

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 78 of 2011

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

Between

Mun Hean Singapore Pte Ltd

... Applicant

And

- 1) Fu Loong Lithographer Pte Ltd
- 2) In-lite Enterprise (S) Pte Ltd
- 3) Caldecott Direct Marketing (Pte) Ltd
- 4) Poh Kim Video Pte Ltd
- 5) CKT Thomas Pte Ltd
- 6) Hock Guan Cheong Builder Pte Ltd
- 7) LCE Engineering Pte Ltd
- 8) KDT Holdings Pte Ltd
- 9) MCST Plan No. 1024

... Respondents

Coram: **Mr Francis George Remedios**
Deputy President

Panel Members: **Dr Lim Lan Yuan**
Prof Teo Keang Sood

Counsels: **Mr Edwin Lee**
(Eldan Law LLP for the Applicant)

Ms Teh Ee-Von
(Infinitus Law Corporation for Respondents 1-8)

GROUND OF DECISION

1. Mun Hean Building (MCST No 1024) is a development comprising 19 lots. The share values of the various lots are not the same and the total share value is 1000
2. Eight of the nine respondents (*ie* all except for MCST Plan 1024) are owners of 8 lots with a total share value 584. The total share value of the remaining 11 lots is 416. Accordingly whilst the eight respondents own less than half of the total of the 19 lots they have 58.4% of the total share value.
3. Mok Wing Cheong (MWC), Mok Wai Hoe (MWH), Mok Wing Tak, Mok Wai Chung, Mok Wing Fai are representatives of 5 companies who are the owners of 5 of the 11 lots and their total share value is 233
4. As on 22/07/2011 MWC was the chairman of MCST Plan No 1024.
5. By way of a letter dated 22/07/2011 to the secretary of MCST Plan 1024, seven of the eight respondents requested for an EOGM
 - (i) *to call for a vote of no confidence in MWC as chairman of MCST Plan 1024 and*
 - (ii) *to elect a new chairman with immediate effect*
6. Hereafter the eight respondents will be referred to as the respondents' camp (RC) and Mok Wing Cheong, Mok Wai Hoe and the owners of the 11 lots not owned by the RC will be referred to as the applicant's camp (AC).
7. Whilst Mun Hean Singapore Pte Ltd (the authorised representative was Mok Wing Cheong) was the named applicant in this application it was not really in dispute

that this was a dispute between AC and the RC as to who should be recognised as the valid council members of MCST Plan 1024.

8. A notice of council meeting dated 02/08/11 was given to all council members informing of a meeting to be held on 05/08/11 at 10.00am. The meeting was *“regarding the requisition dated 22/07/11 from some SPs”*
9. All the council members attended the meeting on the 05/08/11 and the letter from the RC was discussed.
10. It was not in dispute that at the meeting MWC tendered his resignation.
11. In the minutes of the meeting it was *inter alia* recorded

In order to avoid the expenditure of unnecessary time and money for the MCST in having to conduct an EOGM, the Council re elected the appointment of office bearers, by show of hands:

12. MWH was elected as chairman in place of MWC and he sent out a letter dated 05/08/11 to all the subsidiary proprietors informing everyone of the election of the new chairman, secretary, and treasurer and council members. He also informed that

“Results from the re-election have effectively diffused the two resolutions stipulated to call for the above EOGM and rendered them redundant. The council has therefore decided that there will not be any need to call an EOGM”

13. By way of a letter dated the 13/08/11 the RC *inter alia* informed that they were of the view that the meeting on the 05/08/11 had no *“force or effect”* and gave notice that they would be proceeding to convene an EOGM under paragraphs 14(1) and 14(4) of the First Schedule of the Building Maintenance and Strata Management Act (the Act). This was held on the 05/09/11.

14. The members of AC and RC attended the meeting. The following events took place

MWH as chairman ruled that motions requested by the RC *“to call for a vote of no confidence in MWC as chairman for MCST 1024”* and *“to elect a new chairman for MCST 1024 with immediate effect”* to be out of order as MWC was no longer the chairman and a new chairman had already been elected at the council meeting on the 05/08/11. Following this he declared the meeting closed at 11.00am

The members of RC did not accept MWH as the chairman of the MCST and elected Lim Chee Yong to chair the meeting. They then proceeded to vote on the 2 motions viz *“to call for a vote of no confidence in MWC as chairman for MCST 1024”* and *“to elect a new chairman for MCST 1024 with immediate effect”* The voting was by poll and both were passed. Lim Chee Yong was elected chairman

15. The 27th AGM of MCST 1024 was convened by the 26th council of MCST 1024 and it was held on the 06/09/11.
16. MWH was the chairman of the 26th council of MCST 1024. ie it was the council led by MWH that convened the 27th AGM
17. Whilst the members of AC and RC attended the AGM which was held at 10.00am at the Quality Hotel Balestier Road, there were two sets of minutes recorded at the meeting i.e. whilst the two factions were at the same venue at the same time, they were having meetings separate from each other.
18. The minutes of the meeting of the AC were signed by MWH. There was no signature on the minutes of the RC. It was prepared for and on behalf of the RC by a David Tham from Dawson Property Management Pte Ltd.
19. In the minutes of the meeting signed by MWH it was *inter alia* recorded.

He (MWH) told members that as chairman he is responsible for the activities carried out at the premises of the meeting and to have order he was going to make a proposal.

(MWH) proposed that since some subsidiary proprietors did not recognise him as the chairman of the management corporation, in order to ensure order in the premises that he would occupy half of the meeting room to conduct the 27th AGM and the rest of the members who did not recognise him as the chairman of the management corporation can use the other half of the room to carry out whatever activities they want but without causing any disruption or disturbance to the 27th AGM. (MWH) asked the members of the management corporation for their views on his proposal

Sarah Tham (from RC) proposed that as there was a difference in opinion as to who is the chairman of the management corporation; to let the members present vote by poll as to who will be the chairman of the meeting.

(MWH) disagreed and told the meeting that as the chairman of the management corporation he would proceed to conduct the 27th AGM in accordance with Clause 6 of the First Schedule of Act

Mr Charles (from RC) attempted to call members to vote on who should be chairman of the 27th AGM

MWH told him that he could not do that as the chairman of the management corporation is present and will conduct the 27th AGM. MWH invited whoever who recognised him as chairman of the management corporation to participate in the 27th AGM

20. It was an agreed fact that the meeting of the RC chaired by Lim Chee Yong was held at another corner of the room.

21. In the minutes prepared by David Tham it was *inter alia* recorded that 7 council members were voted in as the 27th council of MCST 1024 with Vic E Charles was voted as chairman, Sarah Tham as secretary and Peter Koh as treasurer.

Analysis and submissions

22. In this case the applicant has applied for the following orders against the respondents:

That the election of Lim Chee Yong as chairman during the EOGM on the 5th September 2011 conducted by the respondents during the said EOGM be invalidated;

That the election of Mr VE Charles and the election of the council members during the AGM on the 6th September 2011 conducted by the respondents during the said AGM be invalidated

23. In view of the orders sought ie invalidation of the appointment of Lim Chee Yong on the 5th September and invalidation of VE Charles as chairman and unnamed council members on the 6th September the Board had before the arbitration hearing noted that Lim Chee Yong and VE Charles were not parties to the proceedings. The Board had accordingly queried the applicant as to whether it was appropriate that the applicant should be seeking for the orders to be made against the named respondents.

24. The applicant has since informed that the orders have been sought against the named respondents because it was they who voted for Lim Chee Yong to be the chairman on the 5th September 2011 and for VE Charles and the unnamed to be the chairman and council members of the 6th September 2011.

25. As there was no application for the Board to dismiss the application under the provisions of S 116 or any other provision of the Act the Board considered that it would not be out of order for the Board to make a decision on the applications.

The resignation of MWC and appointment of MWH at the council meeting on 05/08/11:

26. As mentioned earlier, it was not in dispute that MWC had tendered his resignation at the meeting and it was also not in dispute that at the meeting MWH was elected as chairman. It was however the submission of the respondents that the resignation of MWC and election of MWH were invalid because the RC disputes that there was proper notice for the meeting and alleged that there was a breach of paragraph 4 of the 2nd Schedule of the Act viz that the notice did not contain a proper agenda; only 2 days instead of 3 days notice was given and the place of the meeting was not stated.

27. The notice did in fact give particulars of the date, place and time of the meeting as the following was provided in the notice “*Council Meeting on 5th August @ 10.00am* “*Council members, please meet at lift lobby on the 1st level of Mun Hean Industrial Building at 51 Kim Keat Road*”.
28. With regard to the agenda and whether there was two or 3 days notice it was the submission of the respondents that 2 of the council member who were part of the RC viz Lim Chee Yong and Ong Lye Chun had only 2 days notice and that the particulars with regard to the agenda did not give any information that a replacement chairman was going to be elected.
29. Whilst there are provisions enabling the Board to invalidate resolutions made at meetings of a management corporation (S 103), it does not appear that the Act has provisions for the Board to invalidate resolutions made at council meetings. There were no submissions from the respondents on this point and the Board will assume that S 103 can be applicable to council meeting because decisions made at council meetings “*shall be the decision of the management corporation*” (S 58 of the Act).
30. Accordingly the Board considered the submissions of the respondents on the basis that decisions made at council meetings can be invalidated under S 103 in cases where provisions of the Act in relation to meetings have not been complied with.
31. Under S 103 of the Act an order to invalidate must be made **when** failure to comply had prejudicially affected another **and** compliance would have resulted in a failure to pass the resolution or affect the election. If failure to comply had not prejudicially affected anyone or compliance would not have resulted in failure to pass the resolution Board **can refuse** to invalidate even if there was failure to comply.
32. It was the submission of the respondents that inadequate particulars with regard to the place of the meeting could have prevented interested subsidiary proprietors from attending. As noted above there were particulars with regard to place and time and even if subsidiary proprietors other than council members wanted to attend, a perusal of paragraph 5 of the 2nd Schedule will however show that while subsidiary proprietors have a right to attend council meetings they have no right to address the meeting except with permission of the council.
33. With regard to the council members who were part of the RC the Board was of the view that even if it could be found that the notice was defective they were not prejudicially affected as they attended the meeting and had every opportunity to object to anything raised.
34. The respondents also referred to S 58(3) of the Act which provided:
- A council shall not make a decision on any matter if, before the decision is made, notice in writing has been given to the secretary of the council by subsidiary proprietors who altogether own not less than one third of the lots in the subdivided*

building concerned that the making of the decision is opposed by those subsidiary proprietors and any decision if made by the council shall have no force or effect.

35. It was the submission of the respondents that the AC had convened the meeting on the 5th August 2011 to discuss the resignation of MWC as chairman and the election of MWH in his place and RC had not been given an opportunity to object to this.

36. The meeting on the 5th August was convened
“regarding the requisition dated 22/07/11 from some SPs”

37. It was not convened to discuss the resignation of MWC and the election of MWH. The resignation and election took place after the meeting was convened.

38. The Board considered whether the resignation of MWC and the election of MWH was in any way contrary to S58 (3) of the Act.

39. RC had given notice that they wanted the convening of an EOGM.

- (i) *to call for a vote of no confidence in MWC as chairman of MCST Plan 1024 and*
- (ii) *to elect a new chairman with immediate effect.*

40. At the meeting of council on the 05/08/11 MWC tendered his resignation as chairman. The resignation would have been invalid if it was in breach of S 55(5) of the Act which provided

“Notwithstanding anything in this Act, a person appointed to the office of chairperson, secretary or treasurer of the council of a management corporation shall not resign his office until (a) a meeting of the council is first convened for the purpose of appointing another person to fill his vacancy; or (b) a general meeting is first convened for the purpose of electing another person to fill his vacancy, and any purported resignation or vacation of office in breach of this subsection shall be deemed to be invalid.”

41. The remarks of the Minister for National Development on 19th October, 2004 at the 3rd reading of the BUILDING MAINTENANCE AND STRATA MANAGEMENT BILL with regard to this provision were as follows:

Basically, we want the office bearer who wishes to resign to make the effort to announce to the general body to give notice that he is going to resign, and also to have them put on notice that nobody is stepping forward.

42. MWC had in this case not resigned in circumstances where no one was stepping forward. He had resigned in the midst of a council meeting and there was another who was prepared to assume the office. The Board was of the view that the resignation was not out of order.

43. Following the resignation of MWC as chairman there was a vacancy in that office and as provided for in S 54(3) of the Act the council proceeded to appoint MWH as chairman.
44. The Board could not find that there was a breach of S 58(3) as there was no notice in writing objecting to the resignation of MWC as chairman or the appointment of MWH as chairman.
45. It was also the submission of the respondents that MWH's appointment as chairman at the meeting was invalid because it was not in accordance with SS 54(1)(e) and 54(3).

46. S 54(3) provides as follows:

Upon the occurrence of a vacancy in the office of the chairperson, secretary or treasurer or other member of the council, otherwise than by reason of subsection (1)(e) or (f) the council may appoint a person eligible for election as such to fill the vacancy and any person so appointed shall hold office for the balance of his predecessor's term of office.

47. S 54(1) (e) provides as follows:

(1) A person who is the chairperson, secretary or treasurer or a member of a council shall vacate his office as such member- (e) at the end of the next annual general meeting at which a new council is elected by the management corporation or upon the election at a general meeting of another person to that office, if earlier. (S 54(1)(f) is not relevant)

48. MWC did not in this case vacate his office as chairman under the provisions of S 54(1)(e) or S54(1)(f) of the Act and the council members at the meeting were allowed under S 54(3) to elect MWH when the vacancy of the office of the chairperson occurred when MWC tendered his resignation.

The election of Lim Chee Yong at the EOGM on the 05/09/11:

49. It was the submission of the applicant that it was in order that MWH as chairman of the MCST should chair the meeting as this was provided for in paragraph 6 of the First Schedule of the Act and as chairman it was in order for him to rule on motions submitted to be out of order (Paragraph 4 of the First Schedule of the Act).

50. It was the submission of the respondents that MWH had no basis to rule that the motions were out of order as it was provided in Paragraph 4 of the First Schedule that he could do this if the motions if carried

- (a) would conflict with the provisions of the Act
- (b) would conflict with the by-laws of Mun Heng Building
- (c) would be unlawful
- (d) would be unenforceable.

51. It is provided in Paragraph 4 of the First Schedule that the chairman may rule on motions being out of order, ***“if he considers”*** that the motions if carried will have the consequences as spelt out above. It can be noted that the considerations are subjective and it was not for the RC to carry on and proceed on the basis that he had no right to chair the meeting and that his rulings were of no effect. As submitted by the applicant, which we agree, any challenge to his ruling *should be taken by way of an application to the Strata Titles Boards*

52. The Board is of the view that even if there were valid grounds for challenging the rulings of MWH at the EOGM the rulings should be considered to be valid until found to be otherwise by an appropriate authority. The continuation of the meeting by the RC after the chairman had closed the meeting and the election of Lim Chee Yong after the meeting had been closed was not in order.

53. It was the submission of the applicant that Lim Chee Yong's election as chairman by the RC was also in breach of the Act.

54. As noted above the vote for Lim Chee Yong as chairman was by poll and not by lots

55. Paragraph 8 of the First Schedule provides:

Each person entitled to vote on an election of members of the council or executive committee shall have one vote in respect of each lot which he is entitled to vote

56. The applicants submitted that the voting of Lim Chee Yong as chairman was carried out by RC after MWH had closed the meeting and accordingly the members of the AC did not participate in the voting. If they had, Lim Chee Yong would not have been elected because the AC had 11 votes as against the RC's 8 votes.

57. It was submitted by the respondents that the election of Lim Chee Yong who was already a council member, to the office of chairman by poll was not out of order because whilst Paragraph 8 of the First Schedule makes reference to voting of council members by lots it does not make any reference to office bearers *ie* chairman, secretary and treasurer and pointed out that S 55(2) of the Act did not require that the chairman, secretary should be elected by lots.

58. SS 55(2) and (3) of the Act provide:

S 55(2) Where the chairperson secretary and treasurer of the council have not been appointed by the management corporation at its annual general meeting, the members of the council shall, at the first meeting of the council after they assume office as such members, appoint the chairperson, secretary and treasurer of the council.

S 55(3) A person - (a) shall not be appointed to the office of chairperson secretary or treasurer of the council unless he is a member of the council; and....

59. Only council members can be appointed to be a chairman, secretary and treasurer and voting on elections of council members must be in accordance with Paragraph 8 of the First Schedule i.e. by lots
60. S55(2) is of no assistance to the respondents as it provides for **council members to appoint** a chairman, secretary or treasurer “*where the chairperson, secretary or treasurer have not been appointed by the management corporation at its annual general meeting,...*”. The provision does not allow for a chairman to be elected by poll.
61. It was also the submission of the respondents that it was not relevant that the voting was by lots or by share value because the decision was unanimous in that all of the members of the RC who participated in the voting voted for Lim Chee Yong. The submission ignores the fact that the chairman who was supported by the AC had closed the meeting and it was on that basis that they had not voted. There was every likelihood that Lim Chee Yong would not have been elected if all who were eligible to vote had voted and the voting was by lots.

The election of VE Charles and council members at the AGM on 06/09/11:

62. VE Charles and the council members supported by RC were elected in a meeting chaired by Lim Chee Yong. This meeting was held on the same day and at the same place as the AGM of the 27th council of MCST 1024.
63. It was the submission of the respondents that Lim Chee Yong was the validly elected chairman and MWH had no authority to preside; that the meeting chaired by Lim Chee Yong was the valid meeting and the failure of the AC to attend this meeting “*is their mistake*”
64. It was *inter alia* the submission of the applicant that the elections of the office bearers and council members elected was by the RC was invalid as the elections were by poll.
65. It was not in dispute that the elections were by poll and not by lots. It was however the submission of the respondents that the mode of the elections did not invalidate the elections as the voting was unanimous.
66. The elections of the council members in the meeting of the RC was not in accordance with Paragraph 8 of the First Schedule and whilst the Board can in spite of this refuse to invalidate the elections, the Board cannot find that the failure to comply with paragraph 8 of the First Schedule in this case had not prejudicially affected the members of the AC.

67. VE Charles and the council members supported by RC were elected in a meeting chaired by Lim Chee Yong. This meeting was held on the same day and at the same place as the AGM of the 27th council of MCST 1024.

68. The 27th AGM of MCST 1024 was convened by the 26th council of MCST1024 and MWH was the chairman of the 26th council of MCST 1024. It was the council led by MWH that convened the 27th AGM. MWH had chaired the meeting and council members were elected. The voting was by lots.

69. Until a competent authority had declared that MWH was not the chairman of the 26th council, it was not in order for the RC, because they did not recognise MWH as the chairman of the 26th council to ignore his office and the meeting that he was chairing and hold what they considered to be the valid AGM of the 27th council of MCST 1024. The elections held at the meeting chaired by Lim Chee Yong were not valid.

70. The Board accordingly orders:

- (i) That the election of Lim Chee Yong as chairman during the EOGM on the 5th September 2011 conducted by the respondents during the said EOGM be invalidated;
- (ii) That the election of Mr VE Charles and the election of the council members during the AGM on the 6th September 2011 conducted by the respondents during the said AGM be invalidated.

Dated this 18th day of February 2013.

Mr Francis George Remedios
Deputy President

Dr Lim Lan Yuan
Member

Prof Teo Keang Sood
Member