Strata Title Board Requires Owner Of Upper Floor Unit To Bear Bathroom Repair Costs

The Strata Titles Board (‘Board’) recently issued a decision that made headlines in Singapore. The case, Kirpalani v Vivian Tang, involved a dispute between the owners of an upper floor condominium apartment (‘applicants’) and their lower floor neighbour (‘respondent’) in relation to the bathrooms of the upper unit leaking into the lower unit. Upon a claim by the applicants that the respondent bear half of the costs of repair, the Board ruled that the applicants had to bear the full costs. Furthermore, it also indicated that for future cases, the Board would abandon its previous practice of requiring owners of lower units to bear half the costs of such repairs. This case and the reasoning of the Board is summarised in this Update.

Introduction

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The Leak And The Repairs

As noted above, the bathrooms in the applicants’ apartment were leaking into the lower unit. It was found by an independent surveyor that it was caused by leaking pipes and wear and tear in the waterproofing of the upper unit's bathrooms. After his survey, the independent surveyor recommended various measures. In respect of the leaking pipes, he suggested one of the following alternatives:

- localised repair of the leaks in the pipes;
- hacking the walls and rerunning new concealed pipes; or
- abandoning the concealed pipes and replacing the piping system with surface-run new pipes.

For the defective waterproofing membrane, the recommendation was to replace it.

As both the pipes and waterproofing membrane were defective, the applicants decided to engage in a complete replacement of the hot and cold water supply pipes throughout the unit, as well as re-waterproofing the bathrooms. The work also involved hacking and retiling of walls and floors, and the removal and replacement of existing fixtures and fittings (such as the WCs, wash basins, toilet roll holders, soap holders, towel rails, bath tub, marble vanity tops, lighting pelmets, and wall mirrors) with new items. The total cost of the works and materials came to more
than $46,000. The applicants then claimed half that amount from the respondent who refused on the basis that she had never agreed to foot this bill.

The Board’s Review Of
The Law

The Board noted that there was no legal duty on the owner of the lower unit to share in the costs of rectification where his unit has been damaged by leaks from the upper unit. In this regard, it pointed out that:

- by-law 23 in the First Schedule of the Land Titles (Strata) Act stated that the subsidiary proprietor of a unit was to keep his unit in good repair so as not to cause a nuisance to other subsidiary proprietors or occupiers of other units; and

- under case law, the duty was on the owner of premises not to allow his premises to cause nuisance to others.

The Board did note, however, that, notwithstanding the strict legal position, it had previously adopted a practice of apportioning the costs of rectification where the leak was due to wear and tear.

Board’s Explanation Of
Its Previous Practice

The Board explained that it had adopted this practice at a time when condominium living was still relatively new to Singaporeans. When there was a leak, it could arise from various sources, and upper floor unit owners were often uncooperative and tardy in taking action to determine its cause. Some even became evasive and truculent and would deliberately adopt a defiant attitude by not granting access to their units for inspection to ascertain the cause of leakage. Furthermore, they would even try to evade service of the applications made to the Board. This resulted in inordinate delay in proceedings before the Board, as well as further delays to effecting necessary repairs. This was an untenable situation, with the owners of the lower units suffering the leaks having no practical recourse.

The Board therefore had taken the view that since condominium living was community living involving sharing of facilities and friendly neighbourliness, subsidiary proprietors should live in harmony. In this context, in an effort to get the parties to arrive at some acceptable solution speedily, the Board ‘sweetened the pill’ for the owners of the upper units by, as a matter of practice, encouraging parties to share the cost of rectification works proportionately unless there were special reasons or circumstances for ordering otherwise.

Board Chooses To
Change Prior Practice

The Board noted that notwithstanding that this had been its practice in the past, this was clearly not the law. It further noted that it had also adopted exceptions to this practice. In addition, the Board noted that even where it previously apportioned the rectification works, it had also taken into consideration the fact that when replacements were made of items like floor tiles, basins, long baths and water closets, it was only the owner of the upper unit who would be enjoying the use of new items. Hence, it had often factored this into the apportionment by taking into account the depreciation of such items that had to be replaced.

The Board went on to highlight that the new Building Maintenance and Strata Management Act provided (in section 101(8)) for a presumption that leaks emanated from the upper floor unit unless there was proof to the contrary. In passing this provision, the Minister for National Development had stated that the whole purpose of this section was to place the onus on the owner of the upper floor unit to ascertain the provenance of the leaks.

In view of these factors, the Board stated that it was appropriate and timely to abandon the practice of sharing costs where due to wear and tear leaks had occurred in the upper units damaging the units below. It therefore held that the applicants should bear the full costs of rectification and that the lower floor owner should not have to bear half these costs.

Conclusion

Even when the Board had a practice of encouraging parties to share the costs, a number of ancillary issues would arise, for example, the right of the lower floor unit owner to have a say in the choice of contractor to do the repair works and the matter of payment of the costs of damage to the lower floor unit. Often, the Board would take the attitude of the parties into account to determine the outcome of the case and / or the proportion in which the costs of repair should be borne.

However, on a practical level, leaks between upper and lower floor units have been the most common type of dispute brought before the Board. Research by the Centre for Real Estate Studies indicates that in 2002 alone, 38 of the 42 applications brought before the Board involved water leakage. This amounted to some 90% of the disputes heard by the Board in that year, and the rate of growth in these disputes far outpaced the rate
of growth in the numbers of strata title apartments.

The decision of the Board in this case can be explained in part by the facts of the case, in particular, its perception that the applicants had acted unreasonably in claiming for the cost of new fittings and carrying out repairs unilaterally. However, its decision to rescind its earlier policy may also be partly motivated by the extent of the issue in Singapore.

The Board’s decision was far-reaching and sweeping as, instead of confining itself to the facts of that case, it decided to change its previous policy, stating that it would be abandoned from henceforth. In this regard, it is worth highlighting the reliance by the Board on the new section 101(8) of the Building Maintenance and Strata Management Act. The new section does not itself deal with the issue of the sharing of costs and is confined solely to deeming leaks as originating from the upper unit. It may be, however, that the Board was moved to abandon its previous policy as it felt that the new provision would encourage owners of upper units to be more proactive in resolving leaks and hence, a ‘sweetener’ was no longer required.

It should be noted that the decision of the Board does not apply to HDB flats and the Housing and Development Board has indicated that it will be retaining its policy of requiring owners of upper and lower units to share the costs of repair.

While owners of upper floor units may find themselves out of pocket for repairs for leaks – at least vis-à-vis the owners of the lower floor units – the problem of water leakage can raise some broader legal issues and concerns that may provide them with a remedy. Poor workmanship and bad industry practice like poor management of the developments can sometimes play a role in the leaks, and in this case, the larger question of the responsibility of the developer or contractor may be an option that owners may wish to consider.