BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 52/ 64/ 65/ 66 of 2011

In the matter of an application under section **101/105/106** of the Building Maintenance and Strata Management Act in respect of the development known as **TOH GUAN CENTRE** (**MCST No. 2746**)

Between

a) MCST Plan No. 2746 {for STB 52 of 2011}

b) Sia Boon Chye {for STB 64 of 2011}

c) Tay Geok Min/ Julian Tay Lit Oon {for STB 65 of 2011}

d) Lim Kim Hwee/ Lim Saw Eng {for STB 66 of 2011}

... Applicant(s)

And

a) Boon Kee Battery Service {for STB 52 of 2011}

b) MCST Plan No. 2746 {for STB 64/ 65/ 66 of 2011}

… Respondent(s)

Coram: Mr Remedios F.G (Deputy President)
Mr Richard Tan Ming Kirk (Member)
Mr Lim Lee Meng (Member)

Counsel:

i) Mr Lawrence Tan and Mr Aloysius Tan (Eldan Law LLP) for:
- MCST Plan No. 2746

ii) Mr Ng Lip Chih and Mr Alfian Teo (NLC Law Asia LLP) for:
- Boon Kee Battery Service
- Sia Boon Chye
- Tay Geok Min/ Julian Tay Lit Oon
- Lim Kim Hwee/ Lim Saw Eng

GROUNDS OF DECISION

1. The parties in STB 52 of 2011; STB 64 of 2011; STB 65 of 2011 and STB 66 of 2011 are:

   a) Management Corporation Strata Plan No 2746 ("MC"), the MC of the development known as Toh Guan Centre ("the estate");

   b) Sia Boon Chye (sole proprietor of Boon Kee Battery Service) the subsidiary proprietor of #XXX in the estate ("Boon Kee");

   c) Tay Geok Min/ Julian Tay Lit Oon (proprietors of Tee Guan Trading Services) the subsidiary proprietors of #XXX in the estate ("Tee Guan"); and

   d) Lim Kim Hwee/ Lim Saw Eng (proprietors of Gin Huat Industrial Supplier) the subsidiary proprietors of #XXX in the estate ("Gin Huat").

BACKGROUND:

2. At the 7th Annual General Meeting ("AGM") held on the 26 June 2010, the following by laws were passed ("the by-laws"):-

   11.0 BY LAWS (SPECIAL RESOLUTION)

   11.1 Use of forklift within toh guan centre

   It was unanimously resolved that the following by laws effective from 1st July 2010 be adopted: -

   a. Forklift is strictly for use at the loading and unloading area.

   b. There should be strictly no driving of forklift along the driveway for transportation of goods between units.

   c. The Management Corporation shall be empowered and entitled to impose a fee of $200.00 per incident for any violation of By Laws on the use of Forklift.

   Proposer: Mr Loh Chin Poh (#XXX) Seconder: Mr Allen Tan (#XXX)

   11.2 Servicing of vehicles at the driveway

   It was unanimously resolved that the following by laws effective from 1st July 2010 be adopted: -

   a. There shall be strictly no servicing of vehicles along the driveway (including but not limited to the common area in front of the unit)

   b. The Management Corporation shall be empowered and entitled to impose a fee of $200.00 per incident for any violation of By Laws on the "Servicing of Vehicles at the Driveway."

3. The by-laws were passed pursuant to Section 32(3) of the Building Maintenance and Strata Management Act No 47 of 2004 ("the Act").

4. In the four applications, the MC has applied for Boon Kee to pay "*all outstanding fines*" imposed by the MC pursuant to Boon Kee's "*breaches of By Laws*" (STB 52 of 2011). It

was alleged that Boon Kee and/or its customers had since the passing of the by-laws breached the by-laws and at the time when STB 52 of 2011 was filed, it was alleged that the amount due and payable was $30,000.00.

5. Boon Kee, Tee Guan and Gin Huat ("the SPs") have applied for the abovementioned by-laws to be repealed (STB 64 of 2011, 65 of 2011 and 66 of 2011).

6. There were other prayers in the various applications and it was in the course of mediation proceedings agreed that the Board should decide on the validity of the by-laws before dealing with any of the other matters as the determination of the Board on this point would have a significant and critical effect on all the other matters. Inter alia a finding that if the by-laws are invalid, it would result in a dismissal of the MC's claim against Boon Kee for the "outstanding fines" and orders in favour of the SPs for the by-laws to be repealed.

7. Section 106 of the Act provides for the Board to declare a by-law to be invalid where a management corporation does not have the power to make such a by-law.

SP'S SUBMISIONS

8. It was the submissions of the SPs that the MC did not have the power to make the by-laws as the MC is "*not entitled at law to impose or exact any fines for non observance*" of by-laws because there are no express or implied provisions in the Act that allows for this and it "*is clear that Parliament did not intend"* that a management corporation should have such a power.

9. It was submitted that a management corporation which was a creature of statute could only derive its powers from the statute which created it and the power to make by-laws viz Section 32(3) did not provide for the imposition of fines for non observance of by-laws.

10. Under Section 32(3) of the Act, by-laws could be made for "*...the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan...*"

11. In connection with the submission that Parliament did not intend that management corporations should have power to impose fines, it was submitted that if Parliament intended that a management corporation could make by-laws providing for the imposition of fines, this would have been expressly provided for in the Act. The SPs referred to various pieces of legislation which illustrated that whenever it was intended that fines and/or imprisonment could be imposed for breaches of the subsidiary legislation, this was always provided for in the enabling legislation.

12. It will be sufficient to set out the provisions in two of the eight pieces of legislation identified:-

ROAD TRAFFIC ACT

(CHAPTER 276)

General provisions as to rules
140. *—(1) The appropriate Minister may make rules —*

(a) for prescribing the language and script in which any traffic sign, notice, record, application, return or other documents shall be written;

(b) for any purpose for which rules may be made under this Act

(c) for prescribing anything which may be prescribed under this Act

(d) generally for the purpose of carrying this Act into effect; and

(e) for prescribing penalties (not exceeding those provided by section 131) for any breach or failure to comply with any such rules.

BUILDING CONTROL ACT

(CHAPTER 29)

Power of Minister to make regulations

29L. *The Minister may make regulations for giving effect to the provisions of this Part and for the due administration thereof, and, in particular, for or with respect to all or any of the following matters:*

(d) prescribing offences in respect of the contravention of any regulations made under this section, and prescribing fines, not exceeding $10,000 or imprisonment which may not exceed 12 months or both, that may, on conviction, be imposed in respect of any such offence;

(e) prescribing any matter which is required under this Part to be prescribed.

13. There are no provisions in the Act which allows for a management corporation to impose a fine for the breach of a by-law. As opposed to the fact that there are no provisions in the Act providing for the imposition of fines/ penalties by management corporations, the Act provides for by-laws to be enforced or breaches restrained by way of an application to the court. This evidences that Parliament has given due consideration as to how by-laws should be enforced or restrained.

14. Section 32(10) of the Act provides as follows:-
The management corporation or subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot shall be entitled to apply to the court —

(a) for an order to enforce the performance of or restrain the breach of any by-law by; or

(b) to recover damages for any loss or injury to person or property arising out of the breach of any by-law from,

any person bound to comply therewith, the management corporation or the managing agent.

15. It was further submitted that if it is in order that a management corporation can make by-laws that provides for the imposition of fines for the breach of the by-laws, this can result in an "*unfettered discretion to impose fines and the quantum of such fines"*, i.e. there would be no limit on the amount of the fine that can be imposed for the breach of a

by-law and this could not have been intended by Parliament. The pieces of legislation referred to also showed that whenever fines and/or imprisonment can be imposed for breaches of subsidiary legislation, the enabling legislation always provided the maximum fine or imprisonment that can be imposed. There are no such provisions in Section 32 of the Act.

MC'S SUBMISSION

16. As noted above, the application of the MC in STB 52 of 2011 was for Boon Kee to pay "*outstanding fines"* pursuant to breaches of by-laws that "*empowered and entitled*" the MC to impose a "*fee of $200 per incident for any violation of By Laws..."*.

17. In their written submissions, the MC's position was that (paragraph 4 of the written submission) whilst it appeared that "*the imposition of the fee is no different from the imposition of a fine and/or a penalty as a deterrent*." (i.e. whilst it was termed a "fee" in the by-laws, a fine was being imposed), the MC was, in the by-laws, not seeking to impose a fine or a penalty, but was seeking to impose "*liquidated damages for breach of contract"* (paragraph 9 of the written submission). (In further written submission titled as "Reply Submission", the MC expanded on their earlier submissions and elaborated that the by-laws sought to impose valid fees for actions committed in contravention 11(1)(a), 11(1)(b) and 11(2)(a) and were not fines, i.e. penalties that were imposed for unlawful acts.)

18. It was then submitted that the MC can "*create by laws a breach of which would result in liquidated damages and which the MC can claim*".

19. The MC had in this case, imposed fees for contravention of the by-laws that were passed pursuant to Section 32(3) of the Act and by the time the MC filed its application (viz STB 52 of 2011) to the Board, the fees had accumulated to $30,000.00, i.e. the Board was being asked to enforce the MC's imposition of fees that had been imposed for breaches of by-laws.

20. In paragraph 25 of its written submissions, the MC sought to crystallise the issues and identified the issues as follows:-

    a) Whether the MCST has the requisite powers (statutory or otherwise) to pass by-laws imposing fee and/or penalties on defaulting subsidiary proprietors for breach of by-laws;

    b) Whether the additional by-laws passed by the MCST (principally in imposing a fee for every breach of by-law) are valid; in other words, whether the said by-laws are consistent with the legislative scheme set out in the BMSMA and BMSMR (as defined below); and

    c) Whether the fees imposed in the event of a breach of the relevant by-laws are to be construed as a penalty or liquidated damages, and whether the by-law imposing a fee of $200 ought to be enforceable.

21. The MC summarised the history of the Act and concluded that management corporations can only have powers that are granted to it by the Act and the Act has

provided for a management corporations to have duties and powers that can effectively benefit the participants of the strata scheme. The MC went on to submit that by-laws are intended for the regulation of conduct and behaviour and are essentially statutorily constituted contracts between the management corporation and the subsidiary proprietors and between the subsidiary proprietors inter se.

22. The MC also noted that previously it was provided in Section 41(16) of the Land Titles (Strata) Act ("LTSA") for a fine not exceeding $1000 to be imposed for a breach of a statutory by-law. This provision was not retained when the Act was passed in 2004 as it was the intention of the legislature to de-criminalise various offences connected with the management of strata developments, where these do not pose a serious threat to the general public. It was then submitted "*Thus, only civil remedies remain available to an innocent party in the event of a breach of by-laws prescribed under the BMSMR (and the BMSMA). These civil remedies include the right to apply to court under section 32(10) of the BMSMA (which is similar to section 41(14) of the LTSA) for "an order to enforce the performance of or restrain the breach of any by-law" and "to recover damages for any loss or injury to person or property arising out of the breach of by-law" respectively."*

23. The MC referred to by-laws passed by other estates where administrative fees and charges were imposed to cover expenses and losses and fees were charged for the release of wheel clamps fastened onto illegally parked vehicles and also referred to statutory by-law 3(1) in connection with obstruction of common property, and statutory by-law 18(1) in connection with fire and other hazards and submitted that the by-laws, i.e. 11(1)(c) and 11(2)(b) were not inconsistent with the statutory by-laws. The MC sought to equate these with the order that it was seeking in STB 52 of 2011.

24. The MC submitted that, when there is a provision in a contract that provided for payment of monies for breach of the contract, this would be enforceable if it is a genuine attempt to estimate in advance the loss which the innocent party will likely suffer from the breach. As the by-laws are statutory contracts between the MC and the SPs, it was submitted that the fee of $200 for breach of the by-law was a genuine pre-estimate of the loss or damage caused by the breach. The MC referred to the tests spelt out by Lord Dunedin in Dunlop Pneumatic Tyre Company Ltd v New Garage and Motor Company Ltd [1915] AC 79 and to the decision of the Court of Appeal in CLAAS Medical Centre Pte Ltd v Ng Boon Ting [2010] 2 SLR 386, where Chao Hick Tin JA inter alia pronounced "*...it is for the party being sued on the agreed sum to show that the term is a penalty...*" and submitted that it was for the SPs to prove that the fee of $200 was a penalty.

25. It was submitted that the fee of $200 was not a penalty but a genuine pre-estimate of the damages suffered because considerable manpower, time, effort and resources were involved before imposition of the fees. The MC referred, inter alia, to the fact that breaches had to be monitored and the keeping of records with details before fees could be imposed.

26. It was submitted that the MC has the requisite statutory powers to do all things reasonably necessary for the enforcement of by-laws including the imposition of fees in connection with breach, as this would be consistent with the legislative intent for MCs to be a self regulatory body with broad powers of administration.

27. Finally it was submitted that without a power to claim for fees for breach of by-laws, the only remedy available to the MC would be to take each and every SP to court or the Strata Titles Boards ("STB") every time there is a breach. This would be time and cost consuming and the courts and STB would be flooded with such applications.

OBSERVATIONS OF THE BOARD (in connection with the submissions of the SPs and the MC)

28. The submissions of the SPs are quite clear.

29. With regard to the MC, what it was claiming from Boon Kee has been referred to as outstanding fines, fees and liquidated damages and the MC started by submitting that the MC was in the by-laws not seeking to impose a fine or a penalty, but was seeking to impose "*liquidated damages for breach of contract"*.

30. From the above, one could conclude that the MC was conceding that it does not have the power to pass by-laws that imposes a fee/fine/penalty for breach of the by-laws and is now seeking an order from the Board for Boon Kee to pay liquidated damages amounting to $30,000.00. There was however, no application for an amendment of the order that it was seeking in STB 52 of 2011.

31. With regard to the submission that management corporations can "*create by laws a breach of which would result in liquidated damages and which the MC can claim*", it is not clear what exactly the submission was but if it was being submitted that a management corporation can seek to recover damages for breach of by-laws, this is specifically provided for in Section 32(10). As illustrated above, the subsection provides that management corporations, subsidiary proprietors, mortgagees in possession, lessees and occupiers of lots are "*entitled to apply to the court... to recover damages for any loss or injury to person or property arising out of the breach of any by law*....". It was not submitted that the provision can be interpreted as allowing for or could be relied upon by the MC to pass the by-laws in this case.

32. With regard to the issues identified by the MC (as stated in paragraph 20 above),

    a) here the issue has been correctly identified;

    b) this is not quite clear. It is correct that the Act provides for management corporations to pass by-laws for the purpose of controlling and managing the use and enjoyment of the parcel comprised in the strata title plan, and management corporations can do everything that is reasonably necessary for the performance of its duties [Subsections 32(3) and 29(2)(b) of the Act] but, as to whether it follows from this that a management corporation can pass a by-law providing for the imposition of a penalty for the breach of the by-law, this is not spelt out in any of the provisions of the Act. It appears to be the MC's submission that by virtue of Subsections 32(3) and 29(2), the MC can pass by-laws providing for the imposition of penalties for breach of the by-laws.

    c) it appears to be the submission that the by-laws should not be repealed because what was being claimed can be construed as liquidated damages and not a penalty.

The Board is of the view that for any by-law to be enforceable, it has to be valid and if it is not validly made, it will be of no consequence whether what is being claimed is a penalty or liquidated damages.

33. From the submissions of the SPs and the MC, it did not appear that there was any dispute that for a by-law to be valid, it had to be a by-law that was authorised by the Act.

34. On the part of the SPs, it was submitted that the by-laws in this case were not authorised within the ambit of Section 32(3) and on the part of the MC, whilst it was not conceded that the by-laws were not authorised within the ambit of Section 32(3), it was submitted that the by-laws in this case were consistent with the legislative intent for a management corporation to be a self regulatory body with broad powers of administration and they were empowered to create by-laws, a breach of which would result in liquidated damages.

35. By-laws are subsidiary laws. In the case of *McEldowney v Forde* [1971] AC 632, Lord Diplock said that where the validity of subordinate legislation made pursuant to powers delegated by Act of Parliament to a subordinate authority is challenged, the court has a three-fold task: first to determine the meaning of the words used in the Act of Parliament itself to describe the subordinate legislation which that authority is authorised to make, secondly to determine the meaning of the subordinate legislation itself and finally to decide whether the subordinate legislation complies with that description.

36. In this case, it is Section 32(3) that empowers a management corporation to make by-laws. The by-laws that can be made under this provision are by-laws "*for the purpose of controlling and managing the use and enjoyment of the parcel comprised in the strata title plan including all or any of the following purposes:....*" The purposes are listed at (a) to (i) of the subsection. There are no phrases/provisions or words like:-

(i) "*for prescribing penalties for any breach or failure to comply with any such by laws";*

(ii) *"by laws made under this section may provide that any contravention thereof shall be punishable";*

(iii) *" the prescribing of penalties in respect of the contravention of any of the by laws made under this section, and prescribing of fines, not exceeding $...";*

(iv) *"that any contravention of any of the by laws shall be punishable with....";*

(v) *" The by laws may provide that a contravention of specified provisions thereof shall be punished with ...".*

37. The Board agrees with the submission that by-laws are essentially statutorily constituted contracts between the management corporation and the subsidiary proprietors and between the subsidiary proprietors inter se. The MC's submissions on the law in connection with liquidated damages may well be sound, but in this case this is not helpful or relevant. The MC in this case is seeking an order from the Board for Boon Kee to pay fees pursuant to breach of a by-law which the SPs say is an invalid by-law in that the Act does not provide for the making of such a by-law.

38. This was not an application for that payment of damages for breach of contract under Section 32(10) of the Act or any other law in a civil court where unlike an arbitration hearing before the Board, rules of evidence must be applied. By virtue of Regulation 18(1) of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 ("BMSMR"), a Board is not bound to apply the rules of evidence. An action for damages payable for breach of contract is not the same as an application for a monetary payment imposed for a breach of an invalid by-law.

39. With regard to the submission that the MC has the requisite statutory powers to do all things reasonably necessary for the enforcement of by-laws, including the imposition of fees in connection with breach as this would be consistent with the legislative intent for a management corporation to be a self regulatory body with broad powers of administration, the Board agrees that the MC has requisite statutory powers to do all things necessary for the enforcement of by-laws. However what it can do, can only be what the law allows it to do. It cannot do what is not allowed by the law. The fact that providing for imposition of fees for breach of by-laws may make enforcement of by-laws easier, cannot by itself justify such provision. It is also not correct that without such a power, the management corporation's role would be nugatory and ineffective as there can be other ways to persuade and/or ensure that subsidiary proprietors comply with by-laws, for example, the Board is aware that it is not unknown that some management corporations have by-laws providing for the application of wheel clamps on vehicles that are improperly parked.

40. In connection with the MC's reference to administrative fees and charges imposed by various bodies to cover expenses and losses and the MC seeking to equate these with the order that it is seeking in STB 52 of 2011, the short answer to this is that what it is seeking in STB 52 of 2011 is not an administrative fee or a charge for any service rendered, or expense incurred or loss suffered.

41. A "fee" is a payment made to a professional person or to a professional or public body in exchange for advice or services or is a charge made for a privilege such as admission (Concise Oxford English Dictionary, 11th Edition). It is not in order to impose a fine or any other kind of penalty for a prohibited act and term the imposition of the fine/penalty, a "fee".

42. In connection with statutory by-laws 3(1) and 18(1), it can be immediately noted that there are no statutory by-laws providing for a monetary or any other kind of penalty for breach of the identified by-laws. As such, whilst the MC's by-laws 11(1) (a) and (b) and 11(2)(a) would be not be inconsistent with the statutory by-laws, the same cannot be said for by laws11(1)(c) and 11(2)(b).

43. It was noted earlier that the MC did not concede that it did not have the power to pass the by-laws in this case. However with the submission that it was seeking to impose liquidated damages for breach of contract, this, in effect amounted to a concession that the by-laws empowering and entitling it to impose a fee of $200 for each and every violation was invalid. The MC did not specifically submit that the by-law empowering and entitling the MC to impose a "fee" of $200 for each and every violation is a good by-law and that the Board can order "fees" imposed to be paid. Instead it was submitted that

the "fees" are liquidated damages and that this is what it wants the Board to order. As pointed out earlier, there was, beside the fact that there was no amendment to the application in this case, the fact that claims for liquidated damages in a court are not the same as applications before the Board.

44. It would not be out of order to refer to Section 33 of the Act which allows for management corporations to make by-laws conferring on subsidiary proprietors' exclusive use and enjoyment/special privileges of the whole or part of common property for various periods upon conditions, including payment of money, specified in the by-laws. Depending on the period of exclusive use and enjoyment/special privileges, different kinds of resolutions are required for the passing of the by-laws (ordinary resolution for periods not exceeding one year, special resolution for periods not exceeding three years and 90% resolution for periods more than three years). Accordingly, it might not have been out of order for the MC to have made by-laws allowing the SPs to use common property i.e. allowing forklifts on the driveway between units and servicing of vehicles on driveways in accordance with Section 33. It was, however, not the submission of the MC that by-laws 11(1)(c) and 11(2)(b) were by-laws made under Section 33 of the Act. The Board is of the view that they were not made under this provision.

45. The Board considered the words in Section 32(3) of the Act, which allows management corporations to make by-laws *"...for the purpose of controlling and managing the use or enjoyment of the parcel of comprised in the strata title plan..."* and Section 29(2)(b) of the Act which allows an MC to *"...do all things reasonably necessary for the performance of its duties under this Part and the enforcement of the by laws..."* There is nothing in Section 32(3) of the Act to indicate that an MC can pass by-laws providing for a monetary penalty to be imposed when the by-laws are breached. There is nothing in the two provisions that is in any way similar to the provisions in the various pieces of legislation referred to by the SPs which illustrated that whenever it was intended that penalties could be imposed for breaches of the subsidiary legislation, this was always provided for in the enabling legislation and the extent i.e. maximum penalties would also be provided for. The Board is of the view that a finding that the by-laws in this case are valid would be tantamount to a finding that Parliament had entrusted the MC with undefined and unlimited powers of imposing charges/penalties/fines liquidated damages upon subsidiary proprietors for breaches/contravention of the by-laws.

46. Even when it is in order for management corporations to levy contributions in accordance with Section 39(1) or (2) of the Act (i.e. for regular maintenance and keeping in good and serviceable the common property fixtures, fitting and other property held by or on behalf of the management corporation; common expenses of the management corporation; payment of insurance premiums and all other liabilities incurred or to be incurred by or on behalf of management corporations in carrying out its powers, authorities, duties and functions under the Act), there are no provisions allowing for management corporations to impose fines or any other kind of monetary penalty for non-payment of the contributions.

47. Management corporations can only proceed in accordance with Sections 40(8), 40(9) and 40(10) of the Act, i.e. lodge a claim with a Small Claims Tribunal or prosecute the defaulting subsidiary proprietor for an offence of non-payment of the contribution.

48. It will be noted that even in Section 136 of the Act which provides for regulations to be made by the Minister (as opposed to a management corporation) *for carrying out the purposes and provisions of the Act,* there are specific provisions viz subsections (f) and (g) providing for the payment of fees when it is in order for fees to be levied and for fines to be imposed in Section 136(4) for contravention of the regulations.

49. It is also relevant to refer to Regulation 11 of the BMSMR which provides as follows:

11.—*(1) For the purposes of section 47 of the Act, the following fees shall be payable to a management corporation or subsidiary management corporation for the following services:*

(a)	*supplying the name and address of the chairperson, secretary and treasurer of the management corporation or subsidiary management corporation and of the managing agent under section 47(1)(a) of the Act*	*$5*
(b)	*management corporation making available for inspection any document referred to in section 47(1)(b) of the Act*	*$15 per hour or part thereof at each attendance*
(c)	*subsidiary management corporation making available for inspection any document referred to in section 47(1)(b)(ii) or (iii) of the Act, in so far as these relate to the subsidiary management corporation or its limited common property*	*$15 per hour or part thereof at each attendance*
(d)	*certifying any matter referred to in section 47(1)(c) of the Act*	*$25 per certificate*
(e)	*making copy under section 47(4) of the Act of any document referred to in section 47(1)(b) of the Act*	*50 cents per page.*

50. The provision illustrates that when Parliament allowed for management corporations to levy fees; it spelt out and limited the maximum fees that can be charged.

51. It would be incongruent that Parliament when seeking to allow the Minister to make regulations providing for payment of fees for identified purposes and imposition of fines for contravention of regulations had specifically spelt these out in the enabling provisions of the Act would choose not to provide for this in Section 32 of the Act, if it intended to allow management corporations to impose fees/penalties/fines for breach of by-laws made by management corporations. In fact, in the Second Reading of the Building Maintenance and Management Bill on 19 April 2004 (Session No. 1 Volume No. 77 Sitting No. 16), the then Minister for National Development, Mr Mah Bow Tan, said in regard to the decriminalising of non-compliance of certain offences (including "the breach of the by-laws by SPs") that "*Notwithstanding that such non-compliance is decriminalised, the aggrieved party could still seek recourse through the Strata Titles Boards or take civil action via the courts*".

52. Parliament could not have and did not entrust management corporations with undefined and unlimited powers of imposing charges/penalties/fines or any other monetary payments upon subsidiary proprietors for breaches/contravention of by-laws made under Section 32(3) of the Act.

53. Accordingly, the Board declares the MC's by-laws 11(1)(c) and 11(2)(b) to be invalid and it is ordered that the by-laws be repealed.

54. The claim of the MC for Boon Kee to pay "*all outstanding fines*" for "*breaches of By Laws*" is dismissed.

Dated this 11th day of April 2012

MR REMEDIOS F.G
Deputy President

MR RICHARD TAN MING KIRK
Member

MR LIM LEE MENG
Member