applies when there is any evidence of dampness, moisture or water penetration 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.
24. In this regard, Section 101(8)(a) of the BMSMA provides in relevant part:

“(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 is 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; ...”*
25. The Board notes that Respondents’ expert Mr Arditti takes the view that although the unit #03-20 balcony waterproofing has failed, it has caused water seepage to the external wall/brickwork column only. The Board has also examined the reports of the Applicant’s expert Mr Chin and

Respondents' expert Mr Arditti and notes that both experts agree that following the joint water ponding test of 27 July 2022 using the fluorescent-dyed water, there was no fluorescent dyed stains inside the Applicant's Unit at all⁴.

26. The Board is not satisfied that the Applicant has established there is any evidence of dampness, moisture or water penetration at the locations complained of in the Applicant's Unit (i.e. master bedroom, second bedroom and living room) as a result of water seepage from Unit #03-20.
27. The Board finds it regrettable that despite the experts' agreed view that sometimes it takes time for water stains to show, no follow-up inspection was conducted at the Applicant's Unit after the July water ponding test even though this was suggested by Respondents' expert but not agreed to by the Applicant's expert. To-date, the Board has not received any evidence of fluorescent-dyed water stains inside the Applicant's Unit.
28. As such, the Board finds that the statutory presumption under Section 101(8)(a) does not apply.

b. Whether the alleged water seepages at the master bedroom, second bedroom, and living room of the Applicant's Unit were caused by a defect in Respondents' Unit

29. The Board also finds that the Applicant has failed to establish that the alleged water seepages at the master bedroom, second bedroom and living room of the Applicant's Unit were caused by a defect in the Respondents' Unit.
30. Water ponding tests are generally used to detect inter-floor water seepage issues, and in this case, was the agreed methodology between both parties' experts to investigate the alleged inter-floor water seepage issues at the Applicant's Unit.
31. The Board finds it persuasive therefore that following the joint water ponding test of 27 July 2022 using the fluorescent dyed water, both parties' experts agree that there was no fluorescent dyed water inside the Applicant's Unit at all.
32. Even if the Board considers the Wavescan images, these scans at best only show the presence of water, but did not show the source. The Board also notes that the Wavescan images of the Applicant's Unit was taken only on 26 July 2022 before the joint water ponding test on 27 July

⁴ AW-2 page 11; RW-3 page 26.

2022, but not after, and as such, there is no basis for any comparison to be made. In any case, the Board accepts Respondents' submissions that the Wavescan images are static and limited to specific areas selected by Mr Chin. They do not show the origins of water or a flow.

33. The Board therefore finds that the Wavescan images are of little utility and that the path of the water seepage, if any, therefore cannot be ascertained from the Wavescan images provided.
34. The Board also accepts Respondents' submissions that the blue-dyed stains are a red herring. According to the Applicant, the blue-dyed stains resulted from a water ponding test conducted on 13 January 2021. However, Respondents had carried out waterproofing works to the balcony in Respondents' Unit on 22 January 2021, and the subsequent water ponding test following the waterproofing works established that there were no more water seepage issues for almost a year until January 2022.
35. The Board also finds it pertinent that following the most recent water ponding test conducted in July 2022, there were no fluorescent dyed water stain in the areas where the blue dyed water stains were found.
36. The Board therefore finds that the Applicant has failed to establish that the alleged water seepages at the master bedroom, second bedroom, and living room of the Applicant's Unit were caused by a defect in Respondents' Unit.

c. What damages, if any, should the Applicant be entitled to.

37. In light of the Board's findings on issues (a) and (b) above, it is not necessary for the Board to make any finding in relation to issue (c).
38. In any case, the Board finds that the Applicant has failed to establish her entitlement to the damages sought.

BOARD'S DECISION

39. The Board hereby orders that:
 - a. Applicant's application pursuant to Form 8 submitted by the Applicant dated 30 March 2022 (as amended) is dismissed; and
 - b. The Applicant shall pay the Respondents total costs and disbursements of this Application fixed at \$7,500.00.

Dated this 21st day of October 2022

MS LEE LAY SEE
Deputy President

MS HAZEL TANG
Member

MR TONY TAY
Member

Mr Derric Yeoh, Mr Jansen Aw and Mr Vishnu (Donaldson & Burkinshaw LLP) for the Applicant

Ms Gina Tan and Ms Charmaine Ong (Legal Solutions LLC) for the Respondents