

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 73 of 2009

In the matter of an application under Section 102 &
103 of the Building Maintenance and Strata
Management Act in respect of the development
known as **Mun Hean Building** (MCST Plan No.
1024)

Between

1. In-Lite Enterprise (S) Pte Ltd
2. Poh Kim Video Pte Ltd
3. Caldecott Direct Marketing (Pte) Ltd
4. C K T Thomas Pte Ltd
5. Hock Guan Cheong Builder Pte Ltd
6. LCE Engineering Pte Ltd
7. Fu Loong Lithographer Pte Ltd

... Applicant(s)

And

1. The MCST Plan No. 1024
2. Mok Wing Chong
3. Mok Wing Fai
4. Lee Keng Kuang

... Respondent(s)

Coram: Mr Alfonso Ang
Deputy President

Panel Members: Mr Raymond Lye
Mr Lim Boon Cheng

Counsel: Mr Lim Heng Hoe for the Applicants
Firm: M/s H.H Lim Advocates & Solicitors

Counsel: Mr Edwin Lee for the 1st Respondent
Firm: M/s Eldan Law LLP

GROUND OF DECISION

Background

1. This proceeding concerns the validity of the election of council members at the 25th Annual General Meeting of the Mun Hean Building (Building) that was held on 4 November 2009.
2. The material facts before the Board are not disputed. It will not deal with the squabbles that were raised in the course of the hearing which have no relevance to the issue for determination.
3. The Building consists of 2 blocks of 19 strata units. There were 19 subsidiary proprietors, some of which held more share value than others. For many years, peace prevailed in Building. No one bothered to stand for elections to form the Management Council and for many years members had to be co-opted to serve on the Management Council.
4. One day, owing to some differences amongst the subsidiary proprietors in 2008/2009, interests in running the Building was finally stirred. The differences resulted in 2 opposing camps. Now subsidiary proprietors seek to be on the Management Council and began to take an interest in the election. They now began to exercise their voting rights. But, after many years of not conducting a contested election, much less attended one, it appeared that the subsidiary proprietors and the managing agent were at a loss as to how to conduct one. They sorely lacked practice in his field.
5. At the 25th Annual General Meeting held 5 October 2009, the meeting was adjourned so that the Respondents could seek advice on issues concerning the conduct of the election of the Management Council. They accordingly sought legal advice from 2 lawyers, which advice were not, directly relevant to the issue before the Board. Yet despite this, things went wrong at the election.

6. At the resumed 25th Annual General Meeting on 4 November 2009, they proceeded with the election of the Management Council. What transpired in this election led to the present dispute. At that election, Mun Hean Singapore Pte Ltd, exceeded the number of nominees for election that they were entitled to under the Building Maintenance and Strata Act – they had 2 nominees put up for elections, when they were entitled to only one nominee, and both were in fact voted in.

7. On the very same day almost immediately after the election the mistake was discovered and one of Mun Hean Singapore Pte Ltd's nominees who was elected resigned in the hope of rectifying the defect in the election. His resignation effectively brought the number of Mun Hean Singapore Pte Ltd nominee of the Management Council to 1.

8. The Board was informed that this error was accidental in nature. The number of nominees that Mun Hean Singapore Pte Ltd was entitled to have was dependent on the number of seats to be filled. If 9 seats were up for elections, they were entitled to have 2 nominees. If less than 9 seats were to be filled, they were entitled to only 1 nominee.

9. As stated earlier these relevant material facts are not disputed.

Decisions

10. The Board has to decide whether this defect is illegal and incurable by the almost immediate resignation of the extra nominee.

11. The Board accepts the Respondent submission that the wrongful election of a council member cannot invalidate the election of all the rest of the council members. We are mindful of the provision of Section 53 of the Act concerning the eligibility of persons for election as a member of the council. We are also mindful of the fact that Section 53 of the Act states that the Board shall not make an order invaliding an election unless it considers the failure to comply with the provision of the Act prejudicially affects any person.

12. There is nothing before us that could lead to conclude that the nomination of the 2 candidates from Mun Hean Singapore Pte Ltd was done in bad faith. Neither do we see any prejudice to any person by the resignation of the extra nominee from Mun Hean Singapore

Pte Ltd once the error was discovered. In our mind, the error was due to inadvertence and the election itself and the election of the other candidates should not be invalidated. With more elections likely to be contested in the future they would be sufficiently practiced in the art of electioneering and avoid this kind of unnecessary pitfall.

13. The application is dismissed with cost fixed at \$20,000.00 to be paid by the Applicants to the Respondents.

Dated this 17th day of September 2010.

Mr Alfonso Ang
Deputy President
Strata Titles Boards

Mr Raymond Lye
Member
Strata Titles Boards

Mr Lim Boon Cheng
Member
Strata Titles Boards