

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 8 of 2010

In the matter of an application under Section
103 & 104 of the Building Maintenance and
Strata Management Act in respect of the
development known as **Woodgrove**
Condominium (MCST Plan No. 2572)

Between

1. Meow Terk Meng, Edward
2. Low Mong Eng
3. Lee Koh Yong
4. Loh Eng Siak, Louis
5. Lee Tuan Hong, Steven
6. Tan Kok Siong

... Applicant(s)

And

The MCST Plan No. 2572

... Respondent(s)

Coram: Mr Remedios F.G
Deputy President

Panel Members: Mr P O Ram
Mr Lim Lee Meng

Counsel for the Applicants: Mr Henry Heng / Mr Adrian Tan
Firm: M/s Tan Peng Chin LLC

Counsel for the Respondent: Mr Anil Changanroth
Firm: M/s Aequitas Law LLP

Grounds of Decision

Background

1 On the 5/09/09 the 7th Annual General Meeting (AGM) of Strata Title Plan No 2572 (Woodgrove Condominium) (MCST) was held.

2 Among those attending the AGM there were subsidiary proprietors (SPs) who held proxies for SPs who were not present. The proxy forms had been deposited at least 48 hours before the AGM and included proxy forms that had been detached from the AGM booklet that had been distributed to all SPs before the AGM as well as photocopies of the forms.

3 All the forms ie detached from the booklet and the photocopied forms were signed by the proxy giver. As the MCST did not have an official register containing the authorised signatures of the SPs, an attempt was made to verify that the proxy givers had in fact given the proxies that had been deposited at the management office.

4 Due to time constraints all the proxy givers could not be contacted and the managing agent(MA) wanted to deny issuance of voting slips to the proxy holders where it had not verified if the proxy giver had in fact given and signed the proxy forms.

5 Objections were raised as to this course of action and the chairman declared all the proxy forms to be valid and accordingly no one was denied any voting slips

6 The meeting commenced and after 7 items on the agenda had been dealt with, the meeting dealt with item No 8 viz election of council members. There were 16 nominees contesting for 9 council seats.

7 At this point the right to vote of the proxy holders who held proxies from unverified proxies was raised again. They were however not denied the right to vote and all the votes cast were tallied and the following received the highest number of the votes cast: (1st Result)

David Low	56
Tan Kok Siong	56
Steven Lee	57
Edward Meow	62
Timothy Tan	63
Loh Eng Siak	61
Lee Koh Young	54
Goh Boon Beng	80
James Hoe	43
Mark Lim	36
Neil Clarke	32
Toh Seng Hock	32
Goh Say Yeow	30
Tina Lee	28
Keith Sta Maria	28
Xiong Hua Li	24

8 There was then a call to exclude the votes of the unverified proxies and the votes (28) were deducted from the first result. The revised result were as follows: (2nd Result)

David Low	56-28 = 28
Tan Kok Siong	56-28 = 28
Steven Lee	57-28 = 29
Edward Meow	62-28 = 34
Timothy Tan	63-28 = 35
Loh Eng Siak	61-28 = 33
Lee Koh Young	54-28 = 26
Goh Boon Beng	80-28 = 52
James Hoe	43-28 = 15
Mark Lim	36-06 = 30
Neil Clarke	32 = 32
Toh Seng Hock	32 = 32
Goh Say Yeow	30 = 30
Tina Lee	28 = 28
Keith Sta Maria	28 = 28
Xiong Hua Li	24 = 24

9 There were objections to both sets of the results. There were calls for fresh elections without proxies; and for a recount and a re-tallying. The meeting was then adjourned without any declaration being made with regard to the two results. The minutes

of the meeting recorded that a ruling be sought from Building and Construction Authority (BCA) as to which set of results should be adopted.

10 On the 18/09/09 the Honorary Secretary of the Management Council sent an email to the BCA inter alia, informing about the two sets of results and the circumstances under which this had come about and advice was sought as follows:

***WOODGROVE CONDOMINIUM-
ADJOURNMENT OF THE 7TH ANNUAL GENERAL MEETING DUE TO
DISPUTE ON VALIDITY OF PROXY VOTES***

We wish to inform you that the 7th AGM held on 5th September has been adjourned to a date to be fixed due to disputes over the validity of proxy votes and we have been directed to seek a ruling from you.

The issue:

- 1. There were received an unusually high number of proxy votes this AGM. Some of these Proxy votes were disputed as they could not be verified.*
- 2. At the AGM, disputes arose that the proxy votes may not be valid as the proxy giver had not intended their proxy to vote for all resolutions including the election of the council members.*
- 3. Due to protests ,there were two sets of results from the votes casted:
 - i. The first, with the disputed proxy votes and*
 - ii. The second, without the disputed proxy voted**
- Proxy forms that were properly validated were allowed in both results. In validating the proxy form, the MCST accepts only the original form. Where photocopied form was submitted, it was verified by the proxy giver on phone. The disputed ones were those that could not unverified.*
- 4. The AGM was adjourned with no declaration of the elected members into the new council.*

It was directed that the council seek a ruling from BCA

The Management council would like to seek your advice as follows:

- i. Can the BCA rule as to which set of result is valid*

- ii. *In the event the BCA is unable to rule, can the MC call for a fresh election?*
- iii. *Can the General Body rule at the AGM to invalidate proxy voting due to the dispute.*
- iv. *Can SPs who had earlier given their proxy attend the Adjourned AGM and vote in person.*

Will their attendance at the Adjourned AGM invalidate the earlier proxy given hence the proxy vote?
- v. *Can SPs who had not attended at the last AGM, attend at the Adjourned AGM to cast their votes in a fresh election?*

The response of BCA was as follows:

We refer to your e-mail dated 18 Sep 2009.

2 *In your e-mail, you have mentioned:*

- i) *The MC has received two types of proxy forms during the last AGM held on 5 Sep 2009 (ie "original proxy form" that was attached to the notice of AGM and photocopy of the "original proxy form" that was sent to MC by proxy givers.)*
- ii) *Regarding the photocopy of the original form, some of these could not be verified by phone by the proxy givers.*
- iii) *The Motion for election of council members has been voted by those presented either in person or by proxy at the general meeting.*
- iv) *The AGM did not declare the outcome of the voting due to disputes arising from the photocopy of original proxy forms that have been used by the proxy givers.*
- v) *The AGM was adjourned due to the items (ii) and (iv) above.*
- vi) *The MC proposed for a fresh election at the adjourned AGM*

3 *Our views on the matters are as follows:*

i) Proxy Form

The format of the proxy of the proxy form for attendance at the general meeting of the management corporation (MC) is specified in para 17(2) of the First Schedule to the Building Maintenance and Strata Management Act (BMSM Act). The proxy form must be signed by the subsidiary proprietor or his attorney duly authorized in writing and be deposited to the MC not less than 48 hours before the time for holding the meeting (Para 18 of the First Schedule to BMSM Act).

- 4 *Apart from the above, the BMSM Act does not specify any other requirement relating to the acceptance of the proxy form.*

The signature on the proxy form must be original. In essence, paragraphs 17 & 18 of the First Schedule to the BMSM Act must be complied with. A proxy which is lodged after a meeting has been adjourned cannot be used at the adjourned meeting.

If the MC subsequently discovers there is fraud in the signature on the proxy form, the MC can report the matter to the police for investigation.

ii) Election of council members

if the motion for election of the council member has proceeded and voted on at the last AGM, this motion should be considered as voted and determined at the last AGM. The subsidiary proprietor (SP) should be informed of the outcome. If the result was not informed at the general meeting, the MC should now inform all SPs the result of the election.

ii) Adjourned AGM for fresh election of council members

As the casting of votes for the election of the council members have already been done at the last AGM, a "fresh election" should not arise. If there are disputes on the election of council members in relation to proxy forms that have been used by the proxy givers, any aggrieved SP can make an application to the Strata Titles Board for an order to invalidate the election, if the Board considers that the provisions of the Building Maintenance and Strata Management Act have been complied with in relation to the meeting of the MC.

- 5 *You are advised to consult your own solicitors on these matters.*

11. When the meeting resumed on the 24/10/09, the meeting was inter alia informed of the response from BCA and the chairman also informed the meeting that a verification exercise had been carried out on the 08/09/09 where a survey was done on the SPs who

had signed the proxy forms. This was because of; inter alia, feedback received with regard to the manner in which proxies had been collected. The chairman also informed that all the votes cast had been rechecked and irregularities discovered when the votes were rechecked. He, inter alia gave an example of a proxy holder casting an extra vote against his registered number. He then announced that he could not accept 1st Result to be valid.

12. The minutes of the meeting recorded that this was unanimously supported and no objections registered.

13 The minutes of the meeting then went on to record that notwithstanding legal technicalities relating to proxy forms the chairman informed that it was in the best interest of the MCST to rule and declare the 2nd Result as valid. The chairman then proceeded to declare the 2nd Result as valid after the meeting had been asked if there were any objections to this and no objections were registered.

14. The minutes also recorded that the 2nd Result (including the deduction of the 2 irregular votes cast by Mr Edward Meow) was shown to all at the meeting and after the meeting had been informed of the reason for the deduction of the 2 irregular votes, the chairman proceeded to declare the 2nd Result as the officially accepted results of the votes cast.

15. The minutes also recorded that the MA had asked if there was any objections to the chairman's proposal and that all the original votes were displayed at the AGM venue for members to check on the same. No objections were raised and the minutes recorded that the chairman's proposal was unanimously carried.

16 The number of votes for the 2nd Result as set out in paragraph 2.0 of the minutes of the meeting on the 24/10/09 was not exactly the same as that in the minutes of the meeting on the 05/09/09.

17. There was however no query with regard to this at the meeting. According to Phua Joo Hee the director of the Respondent's managing agent company the difference in the numbers was due to the fact that out of the original 28 unverified proxy votes that were deducted at the meeting on the 05/09/10, the votes of the proxy givers were, after it had been verified that they had in fact given their proxies, added back to the results.

18. Subsequently the chairman moved a motion for Mr Edward Meow to be removed as a member of the council and to be disqualified. This was because when the votes had been rechecked it was discovered that Mr Meow had cast and signed for 3 votes when he was not registered as a proxy holder. There were 39 SPs present at the meeting and there were 5 objections registered.

19. There was another motion for Mr Timothy Tan to be removed as a council member on the grounds of conflict of interest when he was the treasurer of the MCST. There were no objections, not even from Mr Timothy Tan himself, and the minutes of the meeting recorded that this was unanimously carried.

THE APPLICATION IN STB No 8 OF 2010

1. Meow Terk Meng, Edward
2. Low Mong Eng
3. Lee Koh Yong
4. Loh Eng Siak, Louis
5. Lee Tuan Hong, Steven
6. Tan Kok Siong

filed application STB No 8 of 2010 and prayed for the following orders:

20. *That the following proceedings of the adjourned AGM held on the 24/10/2009 be set aside:-*

- (a) *the recounting of the voting slips for the election of the new council members was held by the out going council and the managing agent in private when the voting slip were supposed to be sealed and in the safe keeping of the MA.*
- (b) *the said recounting of the voting slips was also not done in the presence of all the interested members who were nominated for council members, and hence this recounting result was improperly resolved to be passed during the adjourned AGM.*
- (c) *the said recounting of the voting slips which were improperly resolved to be passed at the adjourned AGM had a different result from the initial counting of the voting slips done at the AGM held on the 05/09/09. Hence the election of the current council, as result of the improper counting of the voting slips, was improperly resolved to be passed at the adjourned AGM.*
- (d) *the disqualification of Mr Edward Meow and Mr Timothy Tan during the adjourned AGM.*

21. The Applicants informed that the orders were sought under SS 103 and 104 of the Building Maintenance and Strata Management Act 2004 (the Act).

22. In view of the facts and the events preceding the filing of the application it was not clear to the Board what it was that the Applicants wanted the Board to order. It will be noted from the facts that there was never any "recounting" of voting slips. Accordingly the parties were in course of mediation requested to draft and file a joint opening statement and agree on the issues that they wanted the Board to determine. A joint opening statement "Revised Joint Opening Statement"(RJOS) was filed on the 29/06/10. It can be noted from the contents of this RJOS that the parties were not in agreement as to what it was that they wanted the Board to determine. There was the 'Applicants' issues in dispute" and the "Respondent's issues in dispute".

23. As this was an application by the Applicants it was for the Applicants to be clear as to what orders they wanted the Board to make. The Applicants set out their issues in dispute as follows:

The Applicants' issues in dispute are:-

(RJOS paragraph 35).

- (a) Whether the photocopied forms proxy forms with ink signatures were valid proxy forms;*
- (b) Whether the recounting of the voting slips should have been done by the MA on or about the 08/09/09 without the presence of the applicants or other SPs; and*
- (c) Whether the MCST may raise new resolutions to be passed at the adjourned AGM.*

(RJOS paragraph 50)

The issues therefore that fall to be determined are:-

- (1) Whether, having adjourned the AGM for the purpose of clarifying with the BCA whether the photocopied proxy forms bearing original signatures were valid, whether the Respondents were entitled thereafter to:-*

- (i) *unilaterally seek clarifications from the subsidiary proprietors who granted proxies to the Applicants;*
 - (ii) *unilaterally conduct a recount of the votes cast at the AGM;*
 - (iii) *unilaterally tabulate a third set of results of the voting based on the clarifications;*
- (2) *Whether the above acts constituted breaches of the BMSMA.*
 - (3) *Whether the MA's representatives were involved in seeking the clarifications;*
 - (4) *If the MA's representatives were so involved, whether the same was in breach of the BMSMA*
 - (5) *Whether the said breaches would nullify the results of the voting at the AGM*
 - (6) *Whether the voting slips or proxy forms were defaced in any way pending the clarification being made to the BCA*
 - (7) *Whether the results tallied at the Adjourned AGM were accurate, and were based on the votes collected at the AGM;*
 - (8) *Whether there was any basis to disqualify any of the 26 disputed voting slips given the clarification provided by the BCA;*
 - (9) *Whether the addition of new items for discussion at the adjourned AGM was proper, and if not, whether the same was a breach of the BMSMA;*

24. As mentioned earlier the application was filed under SS 103 and 104 of the BMSMA. SS 103 and 104 of the BMSMA provides as follows:

Order to invalidate proceedings

103. —(1) Where, pursuant to an application by a subsidiary proprietor or first mortgagee of a lot, a Board considers that the provisions of this Act have not been complied with in relation to a meeting of the management corporation or subsidiary management corporation, the Board may, by order —

(a) invalidate any resolution of, or election held by, the persons present at the meeting; or

(b) refuse to invalidate any such resolution or election.

(2) A Board shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers —

(a) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and

(b) that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.

Order where voting rights denied or due notice of item of business not given

104. —(1) Where, pursuant to an application by a person under this section, a Board is satisfied that a particular resolution would not have been passed at a general meeting of a management corporation or subsidiary management corporation but for the fact that the applicant —

(a) was improperly denied a vote on the motion for the resolution; or

(b) was not given due notice of the item of business pursuant to which the resolution was passed, the Board may order that the resolution be treated as a nullity on and from the date of the order.

(2) An application for an order under subsection (1) may not be made after 21 days after the date of the meeting at which the resolution was passed.

(3) Where —

(a) an order under subsection (1) is made in respect of a resolution making a by-law amending, adding to or repealing another by-law; and

(b) the by-law made pursuant to that resolution is in force,

the by-law shall, subject to its having been or being amended, added to or repealed under section 32, 33 or 82, as the case may be, have force and effect on and from the date the order is so made to the same extent as it would have had if the resolution had not been passed.

25. At the commencement of the hearing that was fixed on 23/07/10, the Board informed the parties that the Board was not a court of law and was established *to adjudicate disputes between subsidiary proprietors and the management corporation and between one subsidiary proprietor and another* (2nd Minister for Law Third Reading of the Land Titles (Strata) (Amendment) Bill on the 28/07/87) and the orders that the Board could make are listed in SS 101 to 115 of the Act. It appeared from the Applicants list of issues that the Applicants wanted the Board to make ruling/determinations that were not within the ambit of SS 103 and 104 of the Act and the Board then asked counsel for the Applicants to draft the exact order or orders that the Applicants wanted the Board to make (- when filing an application for an order by a Strata Titles Board, an applicant is required to state the exact terms of the order that the applicant wants – Form 9). Mr Gopinath Pillai who was the acting for the Applicants then produced a draft and it was noted that the orders sought were not in line with application filed. Mr Gopinath Pillai then applied for an adjournment and informed that he would on behalf of the Applicants be filing an application to amend the application in STB No 8/2010. There were no objections to the application for the adjournment and directions were then given with regard to timelines for the application for amendment and objections if any. The case was then adjourned to the 12/08/10 for directions in connection with the continued hearing of the case.

26. On the 12/08/10 Mr Henry Heng from Ms Tan Peng Chin LLC appeared and informed that he was now acting for the Applicants in place of Mr Gopinath Pillai who had since left Ms Tan Peng Chin LLC. He inter alia requested for a further adjournment to make the necessary amendments to the application. Directions were then given in connection with the amendments and the matter was fixed for further hearing on the 03/09/10.

27. At the commencement of the hearing on the 03/09/10 counsel for the Applicants applied to amend the application. Inter alia the orders sought were reframed as follows:

- a. *That the election of the Council held at the AGM on 5th September 2009 and as declared by the Chairman at the adjourned AGM on the 24th October 2009 be invalidated.*
- b. *That the resolutions/declarations by the Chairman during the adjourned AGM removing and disqualifying Mr Edward Meow be invalidated.*
- c. *That the results of the 1st count of the voting done at the AGM held on the 5th September 2009 be adopted for the election of the Council (less the 2 irregular proxy votes.*

Learned counsel for the Applicants, Mr Adrian Tan following the Board's query as to whether there was any provision in the Act for the Board to make the order in (c) above withdrew the application in connection with (c) above.

Counsel for the Respondents objected to the application for amendment.

28. The Board was of the view that the proposed amendments, which was really nothing more than a clarification of the orders that the applicant were seeking when the application was filed, would not cause any prejudice to the Respondents. The application for amendment was allowed.

29. The Board considered the submissions of the Applicants and the Respondents.

Decision of the Board

30. The application for an order that the election of the council members who were declared to be elected as a result of the 2nd Result to be invalidated.

31. S 103 of the Act provides that the Board may invalidate an election where provisions of the Act have not been complied with.

32. From the submissions of the Applicant it was the case for the Applicants that the provisions of the Act had not been complied with because the votes of proxy holders (28 votes) were improperly deducted in connection with the election of the council members and the subsidiary proprietors who had given the proxies had unconstitutionally been denied their rights to vote.

33. Even where there has been noncompliance the Board can refuse to invalidate an election unless the non compliance had prejudicially affected any person and compliance would have affected the result of the election.

34. In connection with prejudice counsel submitted that the nominees who would have been elected had the votes of the proxy holders been counted had lost out because of the deduction of the proxy votes.

35. It was noted from the minutes of the meeting on the 24/10/09 that when the chairman announced that he could not accept the results of the 1st Result because of irregularities discovered when the votes were checked and declared the election based on the 2nd Result to be valid, there were no objections raised and this was unanimously supported ie the proxy holders whose votes were not being counted did not raise any objections and more importantly, the nominees who would have been elected if the results of the 1st Result was adopted did not object .

36. It was accordingly the finding of the Board that no one had been prejudicially affected and compliance would not have affected the result of the election.

37. The application for the invalidation of the resolution/declaration removing and disqualifying Mr Edward Meow.

38. The basis of this application was that there was non compliance with the provisions of the Act. Counsel for the applicants submitted that this was not on the agenda of the meeting before it was adjourned and therefore should not have been dealt with. He referred to paragraphs 1 and 12 of the 1st Schedule to the Act which inter alia provided that motions cannot be submitted at a general meeting unless a notice had been given in accordance with paragraph 1(2) of the 1st Schedule.

39. It is a fact that the matter of Mr Edward Meow's disqualification was not on the agenda of the 1st or adjourned meeting. It is however not unusual for motions to arise spontaneously at business meetings. In this case it arose at the adjourned meeting because of matters uncovered since the meeting was adjourned on the 05/09/09.

40. The minutes of the meeting on the 24/10/09 record that during the meeting there was a query as to why 2 votes from Edward Meow was being deducted from the results of the 2nd Result. The meeting was informed that Mr Edward Meow was not registered as a proxy holder but had cast and signed for 3 votes ie one for himself and two others as a proxy holder. When the motion was made for Mr Meow to be disqualified from holding office as a council member because of this irregularity, 5 objections (out of 39 present) were registered and Mr Meow complained about the authority of the MA in checking the votes that led to the discovery of the irregularity. Mr Meow was asked if he was suggesting that his signature had been forged on the voting slips ie that it was not he who had cast the 3 votes. Mr Meow chose not to reply and it was after Mr Meow had chosen not to reply that the motion for his removal and disqualification was carried.

41. It was accordingly the finding of the Board that compliance with the provisions of the Act would not have affected the removal and disqualification of Mr Edward Meow.

42. It was further submitted that the removal and disqualification of Mr Meow was in breach of S 54(2) of the Act.

S 54(2) provides as follows:

Vacation of office of member of council

(2) A management corporation may remove a member of its council from office —

(a) without a general meeting —

(i) where he is a subsidiary proprietor at the time of his appointment or election, if all or any part of his contributions or any other moneys levied or recoverable by the management corporation under this Act in respect of his lot are in arrears for more than 3 months; or

(ii) where he is a nominee of a subsidiary proprietor, if all or any part of that subsidiary proprietor's contributions or any other moneys levied or recoverable by the management corporation under this Act in respect of the subsidiary proprietor's lot are in arrears for more than 3 months; or

(b) by ordinary resolution at a general meeting in any other case, including on any of the following grounds:

(i) misconduct;

(ii) neglect of duty;

(iii) incapacity or failure to carry out satisfactorily the duties of his office

It can be noted that a management corporation can remove a council member *without a general meeting* if the conditions in S 54(2) (a) (i) and (ii) are met. However at a general meeting a council member can be *in any other case*, including the instances listed in S 54(2) (b) (i) (ii) and (iii) ie at a general meeting a council member can be removed even where there is no misconduct, neglect of duty or incapacity or failure to carry out satisfactorily the duties of office.

43. The Board could not find that there was any breach of S 54(2) of the Act.
44. It is order of the Board that Application STB 8/2010 be dismissed.

Dated this 17th day of September 2010.

Mr Remedios F.G
Deputy President
Strata Titles Boards

Mr P O Ram
Member
Strata Titles Boards

Mr Lim Lee Meng
Member
Strata Titles Boards