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2. Redaction HAS been done.

District Judge Chiah Kok Khun
15 July 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGMC 88

Magistrate Court Originating Claim No 2999 of 2025

Between

- (1) Glenford Tan Ming Loon
- (2) Loo Hwee-Wen Vivien (Lu Huiwen Vivien)

... Claimants

And

The Management Corporation Strata Title Plan No. 2823

... Defendant

JUDGMENT

[Land — Strata titles — Common property — Subterranean termites nesting in and traversing through common property ground soil — Subterranean termites causing damage to parts of subsidiary proprietors' property — Whether damage caused by subterranean termites from common property — Whether management corporation failed to take reasonable steps to maintain common property — Whether management corporation breached duty under Section 29(1)(b) Building Strata Management Act 2004]

[Civil Procedure — Expert — Pest controller contracted to management corporation giving expert evidence — Expert not tendering report — Whether expert independent of parties — Whether expert lacked requisite specialised knowledge — Whether requirements of expert evidence under Order 12 Rule 5 Rules of Court 2021 complied with]

TABLE OF CONTENTS

INTRODUCTION.....	1
ISSUES TO BE DETERMINED	3
ANALYSIS AND FINDINGS	3
THE EVIDENCE SHOWS SUBTERRANEAN TERMITES ACTIVITY ACROSS THE COMMON PROPERTY OF THE DEVELOPMENT.....	3
SUBTERRANEAN TERMITES CAUSED THE DAMAGE IN THE PROPERTY	8
THE DEFENDANT FAILED TO TAKE REASONABLE STEPS TO ENSURE THE COMMON PROPERTY GROUND SOIL WAS FREE FROM SUBTERRANEAN TERMITES	10
THE DEFENDANT IS LIABLE FOR DAMAGE AT THE PROPERTY.....	17
THE DEFENDANT’S PURPORTED EXPERT EVIDENCE IS UNACCEPTABLE	20
CONCLUSION.....	24

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Glenford Tan Ming Loon & Anor
v
The Management Corporation Strata Title Plan No. 2823
[2026] SGMC 88

Magistrate Court Originating Claim No 2999 of 2025
District Judge Chiah Kok Khun
2 February, 22 April, 10 June 2026

15 July 2026

Judgment reserved.

District Judge Chiah Kok Khun:

Introduction

1 This case concerns the question of whether the management corporation of a strata title development has a duty to ensure that the common property ground soil is free from subterranean termites nesting in or traversing through it. It would appear that there is no reported case authority in Singapore on the duty of management corporations to maintain common property in specific reference to termite prevention.

2 The claimants are the subsidiary proprietors of 61 Sunset Way [unit no redacted] (the “Property”), within a low-rise condominium development known as Freesia Woods (the “Development”). The Property is a unit on the 5th floor, located at the top of one of the blocks in the Development. The defendant is the management corporation of the Development constituted on 1 November 2023

under the Land Titles (Strata) Act 1967. The claimants' action against the defendant arises from a termite infestation at the Property discovered in December 2023, which caused damage to parts of the Property. The claimants claim for the costs of repair of the damage.

3 The claimants' case is that the defendant breached its statutory duties under s 29(1)(a) and (b) of the Building Strata Management Act 2004 ("BSMA") and its common law duty of care by failing to ensure that the common property ground soil of the Development was free from subterranean termites nesting in or traversing through it. The defendant has also failed to undertake all anti-termite treatment to the common property ground soil of the Development as would be necessary to ensure that the common property ground soil of the Development was free from subterranean termites.¹ The claimants say that the breaches allowed subterranean termites to nest in or traverse through the common property ground soil and make their way to the Property, and once at the Property, caused damage to parts of the Property.²

4 The defendant does not deny the termite infestation at the Property, nor the damage at the Property, but contends that the damage was not caused by subterranean termites.³ The defendant says that the damage was a result of the claimants' unauthorized and illegal installation of a kitchen at the Property, which created a damp environment which caused the Property to be more susceptible to termite infestation.⁴ In other words, the defendant is suggesting that whilst the damage to the Property was caused by termites, it was not caused

1 Para 4 of statement of claim.

2 Para 9 of the statement of claim.

3 Para 4B of defence.

4 Para 4C of defence.

by the subterranean variety. The defendant is therefore not liable for the damage. The defendant also contends that some of the rectification works carried out by the claimants were unrelated to the damage caused by termite infestation.⁵

5 For the reasons below, I am allowing the claim.

Issues to be determined

6 The issues to be decided by me in this case are as follows:

- (a) Whether the subterranean termites nesting in or traversing through the Development caused the damage at the Property.
- (b) If so, whether the defendant had taken reasonable steps to ensure that the common property ground soil of the Development was free from subterranean termites nesting in or traversing through it.
- (c) Whether defendant should be responsible for the damage at the Property.

Analysis and findings

The evidence shows subterranean termites activity across the common property of the Development

7 It is not disputed that the claimants discovered termite infestation and damage at the Property in December 2023. The claimants' position is that the termites at the Property were subterranean. They called an entomologist Ms Teh

⁵ Para 5 of defence.

Jo Lynn (“Ms Teh”) as their expert witness.⁶ When Ms Teh inspected the Development, she found extensive subterranean termite activity across the common property.⁷ She testified that subterranean termites were found originating from the ground in the estate.⁸ Ms Teh’s expert report is clear that there must have been subterranean termites nesting in the common property ground soil at the material time.

8 The burden of proving that there were subterranean termites nesting in or traversing through the Development lies with the claimants. It is trite that whoever asserts a claim has the burden of proving the claim. The claimants are asserting their claim and the burden of proving the claim rests squarely on the claimants. In this regard, by the expert evidence of Ms Teh, the claimants have discharged its evidentiary burden in this regard. The evidentiary burden thus shifts to the defendant to prove otherwise. I will briefly refer to the law on the burden of proof. The starting place is section 103 of the Evidence Act 1893, which provides as follows:

Burden of proof

103.-(1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

9 A comprehensive explanation of the application of the concept of burden of proof is found in the case of *SCT Technologies Pte Ltd v Western Copper Co*

⁶ Teh Jo Lynn’s Affidavit of evidence-in-chief dated 10 November 2025 (“Ms Teh’s AEIC”).

⁷ Ms Teh’s AEIC at P 21.

⁸ Trial Transcript 2 Feb p 74.

Ltd [2016] 1 SLR 1471 (“*SCT Technologies*”). The Court of Appeal stated as follows at [16]-[19]:

16 The concept of burden of proof may be spoken of in two distinct senses which, to avoid any confusion in the analysis which follows, we would clarify from the outset.

17 First, the concept may be used in the context of referring to the legal burden of proof, which is “properly speaking, a burden of proof, for it describes the obligation to persuade the trier of fact that, in view of the evidence, the fact in dispute exists” ... Central to determining where the burden lies in a civil suit is the state of the parties’ pleadings. It is in the pleadings that one finds the material facts that each party asserts to establish its claim or defence (as the case may be) and, as is trite law, he who asserts must prove – this is a rule which is consistent with the general principle underlying ss 103 and 105 of the Evidence Act (Cap 97, 1997 Rev Ed). ...

18 This leads us to the second sense in which the concept of burden of proof is commonly used, which is in the evidential sense. Essentially the evidential burden of proof refers to “the need of the party to adduce evidence to discharge his legal burden (or the need of the opposing party to adduce evidence to prevent the proving party from discharging his legal burden)”. ... From this description alone, it is clear that, unlike the legal burden of proof, the evidential burden can shift from one party to the other depending on the evidence which is adduced at trial by either side. ...

19 The practical operation of the above principles in the context of a trial were helpfully summarised by this court in *Britestone* at [60] as follows:

To contextualise the above principles, at the start of the plaintiff’s case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact coincide. Upon adduction of that evidence, the evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the

plaintiff. The legal burden of proof – a permanent and enduring burden – does not shift. A party who has the legal burden of proof on any issue must discharge it throughout. ...

10 In other words, the concept of burden of proof has to be looked at in two discrete ways. First is the legal burden of proof, which essentially is the burden of proof as commonly understood. The party that asserts a fact in dispute has the onus to persuade the court, in view of the evidence, that the fact in dispute exists. The second way in which the concept of burden of proof is used is in the evidential sense. The evidential burden of proof refers to the requirement to adduce evidence to discharge the legal burden. The requirement to adduce such evidence lies with the party discharging the legal burden. However, it also refers to the need imposed on the opposing party to adduce evidence to prevent the proving party from discharging his legal burden.

11 The legal burden of proof does not shift. It remains with the claimant. It is a “permanent and enduring burden”. A party who has the legal burden of proof on any issue must discharge it throughout. The passage cited above however, describes how the evidentiary burden shifts from one party to the other, with the legal burden always remaining with the claimant. At the start of the claimant’s case, the evidentiary burden rests with the claimant. The claimant must first adduce *some* evidence to prove the fact in dispute. If the claimant adduces that evidence, the evidential burden then shifts to the defendant, to adduce some evidence in rebuttal.⁹

⁹ I have in my previous judgments the occasion to write a similar analysis on the burden of proof: see *Lim Kai Xin v Personal Representative of the Estate of Ong Ah Lak (deceased) & Anor* [2017] SGDC 319; *Carlsberg Singapore Pte Ltd v Laurels Food Suppliers (Pte) Limited* [2018] SGDC 32; *Choon Insulation & Engineering Pte Ltd v Synthetech Engineering Pte Ltd* [2024] SGDC 163.

12 As alluded to above, in the present case the claimants have discharged its evidentiary burden proving that there were subterranean termites nesting in or traversing through the Development. It is for the defendant to adduce some evidence to prove otherwise. In this regard, it is not disputed that the defendant appointed a pest control company Lucky Pest Control Co Pte Ltd (“Lucky Pest”) from 1 July 2023 to undertake pest inspections and treatment at the Development, and that Lucky Pest recorded what they did in service reports. The defendant’s position is that there were no subterranean termites at the common property ground soil because visual inspections by Lucky Pest on 8 November 2023 did not uncover any termites infestation at the common property ground soil in the Development. Mr Chaudhry Muhammad (“Mr Chaudhry”) of Lucky Pest takes the position that the mud trails at the Property may have been left by subterranean termites but he is unable to say for certain.¹⁰ That was the best evidence in favour of the defendant that I am able to glean from his evidence in court. It is woefully inadequate to constitute evidence that there were *no* subterranean termites nesting in or traversing through the Development at the material time.

13 I therefore find that the defendant has failed to produce some evidence to rebut Ms Teh’s evidence. As no evidence in rebuttal is adduced by the defendant, I am entitled to conclude from the evidence of the claimants that their legal burden is also discharged, and I make a finding of fact against the defendant on the question of whether there were subterranean termites nesting in the common property ground soil at the material time.

¹⁰ Paras 13-14 of Chaudhry Muhammad Jawad Ur Rehman Affidavit of evidence-in-chief dated 24 November 2025 (“Chaudry’s AEIC”).

14 For completeness, I note that while Lucky Pest undertook what the defendant characterised as regular inspections, it failed to pick up widespread signs of termite infestation in the Development. It appears that despite attending at the Development fortnightly for years, it failed to detect the widespread subterranean termite activity that Ms Teh found on a single inspection.¹¹ A service report dated 20 December 2023 stated that an inspection found “no sign of “white ants””, but at the same time stated that Luck Pest undertook “spraying of palm tree near baby pool for treatment of “white ants””. Confronted with this discrepancy, Mr Chaudhry admitted that Luck Pest’s service report could not be relied upon.¹²

15 Further, the service report on 13 March 2024 stated that an inspection found “no sign of white ants”, but extensive termite damage was found at the gymnasium and treated on 27 March 2024. Mr Chaudhry gave evidence that the damage likely took around three months to occur, and admitted that the earlier service report on 13 March 2024 had “overlooked” it.¹³

Subterranean termites caused the damage in the Property

16 Following from the above, I therefore made a finding of fact that there were subterranean termites nesting in or traversing through the Development. The next question that arises is whether the subterranean termites caused the damage at the Property. In this regard, Ms Teh’s evidence is plain. Her evidence is that the damage in question in the Property was caused by the Subterranean Termites. She found mud tubes and evidence of mud tubes at the Property,

¹¹ Ms Teh’s AEIC at p 23-24., Trial Transcript 22 April, p 75.

¹² Trial Transcript 22 April, p 75.

¹³ Trial Transcript 22 April, p 74.

which indicates activity by subterranean termites.¹⁴ As alluded to above, she found extensive subterranean termite activity across the common property;¹⁵ originating from the ground.¹⁶ Ms Teh gave evidence that "it is possible for *Coptotermes* termites to emerge in random units along a vertical stack undetected by occupiers. They can sometimes emerge at higher units while bypassing lower ones, randomly and for no reason".¹⁷ I note that her evidence in this regard is unchallenged by Mr Chaudhry.

17 Mr Chaudhry on the other hand acknowledges that the damage at the Property is caused by termites but says that they may not be subterranean termites but instead damp wood termites, which can form colonies directly inside moist or water-damaged wood; or termites entering the Property through small internal gaps or cracks.¹⁸ At the same time, he however acknowledges that subterranean termites build mud tubes whilst damp wood termites do not, and admits that mud tubes at the Property may have been left by subterranean termites, as the mud trail is their known method of travel.¹⁹

18 It is seen therefore that Mr Chaudhry does not proffer any contrary evidence in answer. He did not inspect the Property but instead relies solely on a brief video footage of termites at the Property. He then concludes that there are no visible mud trails connecting the termites in the Property to the ground soil.²⁰ He asserts that it was highly improbable for subterranean termites

¹⁴ P 23 of Ms Teh's AEIC.

¹⁵ P 41 of Ms Teh's AEIC.

¹⁶ Trial Transcript 2 Feb p 74.

¹⁷ P 21 of Ms Teh's AEIC.

¹⁸ Para 54 of Chaudhry's AEIC.

¹⁹ Paras 8 and 13 of Chaudhry's AEIC.

²⁰ Para 22 of Chaudhry's AEIC.

originating from the ground soil to reach the 5th floor without affecting any of the lower floors.²¹ Not only is this speculative, it is also refuted by Mr Teh's evidence that it is possible for Coptotermes termites to emerge in random units along a vertical stack undetected by occupiers, and that they can emerge at higher units while bypassing lower ones.²² As noted above, Mr Chaudhry does not provide contrary evidence in this regard.

19 In view of the foregoing, I make the finding that the subterranean termites caused the damage at the Property.

The defendant failed to take reasonable steps to ensure the common property ground soil was free from subterranean termites

20 I turn next to the question of whether the defendant has taken reasonable steps to keep the common property ground soil free from subterranean termites.

21 The claimants' case is that the defendant has breached its duty under s 29(1) of the BSMA. It should first be noted that s 88(1) allows a subsidiary proprietor to apply to court to recover damages for any loss or injury resulting from the failure of a management corporation in complying with any duty imposed on it by the BSMA.

22 Section 88(1) of the BSMA states as follows:

Breaches of this Part

88.—(1) If a management corporation or subsidiary management corporation commits a breach of any provision of this Part, or makes default in complying with any requirement of, or duty imposed on it by, any provision of this Part, a

²¹ Para 25 of Chaudhry's AEIC.

²² P 21 of Ms Teh's AEIC.

subsidiary proprietor or mortgagee in possession or occupier of a lot is entitled to apply to the court —

(a) for an order to restrain the breach of any such provision by; or

(b) to recover damages for any loss or injury to the subsidiary proprietor, mortgagee in possession, or occupier or property arising out of the breach of any such provision from, the management corporation or subsidiary management corporation, as the case may be.

...

23 The duties that the claimants contend the defendant has failed to comply with are those under s 29(1). Section 29(1) states as follows:

Duties and powers of management corporation in respect of property

29.—(1) Except as otherwise provided in subsections (1A), (1B) and (3), it is the duty of a management corporation —

(a) to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation;

(b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —

(i) the common property;

(ii) [Deleted by Act 35 of 2017]

(iii) [Deleted by Act 35 of 2017]

(iv) each door, window and other permanent cover over openings in walls where a side of the door, window or cover is part of the common property; and

(v) any movable property vested in the management corporation;

...

24 In this regard, in acknowledging that the defendant owed a duty to take reasonable steps in the maintenance of common property, the defendant refers to the High Court decision of *MCST Plan No 3602 v MacFadden, Declan Pearse* [2022] 4 SLR 623 (“*Declan*”). *Declan*, which concerns the duty of a management corporation to maintain a concealed water pipe which leaked, provides useful guidance which is applicable to the present case. The Honourable Justice Andre Maniam held as follows in *Declan* at [38]-[44]:

38 I respectfully adopt the reasoning in the Canadian cases such as *John Campbell*, and that at the appellate level in *New South Wales* (especially that of McColl JA in *Ridis*). The duty to maintain common property does not create strict liability: it does matter whether the MCST acted reasonably or not.

39 The law in Singapore has moved from SPs having no right to claim damages for breach of the MCST’s duty to maintain common property (*per Menezes* ([17] *supra*) interpreting the LT(S)A), to SPs now having such a right to make such a claim (under s 88 of the BMSMA). But it would go too far to hold that an MCST is now strictly liable for any loss caused by the condition of common property.

40 As noted in *Menezes*, a breach of s 31(1) of the LT(S)A (the predecessor of s 29(1)(b) of the BMSMA) would be a criminal offence by the MCST under s 45 of the LT(S)A. A court should refrain from construing an offence as one of strict liability unless it can be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act: *Chng Wei Meng v Public Prosecutor* [2002] 2 SLR(R) 566 at [17]. That is not the case with s 29 of the BMSMA. In relation to its duty to maintain common property, the MCST is merely the agent for the SPs (*Ridis* at [186]), the MCST is not an insurer (*John Campbell* at [18]). The MCST should act with reasonable care, it should not be strictly liable.

...

42 In the present case, the MCST did not know, and could not reasonably have known, of the concealed pipe. When the leak occurred, it ascertained the source of the leak, and

repaired the pipe. The MCST acted reasonably: there was no breach of s 29(1)(b) of the BMSMA.

...

44 Section 29(1)(b) of the BMSMA does not create a situation of strict liability: the mere fact that the leaking pipe is common property does not, without more, render the MCST liable. If the MCST has acted reasonably in the discharge of its duty to maintain common property, it has not breached its statutory duty.

25 It is seen that whilst the duty to maintain common property does not create strict liability, it does matter whether the management corporation acted reasonably or not in maintaining common property.

26 To be clear, there is no suggestion by the claimants in the present case that the defendant operated under any strict liability in discharging its duty to maintain common property. The claimants' contention is that the defendant owed a duty of care to the claimants to ensure that the common property ground soil of the Development was free from subterranean termites nesting in or traversing through it and undertake all such anti-termite treatment to the ground soil as would be necessary to ensure that it was free from subterranean termites. The claimants' case is that the defendant has breached that duty of care by failing to do so.²³ In my view, unlike the facts in *Declan* (which involved a concealed water pipe that leaked), in the present case the defendant knew of a history of subterranean termites infestation in the Development. It reasonably would know that the infestation could recur and thus has a duty to take reasonable steps to guard against such recurrence. I therefore find that the defendant has a duty to take reasonable steps to keep the common property ground soil free from subterranean termites.

²³ Paras 8-9 of statement of claim.

27 For purposes of completeness, it is noted that there is no reported case authority in Singapore on the duty of management corporations to maintain common property in specific reference to termite prevention. It appears however that in enacting the BMSA, Parliament had regard to Australian legislation. Under the state legislation in Queensland, Australia there is a duty similar to that under the BMSA imposed on body corporates, the Australian equivalent of a management corporations, to maintain common property. Reference may therefore be made to their caselaw to determine the scope of such duty. In this regard, the claimants refer to two cases. In the case of *Ryans Road* [2013] QBCCMCmr 257 at [14], it was held by the Queensland Commissioner for Body Corporate and Community Management that termite prevention and treatment is an issue of maintenance and includes work that may be reasonably expected to minimise future maintenance needs. It expressly held that preventative treatment by the body corporate against termites is part of the statutory duty to maintain the common property; and the body corporate is also liable to fix any damage that has occurred because it has not carried out adequate pest prevention.

28 In the case of *Wildwood Gardens* [2025] QBCCMCmr 43, at [58] it was similarly held that the statutory duty to maintain common property has been interpreted to require works that may be reasonably expected to minimise future maintenance works, *ie*, preventative maintenance. When it comes to termites, the statutory duty to maintain requires the taking of reasonable steps to prevent, monitor for, and control termite activity. It is thus seen that Queensland case authorities made clear that a body corporation's duty to maintain the common property includes a duty to undertake preventative treatment against termite infestation.

29 With the above in mind, I return the question of whether the defendant has taken reasonable steps to keep the common property ground soil free from subterranean termites. In this regard, I turn to Ms Teh’s evidence. She testified that a management corporation requires a continuous and effective subterranean termite management and monitoring programme consisting of three elements:

- (a) in-ground subterranean termite treatment (post-construction termiticide injection or in-ground bait stations);
- (b) routine inspection using visual inspection and scanner; and
- (c) spot treatment for incidental infestation using tools targeted for colony elimination.

30 Ms Teh said that all three elements are necessary and performing two out of the three would be ineffective. She stated that this three-pronged approach is the “general standard of termite management in Singapore”.²⁴ Her evidence was not challenged by the defendant at trial. It was not suggested to her that her expert opinion was incorrect. More importantly, the defendant did not offer evidence of a different approach to reasonably maintain the common property ground soil.

31 The claimants pointed out that the proactive approach to control termite populations by way of soil treatment as advocated by Ms Teh and the Australian cases above was confirmed in the Singapore Standard SS 721:2025 on the Code of Practice for the Performance of Pest Management Services released by the National Environment Agency and the Singapore Pest Management Association on 1 December 2025. It stated that “one must take a proactive approach in

²⁴ Trial Transcript 2 Feb at p 56, ln 19-20.

controlling termite populations, including by way of soil treatment to prevent termite entry and even when the risk level is low.”²⁵

32 Ms Teh noted that having reviewed all of the Lucky Pests service reports, she found that the necessary anti-termite treatment to the common property ground soil, whether it is the post construction termiticide injection or the in-ground subterranean termite bait stations, was not carried out. Further, her review shows “either the absence of a continuous termite management and monitoring programme, or gaps in its implementation.”²⁶ Her evidence in this regard is similarly unchallenged at trial.

33 The claimants pointed out that Mr Chaudhry agreed under cross-examination that the only “treatment” he carried out was to kill termites after they were found and that he did not treat soil to prevent termites.²⁷ I note that the other witnesses called by the defendant likewise confirmed that Lucky Pest acted only when termites were found, and took no preventive measures and that its role was limited to “search and destroy”.²⁸ Further, the defendant did not carry out the second of the three elements referred to by Ms Teh, which is to conduct routine subterranean termite inspection using a combination of visual inspection and scanner. Mr Chaudhry confirmed that Lucky Pest only carried out visual inspection, and do not use thermal scanner in their inspection.²⁹

34 The claimants’ case is thus that the defendant did not do what was reasonable to maintain the ground soil, because it undertook no preventive

²⁵ Claimant’s bundle of authorities at Tab 12.

²⁶ P 24 of Ms Teh’s AEIC.

²⁷ Trial Transcript 22 April p 33, ln 13-15; ln 16-23.

²⁸ Trial Transcript 22 April, p 97, ln 20-25; p 14 ln 6-8; p 13, ln 26-28.

²⁹ 1 Trial Transcript 22 April, p 33, ln 1-2.

treatment to the soil, whether by post construction termiticide injection, in-ground termite bait stations, or otherwise. I agree. In my view, the defendant has failed to discharge its duty to take reasonable steps to keep the common property ground soil free from subterranean termites.

The defendant is liable for damage at the Property

35 I turn now to the question of causation and quantum of damage. I had made the finding above that the subterranean termites caused the damage at the Property. As discussed above, Ms Teh’s unequivocal evidence both in her expert report³⁰ and in court³¹ is that the said damage at the Property was caused by subterranean termites. At trial, it was not put to her or even suggested to her that the said damage to the Property was not caused by subterranean termites. In contrast, Mr Chaudhry’s evidence was initially that he could not tell from the evidence whether the infestation was by subterranean termites.³² However, he admitted subsequently that his affidavit of evidence-in-chief (“AEIC”) was written by the defendant’s counsel,³³ and his “expert” views should accordingly be disregarded. He eventually conceded during cross-examination that the damage was caused by subterranean termites.³⁴

36 I therefore find that the defendant’s breach of its duty to take reasonable steps to keep the common property ground soil free from subterranean termites caused the damage at the Property.

³⁰ P 21 of Ms Teh’s AEIC.

³¹ Trial Transcript 2 Feb at p 40, ln 9-27, p 42 ln 18-27.

³² Para 23 of Chaudhry’s AEIC.

³³ Trial Transcript 22 April, p 59 ln 24-29.

³⁴ Trial Transcript 22 April, p 61 ln 21-28.

37 For completeness, I turn now to the suggestion by the defendant that there are unauthorised works done at the Property. The defendant's contention is that the claimants did not comply with two conditions imposed by the defendant in approving the erection of the roof terrace at the Property. These are: (a) the roof terrace area would only be equipped with a barbeque grill; and (b) the roof terrace will not be fully enclosed. The defendant's case appears to be that the roof terrace is fully enclosable, not fully enclosed. There is however no reference to how that would render the works illegal. The claimants' case is simply that the roof terrace is not fully enclosed nor enclosable. I note that this is plain from the photograph that was shown in court. As regards the installations within the private roof terrace of a sitting area and a sink with cabinetry, I agree with the claimants they are within the claimants' private property and therefore within their right to install them as an internal renovation.³⁵ There is no law or regulation prohibiting them.

38 The defendant has not adduced any evidence that the claimants' installations at the Property were illegal. The defendant's witness acknowledged at the trial that the installation was not in breach of URA requirements since it was not enclosed, and said that she was not even sure whether the kitchen was illegal.³⁶ In contrast, the 1st claimant has testified that all necessary approvals by relevant authorities were obtained.³⁷ I note the defendant did not adduce any evidence to the contrary in this regard.

39 I turn next to the question of the quantum of damages. The claim against the defendant is for the cost of repair of the termite damage amounting to

³⁵ Para 7 plaintiff 1st claimant's AEIC.

³⁶ Trial Transcript 22 April, p 117 ln 26-30; p 118 ln 23-25.

³⁷ Trial Transcript 2 Feb at p 88,89.

\$10,978.00. I note at the outset that the claim is based on third party invoices. It comprises essentially the costs of dismantling and replacement of infested carpentry works and related necessary work of reinstalling items that could be reused. The evidence shows that whilst only the wooden cabinetry was eaten by the termites, the attached basin sink, marble top and backing needed to be reinstalled together with the cabinetry as part of a single built-in unit. This was necessary to rectify the damage to the wooden cabinetry.³⁸ For completeness I note the 1st claimant readily agreed at trial that the marble top appeared to have been reinstalled rather than replaced with new slabs. This has no bearing on the claim because the claimants were charged for re-installation of the existing slabs, not for new marble.

40 There is also the question of the claim of \$400 being prorated cost for the supply of cardboard protection for affected areas, haulage service, sand, cement & debris disposal. The total cost for these services was \$800, but there were other works done at the Property at the same time as those for the rectification of termite damage.³⁹ Given that the total costs of all works were \$20,893.00, and the cost of repairing the termite damage was around half of that at \$9,628.00, the claimants attributed 50% of the \$800 as a fair amount to claim as damages caused by the termites infestation. I find that this is a reasonable attribution of the proportion of costs incurred for these services.

41 As well for completeness, as regards the defendant's suggestion that an award of damages that would otherwise be due should be withheld due to considerations of public policy, I do not see any policy considerations that would bar an award of damages in favour of the claimants.

³⁸ Para 18 of 1st claimant's AEIC.

³⁹ Para 5(e) of statement of claim.

42 In view of all of the foregoing, I allow the claimants' claim for the costs of repair of the termite damage amounting to \$10,978.00.

The defendant's purported expert evidence is unacceptable

43 I return to the matter of Mr Chaudhry's evidence. Mr Chaudhry is called by the defendant to give expert evidence on its behalf. He is the owner of Lucky Pest. As alluded to above, Lucky Pest is the entity contracted to undertake pest control work at the Development. Therein lies the first issue. Mr Chaudhry is in a commercial relationship with the defendant. Yet, he was put forth as the defendant's expert witness. Further, he was also in a position of conflict as he was the sole director and shareholder of Luck Pest, the pest control company entrusted with preventing the exact damage that this claim has been brought against the defendant for.⁴⁰ It would be in Mr Chaudhry's personal interest to secure a favourable court outcome for the defendant in the proceedings before me. Plainly Mr Chaudhry cannot be said to be an independent expert. The law is clear that an expert witness must be independent of the parties. The expert's duty to court overrides any obligation to the person from whom the expert receives instructions or by whom the expert is paid. See O 12 r 1(3) of Rules of Court 2021 ("ROC 2021").

44 The second issue with Mr Chaudhry's evidence is that he admitted on the stand that he did not possess the relevant scientific, technical or other specialized knowledge or expertise to assist the court on the issues upon which he purported to give expert evidence. In this regard, the court may disallow the use of or reject any expert evidence if it is of the opinion that the expert lacks

⁴⁰ Trial Transcript 22 April, p 35.

the requisite specialised knowledge in the issues referred to him or that he lacks impartiality. See O 12 r 2(4) of ROC 2021.

45 The third issue with Mr Chaudhry’s evidence is that he did not tender any expert report. Neither did he write any report. He only filed an AEIC, which he admitted was not drafted by him, but by the defendant’s counsel.⁴¹ This is highly unsatisfactory. In turn, two matters of concern arise from this. For one, an expert witness should submit an expert report authored by him, the content for which he takes full responsibility. He is not to delegate the authorship of his report to court to anyone else. Two, which is a matter of some gravity, counsel cannot arrogate the function of the expert witness to himself. This is particularly important as it speaks to the question of the independence of the expert. Counsel in acting for a party to the dispute cannot be seen to be involving himself with the content of expert evidence to be used in court. Doing so may give rise to the spectre of interference with the independence of the expert and the expert’s overriding duty to the court.

46 The fourth issue with Mr Chaudhry’s evidence is that he did not adhere to Form 19 of State Courts Practice Directions 2021 (“PD”), which is based on O 12 r 5 of ROC 2021. In particular, I do not see the declaration of duty owed to the court in rendering his evidence.

47 Order 12 r 5 of ROC 2021 states as follows:

Expert’s report (O. 12, r. 5)

5.—(1) Expert evidence must be given in a report signed by the expert and exhibited in an affidavit made by the expert.

(2) The expert’s report must include the following:

⁴¹ Trial Transcript 22 April p 77.

- (a) the expert's qualifications showing that he or she has the requisite specialised knowledge on the issues referred to him or her;
- (b) the expert's statement that he or she understands his or her duty is to assist the Court in the matters within his or her expertise and on the issues referred to him or her and that such duty to the Court overrides any obligation to the person from whom he or she receives instructions or by whom he or she is paid;
- (c) the issues referred to the expert and the common set of agreed or assumed facts that he or she relied on;
- (d) a list of the materials that the expert relied on and including only extracts of the materials which are necessary to understand the report;
- (e) where the materials include tests, experiments or the collection or analysis of data, the names and qualifications of the persons who did the tests, experiments or the collection or analysis of data and whether they did so under the expert's supervision or guidance;
- (f) where there is a range of opinion on the matters dealt with in the report —
 - (i) a summary of the range of opinion; and
 - (ii) the reasons for the expert's opinion;
- (g) a statement of belief of correctness of the expert's opinion;
- (h) the conclusions reached on the issues referred to the expert and the reasons to support the conclusions.

48 It is seen that expert evidence must be given in a report signed by the expert and exhibited in an affidavit made by the expert. The report must state the expert's qualifications showing that he has the requisite specialised knowledge on the issues referred to him. He must state that he understands that his duty to the court overrides any obligation to the person from whom he

receives instructions or by whom he is paid. There must also be a statement of belief of correctness of the expert's opinion. None of these was set out in Mr Chaudhry's evidence. As noted above, his evidence is not even contained in a proper report in the first place.

49 Given the foregoing, I reject Mr Chaudhry's evidence as that of an expert. I am of the view that he lacks the requisite specialised knowledge in the issues referred to him and he also lacks impartiality. Mr Chaudhry's evidence fulfils both counts under O 12 r 2(4) for rejecting an expert's evidence. I treat his evidence as that of a factual witness with knowledge of the pest control situation in the Development.

50 I note in contrast, Ms Teh's evidence is based on her expert report which complied with the PD and O 12 r 5 of ROC 2021. The report set out her opinion as an expert on clearly defined expert issues relating to the dispute in the present case. Her full *curriculum vitae* ("CV") is also included in her report. The CV contained information on both the training she received and her work experience which qualified her as an expert in entomology, together with details of her professional qualification. It also included her teaching experience on the subject in local educational institutions. More pertinently, Ms Teh's report contained clear and logical analysis of the expert issues under consideration, giving lucid reasons for her findings.⁴²

51 I would caution that counsel have the responsibility not only to ensure the suitability of individuals called as expert witnesses, but also that these individuals are independent. They should not be related to the parties, including commercially. It is also counsel's duty to ensure expert witnesses comply with

⁴² See section 4 of report at p21 of Jo Lynn's AEIC.

the requirements under the ROC and PD in tendering their evidence in court. Above all, counsel should not be seen to be involved in shaping the content of expert evidence.

Conclusion

52 In the premises of the above, I find that the defendant has breached its duty under s 29(1)(b) of the BSMA. I allow the claimants' claim of \$10,978.00.

53 As regards the question of costs, there is no reason for costs not to follow the event in this case. The defendant is pay the costs of the trial to the claimants. As for the quantum of costs, the claimants urge me to impose costs on an indemnity basis in view of the defendant's conduct in the course of proceedings. The claimants referred to the defendant having no intention of following through its pleaded case, resulting in wasted costs including the costs of the expert to address issues that were not seriously contested in the end. The claimants referred to the defendant despite having pleaded that the damage at the Property was not caused by subterranean termites, did not assert so in evidence and at the trial. Mr Chaudhry did not state in his AEIC that the damage was not caused by subterranean termites and conceded during cross-examination that subterranean termites caused the damage. Further, the claimants alluded to Mr Chaudhry admission on the stand that his AEIC, which was stated therein to be his "expert opinion", was in fact written by the defendant's counsel.

54 In my view however, whilst the defendant's conduct of the proceedings has been highly unsatisfactory, it has not crossed the threshold to attract an order for indemnity costs. That said, in deciding the quantum of costs, the conduct of the defendant remains a relevant factor. In the light of the manner in which the defence was conducted, and in particular the way its purported expert evidence

was put forth, I exercise my discretion to award costs above the scale costs provided in O 21 of Rules of Court 2021, Appendix 1, Pt 5. Taking into consideration the two days of trial with five witnesses; and the involvement of expert evidence, I fix costs at \$35,000.00 and disbursements at \$7,749.93, plus GST where applicable, to be paid by the defendant to the claimants.

Chiah Kok Khun
District Judge

Chen Chongguang, Daniel and Drashy Umang Trivedi (Lee & Lee
LLP) for the claimants;
Siew Jowen (Eden Law Corporation) for the defendant.