

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

STB No. 51 of 2012

In the matter of an application under Section 101
& 113 of the Building Maintenance and Strata
Management Act in respect of the development
known as **COTE D'AZUR** (MCST Plan No.
3019)

Between

Mr. Narang Ravinder Pal Singh / Mrs Ranjit
Narang

... Applicant(s)

And

The Management Corporation Strata Title Plan
No. 3019

... Respondent(s)

Coram: Mr. Remedios Francis George
Deputy President

Panel Members: Ms Lee Lay See
Mr. Chua Koon Hoe

Applicants: Mr. Narang Ravinder Pal Singh and Mrs Ranjit Narang
(Acting in Person)

Respondents: The Management Corporation Strata Title Plan No. 3019
Mr. Jeffery Lee Wee Chuan (Secretary)

Counsel: Mr. Bhaskaran Sivasamy
(M/s M & A Law Corporation for the Respondent)

GROUND OF DECISION

1. The Applicants are subsidiary proprietors of 66 Marine Parade Road #XXX Cote d'Azur.
2. The Respondent is MCST Plan No 3019, the management corporation of the condominium known as Cote D'Azur (the MCST).

Background:

3. The MCST entered into an agreement dated 28/04/2012 with M/s Ecco Sys Pte Ltd (Ecosys) and The Association of Management Corporations in Singapore (AMCIS). The agreement was for the supply, installation and maintenance of LED bulbs and tubes in the management of energy usage of the common areas of the condominium (the contract).
4. The contract had been entered into because the MCST had decided to replace fluorescent, PLC and incandescent light bulbs with light emitting luminaries (LED) light bulbs in the common areas.
5. The management council of the MCST had decided to enter into the contract because of concern with high electricity costs and in Nov 2011 had commenced a consultation process with seven companies to see how they could help the MCST to achieve its goal to decrease the cost of lighting for the common areas (The Go Green Project).
6. At the AGM on the 31/03/12 a presentation was made to the subsidiary proprietors with regard to the MCST's intentions and the ongoing negotiations with various service providers.
7. On the 15/04/12 a presentation was made to the management council by one of the council members summarising the bids made by five companies which had been invited to bid for the project. The presenter, one Mr Vincent Cosse who had been chosen to lead the project because he had relevant expertise in the area of reducing energy consumption recommended the proposal by AMCIS and Ecosys.

8. After the contract had been entered into the MCST notified all residents by way of a circular that the MCST would be going to the next level with phased installation of LED lights in all common areas with effect from 07/05/12.
9. The contract (a copy of this was exhibited with the written submission of the applicant) provided for Ecosys to *"...supply, install, and maintain the requisite LED bulbs and tubes on a one-for-one replacement basis in their management of the energy usage of the common areas of the condominium..."* It was described as an agreement *"...based on Co-sharing of savings generated by the use of LED Luminaries in place of fluorescent or other types of lightings..."*. The contract was entered into on the part of the MCST because it *"is desirous of supporting the green buildings campaign by replacing fluorescent and incandescent light fittings with Light Emitting Diode Luminaries"*.
10. Under the terms of the contract Ecosys was to inter alia supply, install and maintain LED bulb and tubes for MCST3019 and AMCIS would coordinate and administer the project. Fees and other payments; conditions and consequences of termination were specified in the contract. For the LED tubes and bulbs the cost was \$173859 if paid in one lump sum or \$208631.00 if paid via an instalment plan over a 5 year period.
11. On or about 30/04/12 the Applicants sent a facsimile to the MCST stating that the council should in keeping with proper procedures and provisions of the Building Maintenance and Strata Management Act (the Act) seek formal approval of the general body for the Go Green Project prior to concluding any contract or agreements. On the 07/05/12 the MCST informed the Applicants that the council was of the view that its actions were compliant with the Act.
12. The council was initially of the view that a general meeting would be convened after a decision had been made on how to proceed on the LED Project but subsequently determined that a special resolution for the replacement of light bulbs was not needed and as such a general meeting was not convened.
13. On the 21/06/12 the Applicants filed the application in STB 51/2012.

The application in STB 51/2012:

14. The Applicants, in Form 8 of STB 51/2012 set out the order sought from the Board as follows:

The MCST 3019 and its Council did not have the authority to enter into a contract with AMCIS/ Ecco Sys Pte Ltd and thus commit the MCST 3019 to assume liability of \$208000 as no such project was approved at the AGM held on the 31 March 2012

The Management Fund or Sinking cannot be used to pay for any instalment in connection with the said contract

As the said contract is void ab initio the MCST3019 and the contracting parties should take immediate steps to rectify the situation

That the authorities be notified to investigate how the void contract came into existence and whether there was any undue influence exercised on the MCST3019

All documents, correspondence, emails between MCST3019, AMCIS, Contractors, Managing Agents, Council Members related to this contract and other MCST3019 matters be made available at the Management Office so that SPs may be able to inspect the same

Costs for this Application and Proceedings be awarded to the Applicant.

15. In the course of mediations, the Applicants confirmed that the order that they were seeking from the Board was an order for the contract that was entered into between the MCST, Ecosys and AMCIS to be nullified/terminated.
16. In the submissions of the Applicants who were not represented by legal counsel and acted in person, reference was made to various matters eg the nature of the contract; the contract was not in the interests of the subsidiary proprietors; whether the MCST could have entered into a contract with better terms; what transpired at meetings between the Applicants and council members; allegations of concealing and falsifying financial statements (in the course of mediations the Applicants were informed that if they suspected that there was any criminal wrongdoing on the part of council members the proper course would be to lodge a report with the relevant authorities).

17. It was the contention of the Applicants that the MCST had no authority to enter into the contract because there was no resolution passed at a general meeting allowing for the MCST to enter into the contract.

18. S 29(1)(d) of the Act provides as follows:

—(1) Except as otherwise provided in subsection (3), it shall be the duty of a management corporation-

(d) when so directed by a special resolution, to install or provide additional facilities or make improvements to the common property for the benefit of the subsidiary proprietors constituting the management corporation.

Board's views and decision:

19. Before dealing with the issue as to whether or not there was any contravention of the Act, it will be in order to consider generally the application filed by the Applicants.

20. Counsel for the MCST in his submissions pointed out that the Strata Titles Board is a creature of statute and has jurisdiction to deal only with such matters allowed under the Act and the Land Titles (Strata) Act Cap 158.

21. The Applicants were asking for an order under S 101 of the Act.

22. S 101(1) (a) provides for the making of orders in connection with defects in lots, subdivided buildings, common property or limited common property. S 101(1) (b) provides for the making of orders in connection with liability for bearing of costs for work carried out by the MCST. SS 101(1)(a) and 101(1)(b) are clearly not applicable in this case.

23. S 101 (1)(c) allows the Board to make an order for the settlement of a dispute or rectification of a complaint with respect to the exercise or performance of a power, duty or function conferred or imposed by the Act or by-laws.

24. The entering into the contract by the MCST with the other two parties was in exercise of duties under the Act to control, manage and administer common property for the

benefit of all subsidiary proprietors. It was the Applicants' case, as mentioned above, that the contract should not have been entered into without approval that was to be obtained at a general meeting because it was a contract with regard to matters described in S 29(1)(d) of the Act. The MCST were of the view that it was not necessary that there should be resolution passed at a general meeting before the MCST could enter into the contract because it was not a contract that fell within S 29(1)(d) of the Act.

25. Whilst there was clearly a difference in the views of the Applicants and the MCST based on their respective understanding of the provisions of the Act, the Board could not find that there was a dispute between them that could be settled by way of an order from the Board under S 101(1)(c) eg if the MCST had required the subsidiary proprietor to do something purportedly in the exercise of its powers or duties under the Act and the subsidiary proprietor was of the view that the purported exercise of the power was not in order the Board could if the Board agreed with the subsidiary proprietor order that the subsidiary proprietor was not required to comply or order the subsidiary proprietor to comply if the Board did not agree with the subsidiary proprietor. In this case the application was for the Board to nullify the contract between the MCST and two other parties. It was first of all noted that if the Board should order that the contract be nullified this would, as submitted by counsel for the MCST affect the rights of Ecosys and AMCIS who were not and are not parties to this application. It would, as submitted by counsel "*be contrary to the fundamental rule of natural justice*" that a decision should be made against a party without giving the party the opportunity to be heard.
26. There are provisions in the Act allowing for various matters including:
 - the invalidation of resolutions or elections (S 103);
 - ordering for resolutions to be treated as a nullity (S 104);
 - repealing by-laws (S 105); and
 - declaring by-laws to be invalid (S 106).
27. There is no provision that enables the Board to invalidate, nullify or declare an agreement or contract entered into by MCST with third parties to be invalid.

28. The Board is of the view that it does not have the power to invalidate, nullify or declare an agreement or contract entered into between the MCST and third parties to be invalid.
29. It is not the case that a subsidiary proprietor who is of the view that the MCST had entered into a contract in breach of the provisions of the Act is without recourse. This is because it is provided in S 88 of the Act that if an MCST commits a breach of any provision of Part V of the Act or makes default in complying with any requirement or duty imposed on it, the subsidiary proprietor or mortgagee in possession or occupier shall be entitled to apply to a court to restrain the breach of any such provision or recover damages for loss or injury suffered.
30. Was there a breach of S 29(1)(d) of the Act?
31. The section provides that when directed by a special resolution, a management corporation is required to install or provide additional facilities or make improvements to the common property for the benefit of the subsidiary proprietors constituting the management corporation.
32. The Board notes that SS 29(1)(a) to 29(1)(h) purports to detail the duties of a management corporation. However unlike the provisions in SS 29(1)(a) to 29(1)(c), and 29(1)(e) to 29(1)(h) it can be noted in S 29(1)(d) that it is not the duty of a management corporation to install or provide additional facilities or make improvements to the common property. Whilst it is not the duty of the MCST to do this, it must do this when it has been directed to do so by a special resolution.
33. Accordingly MCSTs are not duty bound to install and provide additional facilities or make improvements to the common property. MCSTs must do this when directed by a special resolution passed at a general meeting.
34. The contract that the MCST entered into in this case was a contract for the replacement of fluorescent, PLC and incandescent light bulbs with LED light bulbs. It

was not a contract to install or provide additional facilities or make improvements to the common property.

35. Light bulbs which are non structural items would fall within the definition of a fitting and the Board agrees with counsel for the MCST that the MCST was carrying out its duty under S 29(1)(b)(ii) when it entered into the contract in this case. S 29(1)(b)(ii) provides as follows:

29. —(1) Except as otherwise provided in subsection (3), it shall be the duty of a 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) —

ii) any fixture or fitting (including any pipe, pole, wire, cable or duct) comprised in the common property or within any wall, floor or ceiling the centre of which forms a boundary of a lot, not being a fixture or fitting (including any pipe, pole, wire, cable or duct) that is used for the servicing or enjoyment of any lot exclusively.

36. For completeness the Board will deal with the other matters raised by the Applicants.
37. The contract was ultra vires and it created an unlawful liability on the part of the subsidiary proprietors. This, according to the Applicants was so because the expenditure was unauthorised as there was no special resolution authorising MCST to enter into the contract. It was the finding of the Board that the MCST was acting properly and carrying out its duties under S 29(1)(b)(ii) when it entered into the contract with Ecosys and AMCIS.
38. The contract was not in the best interests of the subsidiary proprietors. This according to the Applicants was because the MCST had hurriedly entered into the contract and could have obtained better terms than what was offered by Ecosys and AMCIS. The council members had considered various proposals before deciding on the Ecosys and AMCIS proposal. It may well be the Applicants' view that there were others who were offering better terms. The council had the authority to decide on the offers made and the Board cannot find that the decision was wrong. The Board cannot find that the contract was not in the best interests of the subsidiary proprietors.

Conclusion:

39. The application in STB 51 of 2012 is dismissed.

Dated this 28th day of November 2012

MR REMEDIOS FRANCIS GEORGE
Deputy President

MS LEE LAY SEE
Member

MR CHUA KOON HOE
Member