IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 1

Originating Application 780 of 2024 & Summons 2752 of 2024

Between

(1) Lew Huey Jiun, Isabelle
(2) Ong Pang Liang

… *Claimants*

And

(1) Lee Yu Ru, Michael
(2) Oh Eya Huay, Felicia

… *Defendants*

JUDGMENT

[Civil Procedure] — [Appeals] — [Adducing fresh evidence on appeal]
[Civil Procedure] — [Extension of time] — [Extension of time to file an appeal under O 20 r 3 of the Rules of Court 2021]
[Land] — [Strata Titles] — [Strata Titles Board] — [Whether grounds of appeal against order made by Strata Titles Board raised points of law]

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Lew Huey Jiun Isabelle and another
v
Lee Yu Ru Michael and another

[2025] SGHC 1

General Division of the High Court — Originating Application 780 of 2024 & Summons 2752 of 2024
Christopher Tan JC
23 October 2024, 6 January 2025

8 January 2025 Judgment reserved.

Christopher Tan JC:

1 The claimants are the subsidiary proprietors of a unit in a development at Eng Neo Avenue ("Claimants"), while the defendants are the subsidiary proprietors of the unit directly above that of the Claimants ("Defendants").[1] The present applications before me arise from the decision of the Strata Titles Board ("STB") in STB 89/2023 ("STB 89"), pertaining to the Claimants' complaint of water leaking from the unit of the Defendants ("Defendants' unit") into the unit of the Claimants ("Claimants' unit").

2 During proceedings before the STB, parties entered into a consent order providing that the Defendants would carry out rectification works in the

[1] Felicia Oh's AEIC filed with the STB in STB 89/2023 ("Defendants' AEIC") at para 6; Claimants' Bundle of Documents filed in HC/OA 780 of 2024 ("CBD") at p 392.

Claimants' unit. The STB hearing had then focused on assessment of the damages to be paid by the Defendants to the Claimants. Pursuant to this, the STB:

(a) awarded the Claimants costs of rectification works, disbursements and STB fees fixed at $10,000; and

(b) dismissed the Claimants' claim for loss of rental income.

Dissatisfied with the STB's assessment, the Claimants now seek to appeal.

3 However, as the Claimants failed to comply with the deadline prescribed by the Rules of Court 2021 ("ROC 2021") for filing an appeal, they have filed the present originating application seeking an extension of time for filing their appeal ("the EoT application"). They have also filed an application, HC/SUM 2752/2024 ("SUM 2752") seeking permission to adduce fresh evidence at the proposed appeal.

4 I make no order on the application in SUM 2752 to adduce fresh evidence. As for the EoT application, I dismiss it on the ground that the proposed appeal is hopeless. The reasons for my decision are set out below.

Brief outline

5 I begin with a condensed chronology of the salient facts.

6 Sometime in mid-March 2023, the Claimants complained about leakage of water from the Defendants' unit into the ceiling of the Claimants' master

bedroom toilet.[2] Following the complaint, the development's managing agent notified the Defendants of the leak on 14 March 2023[3] and thereafter carried out an inspection of the Defendants' unit on 24 March 2023.[4]

7 Notwithstanding the leak, the Claimants managed to secure a tenant for their unit. According to the Claimants, they entered into a tenancy agreement with the tenant on 31 March 2023 (the "First Tenancy Agreement")**.** The salient terms of the First Tenancy Agreement are highlighted below:

(a) The tenancy was for a term of five years, at a monthly rent of $6,000.

(b) The Claimants' unit was to be handed over on an 'as-is' condition, although this was expressly stipulated to be "subject to the *complete seepage repair* to the ceiling of the unit …"[5] [emphasis added].

On 4 April 2023, the tenant under the First Tenancy Agreement paid a two-month security deposit by way of a cheque for $12,000. There was a handwritten phrase at the back of the cheque, stating: "subject to *seepage completely cleared*".[6]

8 By early April 2023, the Defendants were still unable to arrest the leak. On 6 April 2023, the Claimants sent an email to the Defendants stating that they were refusing to grant the Defendants further access to the Claimants' unit and

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2 Defendants' AEIC at para 8; Claimants' AEIC filed with the STB in STB 89/2023 ("Claimants' AEIC") at para 8; CBD at pp 392 and 219.

3 CBD at p 61.

4 Defendants' AEIC at para 8; CBD at pp 61 and 392.

5 Claimants' AEIC at Tab B1; CBD at p 240.

6 Form 8 at pp 40–41; CBD at pp 51–52.

would instead be using their own contractors to repair the leak.[7] The email from the Claimants stated:

> Regarding your request to allow your contractor to access my unit on Saturday, unfortunately we will not be available and more importantly, *there is really no need for your contractor to work from my unit to waterproof your toilet. I will have my own contractor to fix my toilet ceiling.* For your information, we will also be re-waterproofing our toilet and my contractor does not require to work [*sic*] from my neighbour's unit at the lower level.
>
> [emphasis added]

To this, the Defendants had replied:[8]

> Thank you for clearing up the miscommunication and for clarifying that you will fix your toilet and that all you require from me is to ensure the waterproofing works are completed on my side. This I can easily do.

9 Following the Claimants' refusal to grant access, several emails were exchanged over the course of 7–10 April 2023:

(a) The Claimants followed up with an email to the Defendants saying that the latter were supposed to have rectified the leak by the deadline of 7 April 2023. As the Defendants had failed to comply with that deadline, the Claimants said that they had engaged their own contractors to fix the leak and were going to bill the Defendants for the repairs.[9]

(b) The Defendants responded to this email with surprise, saying that they were never informed of any such deadline.[10]

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7 Form 8 at p 42; CBD at p 53.

8 Form 8 at p 43; CBD at p 54.

9 Form 8 at p 44; CBD at p 55.

10 Form 8 at p 45; CBD at p 56.

(c) The Claimants replied saying that the Defendants were "clearly aware of" the cause of the leak since 14 March 2023.[11] The Defendants replied to reiterate that they were not aware of the cause of the leak as of 14 March 2023, saying that they were notified about the leak being due to their unit only after the managing agent carried out an inspection on 24 March 2023 (see [6] above).[12]

(d) On 10 April 2023, the Claimants followed up with an email stressing that they had the right to refuse the Defendants access.[13]

10 The Defendants claimed that without access, it became impossible to identify the cause of the leak and remedy the same. Nevertheless, they tried to remedy the leak on a best efforts basis, by applying an epoxy layer to the flooring of their own unit.[14] This was completed on 8 April 2023,[15] after which the Defendants sent an email to the Claimants on 11 April 2023 saying that the waterproofing had been completed.[16] However, on or about 8 May 2023, the Defendants were informed by the development's management committee that the leak was *still* not rectified.[17]

11 According to the Claimants, the tenant had returned from overseas on *9 May 2023* and, upon discovering that the leak in the Claimants' unit had not

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11 Form 8 at p 46; CBD at p 57.

12 Form 8 at p 47; CBD at p 58.

13 Form 8 at p 48; CBD at p 59.

14 Defendants' AEIC at para 11; CBD at p 393.

15 Defendants' AEIC at para 14; CBD at p 394.

16 Claimants' AEIC at para 13 and p 55; CBD at pp 220 and 272.

17 Defendants' AEIC at para 15; CBD at p 395.

been rectified, terminated the tenancy.[18]

12 On 5 July 2023, the Claimants entered into a second tenancy agreement with a different tenant (the "Second Tenancy Agreement"). The Second Tenancy Agreement was for a shorter term of four years and at a lower monthly rent of $5,500,[19] as compared to the First Tenancy Agreement (which was for five years at a monthly rent of $6,000).

Proceedings before the STB

13 On 23 October 2023, the Claimants commenced STB 89 against the Defendants, in which they sought various orders pursuant to s 101 of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) ("BMSMA"). The STB proceedings were commenced by way of the Claimants filing a document called Form 8.[20] In their Form 8 filing, the Claimants alleged that the ceiling of their master bedroom toilet had suffered water damage due to a defect in the waterproofing of the floor of the Defendants' unit.[21] The Claimants professed to have suffered financial loss following the Defendants' failure to rectify the leak, and quantified their damages as follows:[22]

(a) Rental loss flowing from the termination of the First Tenancy Agreement, amounting to $154,814.54. This included, *inter alia*:

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18 Keane's Draft Affidavit at paras 13–15, exhibited in the Claimants' affidavit in HC/SUM 2752/2024 filed on 25 September 2024 ("Claimants' affidavit (SUM 2752)") at pp 36–37.

19 Claimants' AEIC at para 19 and p 31; CBD at pp 221 and 248.

20 This is the prescribed document by which an order from the STB is sought, as required under reg 3(1) of the Building Maintenance and Strata Management (Strata Titles Board) Regulations 2005.

21 Form 8 at p 5; CBD at p 8.

22 Claimants' AEIC at para 28; CBD at pp 223–225.

(i) The difference in rent between the First and Second Tenancy Agreements, amounting to $96,000 (being five years' worth of rental income at $6,000 rent per month minus four years' worth of rental income at $5,500 rent per month).

(ii) Costs of renovations incurred at the behest of the tenant under the First Tenancy Agreement, which ultimately had to be borne by the Claimants upon the tenant terminating the tenancy.

(iii) Fees paid to the estate agent to bring in a new tenant, after the First Tenancy Agreement was terminated.

(b) Rectification-related damages amounting to $5,972. This mainly comprised costs incurred by the Claimants in performing rectification works.

(c) Disbursements amounting to $11,788.75.

14 As alluded to at [2] above, parties entered into a consent order before the STB on 12 April 2024.[23] Pursuant to the order, the Defendants would engage a qualified waterproofing specialist to arrest the leak and effect rectification works in the Claimants' unit. The hearing in STB 89 had then focused on assessment of the damages sought by the Claimants.[24] By agreement of the parties, the hearing before the STB was conducted by way of a paper hearing, meaning that the STB arrived at its decision after considering each witness' Affidavit of Evidence-in-Chief ("AEIC"), without any cross-examination or

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23 CBD at p 216.

24 Transcript, Page 2, lines 9–12; Claimants' supplemental affidavit filed on 23 August 2024 at p 14.

oral submissions.[25]

15 One of the witnesses who testified on the Claimants' behalf during the assessment of damages in STB 89 was Tham Chee Khuen Keane ("Keane"), who gave evidence in his capacity as the contractor who (*inter alia*) assessed the leak and carried out various waterproofing and miscellaneous works.[26] There are multiple documents filed in STB 89 which described Keane as the Claimants' "expert":

(a) The Claimants' submissions to the STB referred to Keane as their "*expert*" on at least two occasions.[27]

(b) Keane furnished a report on the leak, dated 4 October 2023, entitled "*Expert* Witness Report".[28]

(c) In their Form 8 filing, the Claimants stated that Keane had prepared a "technical *expert* report".[29]

16 Of significance is the fact that Keane was *also* the tenant in the First Tenancy Agreement, who terminated the tenancy on account of the leak. However, the Claimants did not draw the STB's attention to this fact. Rather, Keane's status as the tenant who terminated the First Tenancy Agreement was conspicuously obscured within the evidence tendered by the Claimants to the

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25 Defendants' affidavit filed on 3 September 2024 at para 9.

26 Claimants' 3rd Supplemental Skeletal Written Submissions tendered to the STB dated 16 July 2024 ("Claimants' submissions to the STB (16 July 2024)") at para 23; CBD at p 490.

27 Claimants' Skeletal Written Submissions tendered to the STB dated 17 May 2024 ("Claimants' submissions to the STB (17 May 2024)") at para 18 and Claimants' Submissions to the STB (16 July 2024) at para 23; CBD at pp 409 and 490.

28 Form 8 at p 88; CBD at p 99.

29 Form 8 at p 5; CBD at p 8.

STB:

(a) The AEIC filed by the Claimants in STB 89 ("Claimants' AEIC") had exhibited a copy of the First Tenancy Agreement, but Keane's name was redacted from this document.[30]

(b) In their AEIC, the Claimants referred to the tenant in the First Tenancy Agreement as the "Original New Tenant", or "ONT",[31] without identifying him as Keane. The Claimants' AEIC referred to Keane by name only when describing his involvement as the contractor who addressed the leak. An example of this is seen in the following extract from the Claimants' AEIC, where the Claimants described how (following the termination of the First Tenancy Agreement by the "Original New Tenant") the Claimants had to return the two-month rental deposit of $12,000:[32]

> We instructed ***Keane*** to have a pail placed in the inter-floor area above the false ceiling, and three days later, water was discovered in the pail. The ***ONT*** **[***ie*, ***Original New Tenant***] discovered that the leak had not been resolved and he therefore exercised his right to terminate the tenancy agreement. We also had to return the 2-month deposit as a result.
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> [emphasis added in bold and italics]

(c) Keane's AEIC[33] similarly said nothing about him being the "Original New Tenant" who terminated the tenancy. Rather, Keane's AEIC focused principally on the cause of the leak.

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30 Claimants' AEIC at p 23; CBD at p 240.

31 Claimants' AEIC at para 12; CBD at p 220.

32 Claimants' AEIC at para 15; CBD at p 220.

33 CBD at p 352.

The relevance of the manner by which Keane's status had been portrayed by the Claimants to the STB will be explained further below.

17 The STB delivered its decision on 22 March 2024. In respect of the claim for rental loss, set out at [13(a)] above, the STB ruled as follows:

> (a) The First and Second Tenancy Agreements, being unstamped, were inadmissible in evidence by virtue of s 52 of the Stamp Duties Act 1929 (2021 Rev Ed) ("Stamp Duties Act").[34]
>
> (b) The Claimants had failed to adduce any evidence to show that the "Original New Tenant" had terminated the First Tenancy Agreement *because of* the leak,[35] *ie*, causation of the rental loss claimed by the Claimants had not been established.
>
> (c) In any case, the Defendants were not responsible for the failure to resolve the leak as the Claimants had denied the Defendants access into the Claimants' unit to carry out rectification works.[36]

Accordingly, the STB dismissed the Claimant's claim for rental loss.

18 In respect of the claim for rectification-related damages and disbursements, the STB took account of the fact that there was no default by the Defendants which caused the Claimants to incur additional rectification

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34 Transcript, Page 5, lines 1–4; Claimants' supplemental affidavit filed on 23 August 2024 at p 17.

35 Transcript, Page 6, lines 1–3; Claimants' supplemental affidavit filed on 23 August 2024 at p 18.

36 Transcript, Page 6, lines 4–16; Claimants' supplemental affidavit filed on 23 August 2024 at p 18.

expenses.[37] Nevertheless, the STB noted that the Defendants did concede that they were liable to pay some rectification costs and disbursements incurred by the Claimants[38] and accordingly ordered the Defendants to pay the Claimants $10,000 (all-in).

19 Dissatisfied, the Claimants now seek to appeal against the STB's decision.

The present applications

20 As per O 20 rr 3(1) and 3(2) of the ROC 2021, an appeal against the STB's decision must be brought by way of an originating application that is filed and served on all parties having an interest in the matter within 14 days after the relevant tribunal's decision. Parties do not dispute that as the STB delivered its oral decision on 24 July 2024, the Claimants had to file their appeal by 8 August 2024. The Claimants failed to do so and instead filed the EoT application on 8 August 2024.

21 The Claimants cited various reasons why an extension of time should be granted for them to file an appeal:

(a) First, the Claimants said that they were overseas at the time that the STB rendered its oral decision.[39] At the time, the Claimants did not fully understand the STB's decision as all they had were the STB's brief grounds of decision, as relayed to them by their previous lawyer who

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37 Transcript, Page 6, lines 18–24; Claimants' supplemental affidavit filed on 23 August 2024 at p 18.

38 Defendants' Closing Submissions dated 12 July 2024 at paras 39–40; CBD at pp 437–438.

39 Claimants' affidavit filed on 8 August 2024 at para 3.

argued the case in STB 89.[40]

(b) Their previous lawyer had advised them of the timeframe for filing an appeal (*ie*, 14 days) only on 1 August 2024, which was only about a week before the timeframe's expiry.[41]

(c) The Claimants had decided to change lawyers, with their present lawyers coming on board only on 7 August 2024, being a day before expiry of the deadline. Their present lawyers needed time to familiarise themselves with the case[42] but found it challenging to do so as the transcript of the STB's decision was available only after 14 August 2024.

22 Apart from filing the EoT application, the Claimants also filed SUM 2752 to adduce fresh evidence for the appeal, namely:

(a) a draft affidavit by Keane ("Keane's Draft Affidavit)", in which he explained his reasons for terminating the First Tenancy Agreement; and

(b) the Stamp Duty Certificate for the Second Tenancy Agreement.

The fresh evidence sought to be adduced

23 I begin with the Claimant's application to adduce fresh evidence in SUM 2752.

24 A preliminary question is how the fresh evidence sought to be adduced

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40 Claimants' affidavit filed on 8 August 2024 at para 5.

41 Claimants' affidavit filed on 8 August 2024 at para 4.

42 Claimants' affidavit filed on 8 August 2024 at para 6.

interfaces with the Claimants' EoT application. Procedurally, it appears that SUM 2752 has been filed prematurely. It is only if the EoT application is *granted* that the way is paved for the Claimants to file an appeal against the STB's decision by way of an originating application. The summons seeking to adduce the fresh evidence can then be filed in *that* originating application (*ie*, for the appeal proper). As for the EoT application presently before me, all that was needed was for the Claimants' supporting affidavit to allude to the fresh evidence which they propose to adduce at the appeal (should the EoT application be granted), without having to file SUM 2752.

25 Given my views in the preceding paragraph, I have made no order on SUM 2752. Nonetheless, in assessing the EoT application, it is still necessary for me to examine whether an application to adduce the fresh evidence (sought to be adduced by way of SUM 2752) would be granted at the appeal, assuming the appeal is allowed to proceed. As the court assessing whether to grant an extension of time for filing an appeal, I will have to consider various factors, one of which is the merits of the intended appeal: see [48] below. Specifically, an extension of time for filing an appeal would be rejected if the merits are such that the appeal would be hopeless: *Ong Cheng Aik v Dayco Products Singapore Pte ltd (in liquidation)* [2005] 2 SLR(R) 561 ("*Ong Cheng Aik"*) at [18]. In that respect, the fresh evidence sought to be adduced by way of SUM 2752 may potentially tip the scales in favour of a finding that the appeal is *not* hopeless. However, before assessing whether the fresh evidence achieves that outcome, I must be satisfied that an application to adduce that fresh evidence on appeal would be allowed by the appellate court. If the application would be *disallowed*, the fresh evidence should technically not come into the picture in my assessment of the merits of the appeal (within the context of the EoT application). Indeed, a similar approach appears to have been taken in *Falmac Ltd v Cheng Ji Lai Charlie and another matter* [2014] 4 SLR 202, where a plaintiff applied for an

extension of time to file a notice of appeal against the High Court's decision. As part of its finding that the appeal was hopeless, the Court of Appeal declined to consider fresh evidence as part of the record because the fresh evidence could not pass muster under the principles set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") (at [57]).

26 This section of my judgment thus assesses whether an appellate court would allow the fresh evidence (sought to be adduced by way of SUM 2752) to be admitted:

(a) If the answer is in the affirmative, this means that the fresh evidence can properly be taken into account by me *now*, for the purposes of assessing the merits of the appeal under the EoT application (notwithstanding me making no order on SUM 2752).

(b) If the answer is in the negative, the fresh evidence should be disregarded by me when assessing the merits of the appeal under the EoT application.

The requirements for adducing fresh evidence on appeal

27 The powers of an appellate court hearing an appeal from the STB's decision are governed by O 20 r 7(1) of the ROC 2021, which states that the court has the powers under O 19 r 7. Order 19 r 7(7) of the ROC 2021 in turn alludes to the court's power to receive fresh evidence on appeal if there are "special grounds":

> has power to receive further evidence… but no such further evidence (other than evidence relating to matters occurring after the date of the decision appealed against) may be given except on special grounds.

28 The term "special grounds", in the context of receiving fresh evidence

on appeal, was explained in *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan*"). In that case, the Court of Appeal referred to the version of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 57 r 13(2) in existence at the time, which provided that further evidence may be given "only on special grounds and with the leave of the Court of Appeal". The court noted at [21] that the term "special grounds" has consistently been interpreted to mean the following three requirements set out in the case of *Ladd v Marshall*:

(a) First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial or hearing below.

(b) Second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive.

(c) Third, the evidence must be such as is presumably to be believed, *ie*, it must be apparently credible, though it need not be incontrovertible.

29 The applicability of the *Ladd v Marshall* requirements to appeals that do not arise from a judgment after a trial or a hearing on the merits is a matter of the court's discretion (*Anan* at [32]). In *Anan*, the Court of Appeal observed that the cases should be analysed as lying on a spectrum (at [35]):

> … On one end of the spectrum, where it is clear that the appeal is against a judgment after a trial or a hearing having the full characteristics of a trial (*ie,* which involves extensive taking of evidence and particularly oral evidence), then it is clear that *Ladd v Marshall* should be generally applied in its full rigour. On the other end of the spectrum, where the hearing was not upon the merits at all, such as in the case of interlocutory appeals, then *Ladd v Marshall* serves as a guideline which the court is entitled but not obliged to refer to in the exercise of its unfettered discretion. For all other cases falling in the middle of the spectrum, which would include appeals against a judgment

> after a hearing of the merits but which did not bear the characteristics of a trial, then it is for the court to determine the extent to which the first condition of *Ladd v Marshall ie*, criterion of non-availability should be applied strictly, having regard to the nature of the proceedings below. In this regard, relevant (non-exhaustive) factors would include (a) the extent to which evidence, both documentary and oral, was adduced for the purposes of the hearing; (b) the extent to which parties had the opportunities to revisit and refine their cases before the hearing; and (c) the finality of the proceedings in disposing of the dispute between the parties.

If the court determines that the *Ladd v Marshall* requirements should be applied strictly in light of the nature of the proceedings below, the court should proceed to consider whether there are other reasons for which the requirements should be relaxed in the interests of justice (*Anan* at [58]).

30 Parties did not dispute, and I would take the view, that the above exposition of what constitutes "special grounds" for receiving fresh evidence on appeals are applicable to appeals from tribunals, as contemplated by O 20 r 7(1) read with O 19 r 7(7) of the ROC 2021. For reasons set out below, it is the first and second of the *Ladd v Marshall* requirements set out above that are the most relevant in this case. To recapitulate, by SUM 2752, the Claimants sought to adduce fresh evidence comprising:

(a) Keane's Draft Affidavit; and

(b) The stamp duty certificate for the Second Tenancy Agreement.

I will now assess if an appellate court would allow the admission of these two pieces of fresh evidence, in the event that the appeal is allowed to proceed.

Keane's Draft Affidavit

31 To recapitulate, one of the STB's reasons for dismissing the claim for

rental loss was the absence of any evidence linking that loss to the leak (see [17(b)] above), *ie*, there was nothing to show that Keane terminated the First Tenancy Agreement *because* the leak. The Claimants have now sought to plug that evidential gap by adducing Keane's Draft Affidavit, which alludes to that causal link.[43] The salient portions of Keane's Draft Affidavit are set out below:

> 13. After I came back from overseas, on 09 May 2023, I went to check the Apartment's master bathroom ceiling. I was shocked to find that despite our in-principle agreement that the leak should be fixed by early April 2023, the water seepage from the upper floor was not resolved.
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> 14. As it is not viable for me to rent the whole unit while the problem festered, I told the Applicants' representative that the condition of the TA had not been met and had dragged for more than one month beyond initially agreed; I could not proceed with the Tenancy.
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> 15. As such, I obtained a full refund of my booking deposit and security deposit from the Applicants.

32 In seeking to adduce the evidence contained in Keane's Draft Affidavit, the Claimants relied on the Court of Appeal's observations in *Anan* at [35] that the *Ladd v Marshall* requirements may apply with varying levels of vigour, depending on the extent to which the proceedings below (from which the appeal is filed) bear the characteristics of a full trial. The Claimants highlighted that for appeals from hearings that do not bear the characteristics of a trial, it is for the court to determine the extent to which the criterion of non-availability should be applied. Thus, in the case of appeals from interlocutory matters, the *Ladd v Marshall* requirements would merely serve as a guideline which the court is entitled, but not obliged, to refer. The Claimants submitted that the appeal which they now seek to file falls within the middle of the spectrum,[44] given that

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43 Claimants' affidavit (SUM 2752) at pp 36–37.

44 Claimants' written submissions in HC/SUM 2752/2024 filed on 16 October 2024 at header III.A.

proceedings before the STB are relatively informal and (at least in this instance) no oral cross-examination was conducted (see [14] above). The Claimants consequently argued that the requirements in *Ladd v Marshall* should be applied with less rigour.

33 I am minded *not* to attenuate the rigour with which the first *Ladd v Marshall* requirement (*ie*, that the evidence could not have been obtained with reasonable diligence) should be applied, in so far as Keane's Draft Affidavit is concerned. By way of preliminary observation, the present case is unlike in *Anan*, which involved an appeal from an interlocutory matter. Rather, the present appeal is from a decision arrived at after a *trial* on the merits. Both sides called witnesses who had given evidence by way of AEICs (even if there was an agreement to do away with cross-examination). The nature of the proceedings in STB 89 thus lies closer to the end of the spectrum where the *Ladd v Marshall* requirements ought to be applied with greater stringency.

34 Furthermore, even if the nature of the STB proceedings is regarded as meriting relaxation of the *Ladd v Marshall* requirements, the specific manner in which the Claimants ran their case in STB 89 militates against me allowing any such relaxation. To explain, I begin with the Defendants' submission that during the proceedings in STB 89, the Claimants had *consciously* chosen not to disclose the fact that Keane was the tenant who had terminated the First Tenancy Agreement. The Defendants pointed to the following factors, which suggest that this omission was intentional:

(a) The Claimants had exhibited the First Tenancy Agreement in the Form 8 filed with the STB. In this copy of the agreement, Keane's name

was redacted with a marker pen.[45] The First Tenancy Agreement was also exhibited to the Claimants' AEIC. As alluded to at [16(a)] above, Keane's name was *again* redacted in this latter copy of the agreement, although this time the redaction was done using square blocks.[46] The Claimants had thus taken active steps, *on more than one occasion*, to conceal Keane's identity as the tenant.

(b) As mentioned at [16(b)] above, the Claimants' AEIC referred to Keane by name when explaining his involvement as the contractor who addressed the leak. However, the Claimants took pains to avoid naming Keane and instead used a different description ("Original New Tenant", or "ONT") to identify him, within those portions of their AEIC alluding to how Keane, as the tenant, terminated the First Tenancy Agreement.

(c) Keane's AEIC, filed in support of the Claimants' case, similarly made no mention of the fact that he was the tenant and instead focused on the steps that he had taken as the Claimants' contractor to address the leak.

(d) Keane's Draft Affidavit exhibits an exchange of correspondence between the Claimants' present lawyers (*ie*, Tan & Au LLP, who are arguing the present applications before me) and their previous lawyer (Ong Ying Ping Esq, who had carriage of the Claimants' case at STB 89). In the correspondence, Tan & Au LLP accused Ong Ying Ping Esq of advising the Claimants not to bring Keane in as a witness to testify.[47] To this, Ong Ying Ping Esq replied that *it was the Claimants* who had

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45 Form 8 at p 36, as exhibited in Defendants' Bundle of Documents at p 48.

46 Claimants' AEIC at p 23; CBD at p 240.

47 Claimants' affidavit (SUM 2752) at p 61.

given specific instructions on how Keane's evidence was to be scoped, and that up to a few minutes before the STB hearing the Claimants had not even instructed him that Keane was the tenant under the First Tenancy Agreement:[48]

> We were instructed from the beginning that the evidence of Keane was only intended to be confined to the works that he had done. This formed the basis on which the AEICs, including Keane's, and the 1st round of submissions were drafted. We were only instructed on Keane being the 1st Tenant on the day just a few minutes before the hearing.

35 At the hearing of this appeal, the Claimants maintained that they never set out to hide the fact that Keane was their tenant. Amongst other things, they pointed to a copy of the cheque for the rental deposit paid under the First Tenancy Agreement that had been tendered by the Claimants to the STB, in the Form 8 filing. This copy of the cheque clearly showed that it was drawn on the bank account of "Intentional Corporation Pte Ltd", which is Keane's company.[49] In my view, this argument tells only part of the story. The Form 8 filed by the Claimants is 127 pages long, comprising an unwieldy array of items, including WhatsApp chats, diagrams, invoices and NETS receipts. It is a rather difficult document to navigate, although counsel for the Claimants had sought to explain that the Form 8 was prepared by the Claimants who, being lay persons, could not be faulted.[50] Nonetheless, given the nature of the Form 8, it would be unrealistic to expect someone thumbing through this document to home in on the cheque (which was buried at p 51), single out the name of the account holder stamped at the bottom left corner of the cheque (*ie*, "Intentional Corporation Pte Ltd") and draw the link between Keane and the payor of the rental deposit. For

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48 Claimants' affidavit (SUM 2752) at p 63.

49 Form 8 at p 40; CBD at p 51.

50 Notes of hearing on 23 October 2024.

the STB to even get an inkling of that nexus, the Claimants' AEIC would have to extract the salient document from the hodgepodge of material within their Form 8 filing and draw the necessary connection. The Claimants not only failed to do that but did the *opposite*. Specifically, the Claimants' AEIC exhibited a copy of the cheque[51] but, unlike the copy of the cheque appended in the Form 8 filing, the copy in the Claimants' AEIC specifically *redacted* the name "Intentional Corporation Pte Ltd" at the bottom of the cheque. Given that the Claimants' AEIC would have been a central point of the STB's focus at the hearing, it is evident from the redaction that the Claimants did not want the STB to see the involvement of "Intentional Corporation Pte Ltd" in paying the rental deposit. I must also point out that it is unacceptable for Claimants' counsel to have only raised the unredacted copy of the cheque in the Form 8 filing, without also drawing my attention to the redacted copy in the Claimants' AEIC. Counsel owes a duty to the court to paint the full picture, particularly where depicting only part of the landscape engenders a misleading impression.

36 In any case, the Claimants have failed to explain why the fact that Intentional Corporation Pte Ltd paid the deposit would necessarily lead the reader to infer that the tenant had to be Keane and not someone else associated with the company. The Claimants also argued that the signature on the cheque for the rental deposit matched Keane's signatures on the First Tenancy Agreement.[52] Again, this submission is unconvincing, as the key point here is that the cheque does not reflect Keane's name. It would not have been reasonable to expect the reader to engage in the exercise of matching signatures across different documents, particularly given that it is not possible to make out

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51 Claimants' AEIC at p 27; CBD at p 244.

52 Claimants' written submissions in HC/SUM 2752/2024 filed on 16 October 2024 at para 27.

specific characters of the alphabet from Keane's signature.

37 When the factors enumerated at [34] above are placed onto the scales and weighed, the irresistible inference is that Keane's identity as the tenant under the First Tenancy Agreement was *consciously* withheld from the STB by the Claimants. This then leads me to the next question: given the deliberate nature of the omission of evidence at the STB hearing, how does that impact the applicability of the *Ladd v Marshall* requirements – particularly the first of the three requirements – when the Claimants seek to adduce that very evidence on appeal?

38 Some guidance can be drawn from the Court of Appeal's decision in *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2018] 2 SLR 159 ("*JTrust Asia*"). In that case, the appellant alleged that the first respondent, being a company which the appellant had invested in, issued sham loans to several borrowers. When the domestic Mareva injunctions obtained by the appellant against the respondents were set aside by the High Court (at [33]), the appellant appealed to the Court of Appeal. After the hearing of the appeal, the respondents filed a request for leave to adduce evidence on the identity of the ultimate owner of the borrowers, with a view to convincing the court that the borrowers were legitimate business entities (at [52]). The Court of Appeal acknowledged (at [54]) that for an interlocutory appeal, the principles in *Ladd v Marshall* should not be applied as strictly as an appeal against a judgment after a trial or a hearing of a cause or matter on the merits. *Even then*, the Court of Appeal rejected the respondents' request to adduce fresh evidence. It is noteworthy that the respondents' omission to adduce the evidence was, as with the present case, deliberate – the respondents had omitted to adduce the evidence at the hearing below to preserve commercial secrecy. The Court of Appeal found that the respondents' decision to subsequently adduce that evidence after the hearing

was made with hindsight and with a view to "retrieve lost ground". The Court of Appeal observed (at [57]):

> These principles led us ultimately to reject [the respondents'] request to adduce fresh evidence. In our view, this is not a case where, on account of the expedited nature of interlocutory matters, the plaintiff might be forgiven for failing to place all the relevant material before the court below to support their application to discharge the Mareva injunction. [Respondents' counsel] said unequivocally at the hearing of the appeal that [the respondents] had decided from the outset not to disclose the true identity of the ultimate owners and controllers of the Borrowers in order to preserve commercial secrecy. However, it became plain at that hearing from our questions to [respondents' counsel] that they could not maintain that position and at the same time reasonably expect to cast legitimate doubt on [the appellant's] *prima facie* evidence that the loans were a sham. *It was with the benefit of hindsight that they sought after the hearing of the appeal to adduce this information. In our view, this was clearly an attempt to "retrieve lost ground" by relying on evidence which they should have put before the court below and before us. The issue was always live and the respondents made a deliberate judgment call not to adduce the information in spite of its obvious relevance, and they must therefore bear the consequences of the decision they took.*
>
> [emphasis added]

The observations in *JTrust Asia* apply with equal force to the present case. The Claimants should not be allowed to "retrieve lost ground" by putting in evidence which they had consciously withheld at the proceedings in STB 89.

39 I would venture to add that if a party had *consciously* withheld evidence at the forum below, he must (when seeking to admit that evidence on appeal) at the very least *explain* why he saw fit to withhold the evidence at first instance. This will assist the appellate court in deciding whether a relaxation of the application of the first *Ladd v Marshall* requirement is warranted. Thus, in *JTrust Asia*, the reason for the omission was made known to the appellate court – the respondents had withheld the evidence at first instance to preserve commercial secrecy. Nonetheless, this reason held no sway in convincing the

Court of Appeal to allow the admission of the evidence on appeal.

40 The present case before me is one step removed, in that the Claimants have not furnished any credible reason to explain their omission of the evidence (which they now seek to adduce via Keane's Draft Affidavit) during the proceedings in STB 89. Given this informational deficit, the Defendants invite me to infer that since Keane was put forward as the Claimants' expert, the Claimants had reason to draw attention away from the fact that this "expert" was *also* a main actor in the story – being the tenant who had terminated the tenancy on account of the leak – as that could tarnish the perception of Keane's objectivity (as an expert). The Claimants, on their part, challenged that suggestion by contending that Keane was never put forward as an expert, but merely as a factual witness. I reject that contention, which is roundly contradicted by the evidence highlighted at [15] above. The Claimants further contended that Keane's details were redacted for personal data protection purposes and not for any sinister end. Specifically, Claimants' counsel explained that Keane's details were not redacted from the cheque in the Form 8 filing because the Form 8 was filed at the very inception of STB proceedings, when the Claimants were yet to be represented by counsel. However, by the time the AEICs were filed, the Claimants had a lawyer on board (Ong Ying Ping), and had received legal advice to effect the redactions for personal data protection. I find this hard to believe. Firstly, the Claimants have failed to explain why personal data protection would necessitate the selective redaction of only Keane's identity as the tenant but *not* his identity as the contractor addressing the leak. Secondly, as explained at [34(a)] above, the Claimants redacted Keane's name in the copy of the First Tenancy Agreement *annexed in the Form 8* that was submitted to the STB – by the Claimants' own explanation, they had yet to be represented by counsel at this point and thus had yet to be

legally advised about the need to redact for personal data protection purposes. If personal data protection was not the impetus for redacting Keane's name from the copy of the tenancy agreement filed in Form 8, one is then led back to the question of why the redaction was effected at all. All of this leaves the Defendants' charge – to the effect that Keane's identity as tenant was concealed for tactical reasons that were less than salutary – unanswered.

41 Considering the circumstances in the round, I have no hesitation in exercising my discretion to apply the first *Ladd v Marshall* requirement in its full rigour, as regards Keane's Draft Affidavit. This was evidence which could clearly have been obtained with reasonable diligence for use in STB 89. The evidence shows that the Claimants *intentionally* omitted to do so. Pertinently, the Claimants have failed to sufficiently explain the reasons for that omission. I see no reason to absolve the Claimants from having to (borrowing the language in *JTrust Asia* at [57]) "bear the consequences of the decision they took".

42 Aside from the first requirement in *Ladd v Marshall*, I take the view that the second *Ladd v Marshall* requirement – that the evidence must probably have an important influence on the case outcome – would similarly pose a hurdle to the admission of Keane's Draft Affidavit on appeal. As I explain at [70] below, I share the STB's view that the Defendants cannot be made to bear the rental loss detailed at [13(a)] above, given that it was the Claimants who had prevented the Defendants from entering the Claimants' unit to effect the necessary repairs. This was why the leak went unrectified and ultimately triggered Keane's termination of the tenancy. That being the case, even if the Claimants are allowed to adduce Keane's Draft Affidavit to establish that Keane was the tenant under the First Tenancy Agreement and that he had terminated the tenancy *because* of the leak, the Defendants should *still* not be made to compensate the Claimants for the rental loss. Keane's Draft Affidavit would not

influence the outcome of the appeal.

Evidence of the stamping of the Second Tenancy Agreement

43 As regards the fresh evidence pertaining to the stamping of the Second Tenancy Agreement, the Claimants sought to adduce this in order to address the STB's finding (referred to at [17(a)] above) that the document was unstamped and should thus be regarded as inadmissible under the Stamp Duties Act. To recapitulate, the Second Tenancy Agreement needs to be admitted into evidence if the Claimants are to establish the difference in rental between the First Tenancy Agreement (which was terminated by Keane following the failure to rectify the leak) and the Second Tenancy Agreement – it is that differential which forms the major component of the sum at [13(a)] above which the Claimants regarded as their rental loss.

44 As with Keane's Draft Affidavit, the Second Tenancy Agreement was something which could have been obtained with reasonable diligence during the STB proceedings, meaning that the first of the *Ladd v Marshall* requirements has not been fulfilled. Furthermore, I find that that this piece of evidence fails to satisfy the second requirement in *Ladd v Marshall*, in that it would not have an important influence on the outcome of the case. If the Defendants cannot be held responsible for Keane's termination of the First Tenancy Agreement (the Claimants having prevented the Defendants from entering the Claimants' unit to rectify the leak that triggered Keane's decision to quit the tenancy – see [70] below), the rental loss comprising the difference in rent between the First and Second Tenancy Agreements is no longer in issue. Consequently, the stamp duty certificate which the Claimants sought to adduce, with a view to allowing the Second Tenancy Agreement to be admitted into evidence, will not have an important influence on the case outcome.

Conclusion on the application to adduce fresh evidence

45 Having regard to the *Ladd v Marshall* requirements set out above, I am of the view that the fresh evidence sought to be adduced via SUM 2752 would *not* be admissible on appeal. Accordingly, there is no necessity for me to have regard to the fresh evidence when assessing the merits of the appeal (*ie*, assessing whether the appeal would be hopeless) in the course of dealing with the EoT application.

46 Be that as it may, to guard against the prospect that I may be wrong in my application of the *Ladd v Marshall* requirements, I have at several junctures in my assessment of the EoT application taken the fresh evidence into consideration – particularly the details contained in Keane's Draft Affidavit – in so far as they may potentially impact the evaluation of the appeal's merits. As I explain below, my conclusion is that the appeal would be hopeless *even* if I were to take the fresh evidence into account.

The Application for extension of time

47 I now move to the EoT application.

48 It is trite that when a court considers an application for an extension of time to file a notice of appeal, regard will be had to the following factors (see *Ong Cheng Aik* at [10]–[11]):

(a) the length of the delay;

(b) the reasons for the delay;

(c) the merits of the intended appeal; and

(d) the question of prejudice to the respondent if the extension of

time were granted.

49 I begin with the first and last of the four factors above. In my view, the length of the delay in this case was relatively short. The Claimants had filed the EoT application on the very day of the deadline for filing their appeal. This tended to suggest that the Claimants "had not wholly disregarded the rules": see *Ong Cheng Aik* at [17]. Relatedly, given the shortness of the delay, the Defendants were not able to point to any prejudice that might arise from allowing the EoT application.

50 As regards the reasons for the delay, I am not persuaded by the Claimants' explanations for why the appeal was not filed on time:

(a) Even if the Claimants were, as they claimed, overseas at the time the STB's decision was delivered, there was nothing to stop their previous lawyer from promptly communicating to them the *gist* of the STB's decision and taking instructions for filing an appeal.

(b) The Claimants said that they were only informed by their previous lawyer of the deadline to file an appeal on 1 August 2024, *ie* one week after the STB delivered its oral decision.[53] However, the Claimants have failed to produce any evidence to substantiate this claim. In any event, the Claimants had one whole week from that point until expiry of the deadline on 8 August 2024 – there is no reason why they could not have moved promptly to file an appeal within that window.

(c) The Claimants also explained that their new lawyers needed time to understand the STB's decision. A proper grasp of the STB's decision

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[53] Claimants' affidavit filed on 8 August 2024 at para 4.

> was important as O 20 r 3(3) requires that an appeal against that decision be accompanied by an affidavit containing (*inter alia*) all necessary facts and the questions of fact or law to be determined. Far more detail was thus required before an appeal could be filed in these proceedings than, say, an appeal in civil cases under O 18 or O 19 of the ROC 2021.[54] I am similarly not persuaded by this explanation. Parties who are unhappy with the tribunal's findings must be taken to be fully aware of the prescribed timelines for appeal and they must tailor their litigation strategy to accommodate those timelines. The need for more detail to be incorporated, by way of an affidavit filed together with the appeal, cannot in and of itself mean that an extension of time should be granted for the bringing of every appeal under O 20. Otherwise, the 14-day timeline set in O 20 r (2) would be denuded of operative effect.

51 Leaving aside my finding that the Claimants have failed to furnish adequate reasons for their delay in filing an appeal, the principal reason underlying my rejection of the EoT application is that the merits of the intended appeal do not warrant an extension of time. Specifically, I take the view that the appeal would be hopeless. The grounds of appeal on which the Claimants wish to proceed are extracted below:[55]

> 4.1 Whether the Board erred in law by failing to take into account relevant considerations when applying the law to the facts, by rejecting the relevant evidence that the water leakage caused loss of income, as the Unit could not be rented out at market value due to the water leakage.
>
> 4.2 That the Board totally failed to consider that the Respondents have been granted access to the Applicants' Unit at least 10 times and wrongly concluded that the Respondents had not been granted access into the Applicants' Unit to carry

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54 Claimants' submissions in OA 780 filed on 16 October 2024 at paras 9–10.

55 Claimants' supplemental affidavit sworn on 23 August 2024 at page 7.

> out works. [A]nd hence are not responsible for the fact that the leak was not arrested by the Respondents' unsuccessful rectification works, and thus are not liable to the Applicants for their loss of income.
>
> 4.3 Whether the Board erred in law by applying the wrong test as to whether the entire Unit was untenantable when that was not the issue before the Board.
>
> 4.4 Whether the Board erred in law by failing to give full effect to and misinterpreting Section 52 of the Stamp Duties Act 1929 and failing to consider relevant and material evidence admitted before it including the evidence relating to loss of the tenancy which agreement was in escrow and hence Section 52 of the Stamp Duties Act 1929 is inapplicable.
>
> 4.5 That the Board erred in law by failing to apply the legal principle that the Applicants are entitled to compensation for water leakage into the Applicants' master bedroom bathroom as the Applicants have been wrongfully deprived of full use of their property being mesne profits for trespass or wrongful occupation by the Respondents.
>
> [emphasis in underline omitted]

As can be seen, the proposed appeal is centred primarily around the STB's decision to deny the Claimants' claim for the rental loss. To recapitulate, this sum stands at $154,814.54 (see [13(a)] above), forming the lion's share of the claim before the STB.

52 As a preliminary point, it should be highlighted that the BMSMA permits appeals only on points of law. Section 98 of the BMSMA reads:

> **Appeal to General Division of High Court on question of law**
>
> **98**.—(1) No appeal shall lie to the General Division of the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act 1967 except on a point of law.
> …

This means that pure findings of fact cannot be appealed against.

53 With the above constraint in mind, I now examine each of the Claimants' proposed grounds of appeal.

The first ground of appeal

54 To recapitulate, the first ground of appeal states:

> … the Board erred in law by failing to take into account relevant considerations when applying the law to the facts, by *rejecting the relevant evidence* that the water leakage caused loss of income, as the Unit could not be rented out at Market value due to the water leakage. [emphasis added]

55 I do not see how this ground of appeal can succeed. The relevant finding of the STB which is the subject of this ground of appeal pertains to whether causation of the rental loss had been established. This was clearly a finding of fact and thus cannot be the subject of an appeal, given that s 98(1) of the BMSMA allows only for appeals on a point of law.

56 I pause to observe that while the term used in s 98(1) of the BMSMA is "*point* of law", the judicial pronouncements of what constitutes a "*question* of law" would still be of relevance. The porosity of the boundary between both terms, at least in the context of s 98(1) BMSMA, was noted by the Court of Appeal in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee*"), where the court observed (at [99]):

> Although the body of s 98(1) of the BMSMA refers to a "point of law", rather than a "question of law", nothing turns on this as the heading of s 98(1) is "Appeal to High Court on question of law".

57 The distinction between what constitutes a question of law (as opposed to a question of fact) was raised in *THM International Import & Export Pte ltd v Comptroller of Goods and Services Tax* [2024] SGHC 97 ("*THM International*"). In that case, which concerned an appeal against a decision of the Goods and Services Tax Board of Review under the Goods and Services Tax Act 1993 (2020 Rev Ed), Aidan Xu J made the following observations

about the distinction (at [23]):

> … In sum, questions of law relate to the content of the law; questions of fact relate to the happenings between the parties that form the context of their dispute; and questions of mixed law and fact concern the application of the law to the facts.

A slightly different means of couching the distinction was expressed in Kevin Y L Tan and Thio Li-ann, *Constitutional and Administrative Law in Singapore: Cases, Materials and Commentary* (Academy Publishing, 2021) ("*Constitutional and Administrative Law in Singapore*") at para 19.013, citing Peter Cane, *Administrative Law* (Oxford: Clarendon Press, 4th Ed, 2004) at p 229:

> A question of fact is a question as to the existence of some phenomenon in the world about us; a legal question is any question about the legal significance of such phenomena.

58 In *Ng Eng Ghee*, the Court of Appeal had occasion to consider what constitutes a point of law, in the context of s 98(1) of the BMSMA (being the operative provision in the present case before me). In that case, the Court of Appeal referred (at [93]) to the House of Lords decision in *Edwards v Bairstow* [1956] AC 14 ("*Edwards v Bairstow*"), where Lord Radcliffe opined (at 35–36):

> If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, *it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene.* It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law.
>
> [emphasis in original]

Edwards v Bairstow thus contemplated that an error on a point of law can come

in two forms:

(a) Where there is an obvious error on a point of law; and

(b) Where the facts are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination being appealed against.

As regards the first category, *ie*, obvious errors of law, the Court of Appeal in *Ng Eng Ghee* clarified that appeals on points of law under s 98(1) of the BMSMA need *not* be restricted to appeals on novel points of law. Rather, errors on *settled* points of law can also be the subject of an appeal under s 98(1) of the BMSMA, as this then "affords the court greater oversight over administrative and other inferior tribunals, and thus accords better protection to private rights" (at [97]–[101]).

59 Reverting to the present case, I can see no obvious error on any point of law in connection with the first ground of appeal. The STB's decision as to causation of the rental loss did not turn on any point of law, whether novel or settled. Nor can the STB's decision on this point be regarded as one which no person acting judicially and properly instructed as to the relevant law could have arrived at. Rather, it was a factual decision that was amply supported by the abject dearth of evidence adduced by the Claimants in support of their case.

60 The Claimants relied on the definition of the term "errors of law" that was propounded in *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) ("*Halsbury's*") at para 70. This definition, which was quoted by the Court of Appeal in *Ng Eng Ghee* (at [90]), reads as follows:

> Errors of law include *misinterpretation of a statute* or any other legal document *or a rule of common law*; *asking oneself and*

> *answering the wrong question*, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or *rejecting admissible and relevant evidence*; exercising a discretion on the basis of incorrect legal principles; *giving reasons which disclose faulty legal reasoning* or which are inadequate to fulfil an express duty to give reasons, and *misdirecting oneself as to the burden of proof*.
>
> [emphasis in original]

61 From within the definition above, the Claimants sought to extract the words "*rejecting* admissible and relevant evidence", saying that the STB's finding on causation of the rental loss (being the focus of the first ground of appeal) constituted just such an error. In particular, the Claimants said that this finding was arrived at by the STB "*rejecting* relevant evidence" that had been adduced in the form of:

(a) the First Tenancy Agreement, the preamble to which stated that the "handover of the unit shall be … subject to the complete seepage repair to the ceiling …" (see [7(b)] above); and

(b) the back of the cheque issued as payment of the two-month rental deposit, which similarly set out the condition "subject to seepage completely cleared" (see [7] above).[56]

The Claimants argued that both these items constituted relevant evidence showing that Keane *could* terminate the First Tenancy Agreement if the leak was not repaired. Despite this, the STB went ahead to find that there was no evidence of the tenancy having been terminated because of the leak. The Claimants thus argued that the STB had "rejected" relevant evidence, thereby bringing its finding on causation of rental loss within one of the categories of

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[56] Form 8 at p 51; CBD at p 52.

"errors of law" in the extract from *Halsbury's* set out above. With respect, this is a contrived argument. All that the preamble in the First Tenancy Agreement and the statement on the back of the cheque establish is that Keane had the *right* to terminate the tenancy if the leak was not repaired. That did not constitute evidence as to *why* Keane ultimately terminated the tenancy.

62 In any event, it is important to bear in mind the caution sounded in *Liu Chee Ming and others v Loo-Lim Shirley* [2008] 2 SLR(R) 764 against using the definition of "errors of law" set out in the above extract from *Halsbury's* to justify an overly permissive approach in the determination of what qualifies as points of law. In that case, Woo Bih Li J (as he then was) held (at [16]):

> In the present appeal before me, the statement in *Halsbury's* was again cited by the appellants without contest by the respondents. … [B]ut it must be remembered that the statement in *Halsbury's* should not be taken to allow an appellant to raise issues of fact. That is why Ang J held in *Dynamic* at [14] that a decision on the facts of the case could not be challenged *unless there was an error of law either* ex facie *or such as was described in* Edwards v Bairstow.
>
> [emphasis added]

Woo J's caution was also referred to by the Court of Appeal in *Ng Eng Ghee*, at [92].

63 What the Claimants have done is to selectively lift a single line from the definition in *Halsbury's* for the proposition that any act of "rejecting admissible and relevant evidence" could qualify as an error on a point of law. That is extremely sweeping and would allow disgruntled litigants to conjure errors on points of law from just about any factual finding, making a mockery of the limitation in s 98(1) of the BMSMA. In the absence of in-depth submissions by parties on this point, I would harbour doubts as to whether the rejection of admissible and relevant evidence would, in and of itself, constitute an error on

a "point of law" unless that rejection:

> (a) stems from the tribunal labouring under an obvious error on a point of law; or
>
> (b) constitutes a determination which no person acting judicially and properly instructed as to the relevant law could have arrived at, such that the appellate court has no option but to assume that there was some misconception of the law by the tribunal which led to that rejection.

These qualifications echo that expressed in *Edwards v Bairstow*, set out at [58] above, preventing an overly liberal interpretation of what constitutes errors on a "point of law" within the meaning of s 98(1) of the BMSMA.

64 In any case, I need not express a conclusive opinion on this point, for the simple reason that the STB's finding on causation of rental loss did not stem from any "rejection" of evidence. The Claimants' case was that they had lost rental income (which would otherwise have been earned from Keane had he not terminated the tenancy) *because* of the water leakage. The Claimants thus bore the legal burden of showing that the water leakage *caused* Keane to terminate the tenancy (and thereby *caused* the rental loss which they now claim). Yet, the Claimants failed to adduce the necessary evidence to the STB to show *why* Keane terminated the first tenancy. In fact, as explained above, it was not even made known to the STB that Keane was the first tenant. This was thus not a case where the STB had "rejected" relevant and admissible evidence, as the Claimants allege. This was a case of the Claimants *failing* to adduce relevant and admissible evidence on a pivotal issue, which in turn led to the STB finding that the Claimants failed to discharge their burden of proof.

65 If the Claimants wanted to establish the causal link between the leak and

the termination of the first tenancy, they needed to have Keane explain to the STB *why* he terminated the tenancy, *ie*, allude to the leak as the cause of his exit. As the Claimants failed to do this, the STB was fully entitled to find that evidence of causation of the rental loss had not been adduced. There was no error undergirding this finding by the STB, whether of fact or law. The first ground of appeal would thus be hopeless.

The second ground of appeal

66 The second ground of appeal states:

> That the Board totally failed to consider that the Respondents have been granted access to the Applicants' Unit at least 10 times and wrongly concluded that the Respondents had not been granted access into the Applicants' Unit to carry out works. [A]nd hence are not responsible for the fact that the leak was not arrested by the Respondents' unsuccessful rectification works, and thus are not liable to the Applicants for their loss of income.

67 The Claimants took issue with this finding, saying that there *was* evidence of the Defendants being granted access to the Claimants' unit on multiple occasions. Defendants' counsel conceded that access had indeed been granted and highlighted the dates on which the Claimants allege that the Defendants had been granted access are listed below:[57]

(a) 24 March 2023;

(b) 30 March 2023;

(c) 31 March 2023;

(d) 4 April 2023;

(e) 5 April 2023;

(f) between 15 May 2023 and 22 May 2023;

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57 As set out in the Claimants' Submissions to the STB (16 July 2024), in CBD at pp 484.

(g) 27 June 2023;

(h) 4 December 2023;

(i) 20 March 2024;

(j) 22 May 2024;

(k) 23 May 2024.

The Claimants argued that the STB, in absolving the Defendants from having to pay for the rental loss on account of the Claimants' refusal to grant the Defendants access to conduct repairs, failed to take account of the multitude of occasions where the Defendants were allowed into the Claimants' unit. The finding thus contained an error on a point of law, as the STB was guilty of (to use the language of the passage from *Halsbury's* extracted at [60] above) "failing to take relevant considerations into account when purporting to apply the law to the facts".

68 In my view, the failure to take account of the visits listed above did not appear to stem from any obvious error on a point of law, nor could it be described (for reasons detailed in the next paragraph) as a determination which no person acting judicially and properly instructed as to the relevant law could have arrived at. In line with the views expressed at [63] above, I consequently harbour doubts as to whether this ground of appeal can be said to relate to a "point of law".

69 Even if this ground of appeal is construed as being on a point of law, I find that any failure to accord weight to the multitude of occasions listed in [67] above (where the Defendants were allegedly granted access to the Claimants' unit) does not undermine the STB's decision. The Defendants' case in STB 89, which was supported by the email evidence tendered by the Claimants in their Form 8 filing, was that the Claimants had blocked the Defendants from

accessing their unit on *6 April 2023*. Specifically, the Claimants had on that date declared to the Defendants that the Claimants were going to get their own contractors to do the repairs (see [8] above). This turn of events must then be juxtaposed against Keane's evidence, to the effect that his discovery of the unrectified leak (which triggered the termination of the tenancy) occurred on *9 May 2023* – see extract from Keane's Draft Affidavit set out at [31] above.[58] This meant that between 6 April and 9 May 2023, which was a significant stretch of time spanning ***five weeks*** *immediately preceding Keane's discovery of the unrectified leak* (and his consequent termination of the tenancy), the Defendants were blocked from accessing the Claimants' unit to perform repairs. If one then looks at the list of occasions at [67] above (where the Claimants allegedly granted access to the Defendants), it is apparent that *all* these instances fall outside the five-week window during which the Defendants had been denied access:

(a) The dates listed in sub-paragraphs (a) to (e) predate 6 April 2023, when the Defendants tried to access the premises but were blocked from doing so – I also note that collectively, these instances spanned a rather short window of time that did not even reach two weeks.

(b) The dates listed in sub-paragraphs (f) to (k) post-date Keane's discovery of the leak on 9 May 2023, which triggered his termination of the tenancy.

70 The upshot of the above is that the Defendants were given less than two weeks to effect rectification works, after which the Claimants blocked them from accessing the Claimants' unit (thereby preventing them from rectifying the

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58 Claimants' affidavit (SUM 2752) at p 36.

leak). The Claimants had then *taken it upon themselves* to effect the repairs, for which they had a far more generous window of *five weeks* to do so. Despite this, Keane had returned to the Claimants' unit at the end of those five weeks to find the leak unrectified – this had then prompted him to terminate the tenancy. Under such circumstances, a tribunal would be hard put to lay responsibility for Keane's termination of the tenancy (on account of the unrectified leak) at the feet of the Defendants. The Claimants had failed to rectify the leak (as they said they would) and concurrently hamstrung the Defendants' ability to do so. The STB thus had ample justification for refusing to find any unbroken causal link between the leak and Keane's termination of the tenancy, and to award minimal or no damages as regards the rental loss sought by the Claimants.

71 Before issuing my judgment, I had called parties before me for a short hearing to highlight, *inter alia*, the five-week window described in the immediately preceding paragraph, as I thought this to be quite material. In response, Claimants' counsel sought to persuade me that denial of access during those five weeks was inconsequential, by asserting that access to the Claimants' unit was *not required* to rectify the leak.[59] When I asked for the evidence in support of this, Claimants' counsel contended that the leak was eventually rectified by the Defendants *without there being any evidence of the Defendants accessing the Claimants' unit to do so*. It is quite evident that in hazarding this contention, Claimants' counsel had lost sight of their own case (set out at [67] above) that after Keane's termination of the tenancy, the Claimants allowed the Defendant to enter the Claimants' unit on *multiple* occasions. The last two of these occasions took place after the parties had agreed to a consent order before the STB, under which the Defendants would carry out rectification works in the Claimants' unit. Defendants' counsel was thus compelled to point out during

[59] Notes of hearing on 6 January 2025.

the hearing before me that the contention by Claimant's counsel was factually untrue, to which Claimants' counsel was unable to provide any meaningful riposte.[59]

72 After the hearing, the Claimants sent in a request for further submissions.[60] In it, they attempted to highlight various documents to bolster their point that the repairs did not require access to the Claimants' unit. One of these was the "Expert Witness Report" prepared by Keane, in which Keane:

(a) opined that "Leakage can be stopped within a week by repairing the [Defendants'] damaged … toilet support flooring"; and

(b) described the remedial work which needed to be done as: "rectify waterproofing in upper floor unit" and "Urgent corrective works to the waterproofing of the upper floor unit".[61]

Clearly, the Claimants maintained, all these references contemplated that the repairs need *only* be done in the upper unit, *ie*, that of the Defendants, and not the Claimants' unit. The Defendants also referred to a survey report prepared by Lacasa Consultancy and Assessment Pte Ltd, which recommended that certain repairs be effected to the Claimants' unit only *after* satisfactory completion of the repair works to the Defendants' unit. I have looked at the documents referred to by the Claimants, including those cited at the hearings before me. None of them support the Claimants' contention that access to the Claimants' unit was not required to rectify the leak.

73 In their request for further submissions, the Claimants also suggested

[60] By way of letter dated 7 January 2025.

[61] Claimants' AEIC at p 95.

that when they told the Defendants that the Claimants would be conducting their own repairs, the Claimants' intention was to repair only the *false ceiling* of their unit, which sustained damage from the leak – this was merely cosmetic. As far as stopping the source of the leak was concerned, the Claimants had always relied on the Defendant to do so.[62] I doubt that this was indeed the intent being conveyed by the Claimants. The Claimants' email of 6 April 2023 (referred to at [8] above) stated:

> … unfortunately we will not be available and more importantly, there is really *no need for your contractor to work from my unit* ***to waterproof your toilet****. I will have my own contractor to fix my toilet ceiling.* [emphasis in italics and bold italics added]

As can be seen, the subject of the discussion clearly pertained to *waterproofing*, *ie*, rectifying the source of the leak, and not just cosmetic repairs to the Claimants' ceiling. It was in response to this representation that the Defendants responded:

> Thank you for clearing up the miscommunication and for clarifying that you will fix your toilet and that all you require from me is to ensure *the waterproofing works are completed* ***on my side***. This I can easily do. [emphasis in italics and bold italics added]

In any case, the Claimants' intention is beside the point. In the absence of evidence substantiating the Claimants' assertion that the repairs could be conducted without accessing the Claimants' unit, the Claimants must live with the consequences of their decision to bar the Defendants from entering their unit to conduct repairs (whatever the intention lying behind the Claimants' actions).

74 I therefore find the second ground of appeal to be hopeless.

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[62] See paras 10-12 of the Claimants' letter dated letter dated 7 January 2025.

The third and fifth grounds of appeal

75 Both the third and fifth grounds of appeal are related, as they centre on the Claimants' contention that the STB applied the wrong approach for assessing damages. The third ground of appeal reads as follows:

> Whether the Board erred in law by applying the wrong test as to whether the entire Unit was untenantable when that was not the issue before the Board

The fifth ground of appeal reads as follows:

> That the Board erred in law by failing to apply the legal principle that the Applicants are entitled to compensation for water leakage into the Applicants' master bedroom bathroom as the Applicants have been wrongfully deprived of full use of their property being mesne profits for trespass or wrongful occupation by the Respondents

76 In support of these grounds of appeal, the Claimants stressed that trespass is a strict liability tort and contend that the STB failed to appreciate this. The Claimants cited *Swordheath Properties Ltd v Tabet & Others* [1979] 1 WLR 285 and *Inverugie Investments Ltd v Hackett* [1995] 1 WLR 713 for the proposition that a claimant suing for trespass can claim compensation extending *beyond* the actual loss arising from the trespass and can seek damages calculated at the ordinary letting value of the property trespassed upon.[63]

77 With respect, the Claimants' submissions are misconceived. Firstly, the principle that trespass is a strict liability tort which allows the property owner to claim for the ordinary letting value of the property does not serve to advance this ground of appeal. In STB 89, the Claimants did *not* seek mesne profits for trespass. It does not now lie in their mouth to complain that the STB failed to consider this measure of damages. Rather, the Claimants had quantified their

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63 Claimants' written submissions in OA 780 filed on 16 October 2024 at paras 21–23.

claim as being the differential in rental income between the first tenancy (in which Keane was the tenant) and the second.[64] Quantified as such, this claim had been squarely addressed (and rejected) by the STB.

78 In any event, this is not a case where the trespass alleged by the Claimants entails wrongful occupation, for which a property owner might seek to claim reasonable rent. Rather, this is a case where the Claimants have alleged property damage. That there is a distinction between the two was made clear by the following passages from Gary Chan Kok Yew, The Law of Torts in Singapore (Academy Publishing, 2nd Ed, 2016) ("*The Law of Torts in Singapore*") at paras 10.024–10.026*:*

> 10.024 The measure of damages for trespass depends on the consequences flowing from the trespass (including property damage and damage arising from wrongful occupation). *Unless there is sufficient evidence of the damage suffered by the plaintiff, nominal damages will be awarded.* …
>
> 10.025 Where there is property damage, the plaintiff may claim for the depreciation in the value of property or costs of replacement or repair. The measure of property damage … depends on the plaintiff's future intentions and the reasonableness of those intentions …
>
> 10.026 For wrongful occupation, the plaintiff is normally entitled to recover the lost rental value of land during the period of the defendant's occupancy … The compensation is not necessarily confined to the plaintiff's actual loss arising from the defendant's trespass. In *Inverugie Investments* … the plaintiff was entitled to recover reasonable rent for the apartments …
>
> [emphasis added]

The passage above also re-iterates the principle that unless there is sufficient evidence of damage, nominal damages will be awarded.

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64 Claimants' submissions to the STB (17 May 2024) at para 27; CBD at p 411.

79 Given the lack of evidence establishing that the "Original New Tenant" (*ie*, Keane) terminated the tenancy *because* of the leak, the Claimants had failed to discharge their burden of proving the measure of rental loss that they had specifically claimed for. The third and fifth grounds of appeal are thus also hopeless.

The fourth ground of appeal

80 The fourth ground of appeal reads as follows:

> Whether the Board erred in law by failing to give full effect to and misinterpreting Section 52 of the Stamp Duties Act 1929 and failing to consider relevant and material evidence admitted before it including the evidence relating to loss of the tenancy which agreement was in escrow and hence Section 52 of the Stamp Duties Act 1929 is inapplicable.

81 By way of backdrop, s 52(1) of the Stamp Duties Act states that an instrument chargeable with stamp duty is inadmissible in evidence if it has not been stamped. The provision reads:

> Subject to this section, an instrument chargeable with duty must not be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, and must not be acted upon, registered or authenticated by any such person or by any public officer, unless the instrument is duly stamped.

82 The Claimants maintained that the First Tenancy Agreement with Keane was not chargeable with stamp duty as it was undated.[65] The Claimants contended that if stamp duty was never chargeable, the failure to stamp the First Tenancy Agreement did not attract the proscription in s 52 of the Stamp Duties Act. The STB should thus not have regarded the First Tenancy Agreement as inadmissible.

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[65] Claimants' submissions in OA 780 filed on 16 October 2024 at para 36; "Claimants' affidavit (SUM 2752) at para 17.

83 During the hearing, I had highlighted to Claimants' counsel s 4(1)(*a*) of the Stamp Duties Act, which states that any instrument which is "*executed* in Singapore" is chargeable with stamp duty. In the context of documents not under seal, s 2(1) of the Stamp Duties Act defines "executed" to mean "signed". In the present case, the First Tenancy Agreement *was* signed by all sides (*ie*, by the Claimants and Keane). In light of this, I had asked Claimants' counsel during the hearing to explain their basis for saying that stamp duty was not chargeable. Claimants' counsel asserted that it is not IRAS' practice to stamp documents that are not dated. When I pointed out that there was no evidence tendered by the Claimants in support of this assertion, Claimants' counsel retorted that the court should take judicial notice of IRAS' practice.[66] I refuse to do so. Apart from the list of matters statutorily prescribed by s 59(1) of the Evidence Act 1893 (2020 Rev Ed), for which the court may take judicial notice, a court may also take judicial notice of two categories of facts at common law (*Zheng Yu Shan v Lian Beng Construction (1988) Pte Ltd* [2009] 2 SLR(R) 587 at [27]):

> (a) facts which are so notorious or so clearly established that they are beyond the subject of reasonable dispute; and
>
> (b) specific facts which are capable of being immediately and accurately shown to exist by authoritative sources.

In this case, the Claimants' assertion as to IRAS' practice fits into neither category. The Claimants elided my query as to why the First Tenancy Agreement, despite having been signed by all parties, cannot be regarded as an "executed" document within the meaning of s 4(1)(*a*) of the Stamp Duties Act, on which stamp duty is chargeable. I am thus unable to say with any degree of confidence that the Claimants' assertion as to IRAS' practice is beyond

[66] Notes of hearing on 23 October 2024.

reasonable dispute. The assertion also does not fit within category (b), there being no authoritative sources raised by the Claimants to indicate that such a practice by IRAS exists.

84 I should also point out that at *no point* in their submissions before the STB did the Claimants ever mention that the First Tenancy Agreement was "in escrow", as they now claim in the fourth ground of appeal.

85 In any case, even if the STB erred in failing to admit the First Tenancy Agreement into evidence, the purported error would have been immaterial to the case outcome. Admission of the First Tenancy Agreement into evidence would not change the fact that the Claimants failed to adduce any evidence on why Keane terminated the First Tenancy Agreement, and consequently failed to establish causation of the rental loss. This ground of appeal thus does not contribute to the merits of the appeal. The fourth ground of appeal is also hopeless.

Conclusion

86 In conclusion, the Claimants' application for an extension of time is dismissed as I find that the appeal, after taking into consideration the merits of the proposed grounds of appeal, would be hopeless. This would be my finding *even* if I were to take into account the fresh evidence sought to be adduced by way of SUM 2752.

87 I will now hear the parties on costs.

Christopher Tan
Judicial Commissioner

Carolyn Tan Beng Hui and Leong De Shun Kevin (Tan & Au LLP) for the Claimants;
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