

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 54 of 2013

In the matter of an application under Section 101,
105,106 & 118 of the Building Maintenance and Strata
Management Act in respect of the development known
as Parc Oasis (MCST No. 2054)

Between

1. Roland Yeo Peng Sin/Chan Mei Yoke
2. Ang Bee Hong/Chong Park Cheong
3. Bi Lin/Cao Yong
4. Chen Chuen Kai/Lee Yuet Yee
5. Cheng Heng Yong/Tan Lay Peng
6. Francis Chew Chong Chiang/Molly Fang Lai Fong
7. Foong Yiew Ming/Tan lee Jing
8. Goh Hrong Kuan/Chong Chia Hui
9. Kan Kuon Weng/Pang Poh Chun
10. Benjamin Lau Hong Hoh/Adriana Lee Yen-Nee
11. Lee Kuan Chung/Claya Marie Cabagay Lee
12. Ler Lee Ai/Chu Choon Seng
13. Luo Yun-Chun/Luo Chen Shu Chen
14. Ng Guat Hong/Thomas Ng Cheng Nam
15. Tan Tiang Khwang/Pea Wen Mei
16. Tan Chor Kheng
17. Toh Seng Chong/Lim Bee Hua
18. Wong Joon Tay/Kerk Yong Seng
19. Wong Yew Weng/Lee Ah Geok
20. Yong Foong Yin/Tan Buck Seng

... Applicants

And

The MCST Plan No. 2054

... Respondent

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

Panel Members: **Mr Raymond Lye**
Mr Edwin Choo

Counsels: **Mr Ng Lip Chih**
(NLC Law Asia LLP for Applicants)

Mr Subramaniam Pillai
Mr Leow Zi Xiang
(Colin Ng & Partners for Respondent)

GROUND OF DECISION

1. This is an application by 20 subsidiary proprietors in the estate known as Parc Oasis for orders with regard to the by-laws of the Management Corporation Strata Plan No 2054.

Background:

2. Parc Oasis is an estate located at 35-55 Jurong East Ave 1. There are 950 units in the estate and an equal number of parking lots.
3. Prior to 15/06/13 the applicable by-laws provided that subsidiary proprietors (SPs) who owned more than one vehicle could park their vehicles in the estate without having to pay any parking charges. There was however no automatic right to park the 2nd and 3rd vehicles in the parking lots. They had to, for their 2nd vehicle, apply for and be issued with a parking label that was valid for 6 months; pay an administration fee of \$5.00 and a refundable deposit of \$200 for the parking label. The labels would be issued only if there were parking lots available. Similarly for the 3rd vehicle, there was a need for an application and administration fee, but the validity was for 1 month.
4. On the 15/06/13 at a general meeting of the management corporation the by-laws in connection with the parking of 2nd, 3rd and subsequent vehicles were, pursuant to a special resolution amended and now provided

A fee of \$100 per month (excluding GST) shall be imposed on residents for parking of second vehicle and a fee of \$150 per month (excluding GST) shall be imposed on residents for parking of third and subsequent vehicles with effect from 1 July 2013; payment of which shall be made monthly in advance on the first day of each calendar month without demand....

5. S 32(3) of the Building Maintenance and Strata Management Act Chapter 30C (the Act) provides that it is only pursuant to a special resolution that by-laws may be made, amended, added to, or repealed. A special resolution requires that notice of the motion must be given at least 21 days before the meeting and a vote in favour of the motion of at least 75% of the aggregate share value of all the lots (S 2(3) of the Act). In this case 84.37% voted for the amendment.
6. Before the amendment of the by-law, the management council had in Nov 2012 informed all SPs of the estate that a review of the revenue and expenses of the estate revealed that there would be a deficit of \$117827.65 for financial year 2012 (01/07/12 -30/06/13). There was a residents' forum held that same month and cost-cutting proposals were discussed. Charging for usage of facilities and payment for parking of second and subsequent vehicles were among the proposals suggested. On 12/01/13 there was a motion to consider and approve by way of a special resolution that fees be imposed on residents for the parking of second, third and subsequent vehicles. SPs had been informed that this was for the purpose of generating additional income to help in the financial situation and that this was one of many steps being taken to manage the deficit. The resolution was not passed as the required percentage was not met (Whilst SPs with share values totalling 73.18% of voted in favour of resolution this was short of the 75% required).
7. By way of a letter dated 22/05/13 from the chairman of the management council, SPs were inter alia informed that an EOGM was to be called to address a forecasted deficit of \$353000 for the financial year commencing 01/07/13. The motion for the charging of parking fees was at item 3 of agenda of the 15/06/13 meeting. Item 4 was a motion for contributions to the management fund to be levied. It was to be \$59 per share value per month if the motion for the charging of parking fees was approved and if that was not approved then the amount was to be \$64 per share value per month. The motion for the charging of parking fees was approved and the resolution was, as noted above, passed with a vote of 84.37%.
8. In this application the applicants are, inter alia applying for the by-law passed on the 15/06/13 (the by-law) to be repealed and for the previous by-law to be reinstated. It is the submission of the applicants that under SS 101, 105, 106 and 118 of the Act the Board can make the orders sought because the by-law is ultra vires, oppressive and discriminatory.
9. Under S 101 of the Act a Board can make orders for the settlement of a dispute with respect to the exercise or performance of or failure to perform a power, a duty or function conferred or imposed by the Act(S 101(1)(c).
10. Under S 105 of the Act the Board has the discretion to order an amended by-law to be repealed and revive the by law that was revoked by the amended by-law when the Board considers this to be in the interests of all subsidiary proprietors.
11. Under S 106 the Board may declare a by-law to be invalid when the Board considers that the management corporation did not have the power to make the by-law.

12. Under s 118 the Board can, when there is a request for the making of an interim order, make such an order when the Board is satisfied that there are urgent considerations justifying the making of an interim order. There was in this case no request for an interim order

Decision of the Board:

13. By-laws are statutorily constituted contracts between the management corporation and the subsidiary proprietors and between the subsidiary proprietors inter se (*Choo Kok Lin v MCST Plan 2405 [2005] SGHC 144*). They are intended for regulation of conduct and behavior and it is clear from S32(3)(c) of the Act that the management corporation can inter alia make or amend a by-law for the purpose of controlling and managing the use of parking within the estate. The section is as follows:

S 32 (3)...a management corporation may, pursuant to a special resolution, make by-laws or amend, add or repeal any by-laws made under this section 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:

...

(d) parking

.....

14. Ultra Vires:

It is the duty of a management corporation to control, manage and administer common property for the benefit of all the subsidiary proprietors (S 29 of the Act). Under the Act (S 38 of the Act) management corporations are obliged to establish and maintain management and sinking funds for the purpose of meeting liabilities and carrying out its powers, duties and functions.

15. It was the submission of the applicants that the by-law which was proposed and passed for the purpose of addressing a financial deficit was ultra vires because management corporations can raise funds only in accordance with S 39 of the Act.

16. Under S39 of the Act it is mandatory for a management corporation to *from time to time at a general meeting, determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual and expected liabilities* in respect of matters listed at S39 (1) (a) to (d) and S 39(2) (a) to (d).

17. S 39 is a provision with regard to the raising of **contributions** for the purpose of meeting actual and expected liabilities. The section is in connection with contributions from SPs and is not concerned with other means of raising funds to meet the expenses of the management corporation. It does not provide that, other than contributions from SPs, management corporations cannot raise funds by other means and there is nothing in the Act to suggest that Parliament intended that management corporations should be

allowed to raise funds only by way of contributions from SPs and not by any other means.

18. In this case the by-law provides for the payment of fees in connection with the parking of vehicles. It was submitted that other than fees prescribed in S 47 of the Act, management corporations are prohibited from charging fees of any other matter.

19. S 47 of the Act is a provision with regard to the supplying of information specified in S 47(1)(a) to (c) of the Act and the fees payable in connection with the provision of the information. There is no provision in the Act that prohibits management corporations from charging fees in connection services provided by the management corporation or for other matters (including fees for the use of various facilities in the estate)

20. Discriminatory:

S105 provides that a Board can repeal additional by-laws and amendments to existing by-laws and revive revoked by-laws after considering the interests of all subsidiary proprietors in the use and enjoyment of their lots or the common property. Clearly a by-law that is discriminatory in its application will qualify for repeal.

21. The applicants submitted that the by-law is discriminatory in application because it targets a specific class of subsidiary proprietors. The submission was that the by-law required SPs who owned two or more m/vehicles to pay additional contributions for the maintenance of the estate. Does the by-law require this? Whilst no parking fees are levied for the parking of one or 1st vehicle, owners two or more vehicles are required to pay fees for parking these vehicles on the common property of the estate. Owners of two or more vehicles are however not obliged to park their 2nd and 3rd vehicles in the parking lots of the estate (it is a fact that there are parking lots available in the vicinity of the estate) and in this case will not be required to pay parking fees. Should they choose to park in the parking lots of the estate fees are chargeable and proceeds are used for the maintenance and upkeep of the estate.

22. Oppressive:

It was submitted that the by-law was oppressive because alternative proposals submitted by the applicants were not adopted. The Board considered whether the by-law that required owners of two or more vehicles to pay parking fees if they wanted to park their second and third vehicles in the car parks in the estate could be viewed as one that was unfair to owners of two or more vehicles. From the equal number between parking lots and the units in the estate it would not be out of order to assume that the developers intended that there would be one parking lot for each and every unit. It was not the intention that more than one parking lot would be available for each and every unit. The Board was of the view that charging parking fees for the second, third and more vehicles when lots were available cannot be viewed as being unfair to owners of two or more vehicles especially when the fees collected are to be used for the benefit of all subsidiary proprietors. It was a fact that the by-law was passed at a meeting of the management corporation where all subsidiary proprietors including the applicants had a right to

address the meeting, and even before the meeting, the applicants could have done whatever was necessary to persuade the meeting to adopt their proposals. An overwhelming majority had voted in favour of the by-law (The respondents have in written submissions informed that the chairman of the management council and one other council member own more than one motorcar). The Board did not consider that the by-law was oppressive.

23. It was further submitted that the by-law was contrary to the law of tenancy in common. The argument was that common property (ie the car parks) is owned by all subsidiary proprietors as tenants in common and as such they should not have to pay for the use and enjoyment of the car parks. The applicants referred to, inter alia *Dennis v McDonald [1981] 1 WLR 810* where it was held that although a tenant in common was not liable to pay an occupation rent where the other tenant in common voluntarily chose not to exercise the right of occupation, if the non-occupying tenant had been excluded from the premises the courts would order payment of occupation rent if it was necessary to do justice between the parties. The applicants referred to S 33 of the Act and submitted that this was the statutory equivalent of "occupation rent". Unless there was exclusive use of common property it was not in order for fees to be charged and no exclusive use was conferred in this case.
24. Under S 33 of the Act, a management corporation can with the written consent of a subsidiary proprietor make a by-law conferring exclusive use and enjoyment or special privileges in respect of the whole or any part of common property. Where use and enjoyment or grant of special privileges is for a period of less than 3 years a special resolution is required and if more than 3 years then a 90% resolution is required.
25. The Board did not consider the by-law for the payment of fees for the parking of second, third or more vehicles to be a payment of "occupation rent". Whilst car parks are common property and are owned by all subsidiary proprietors as tenants in common this does not detract from the duty of a management corporation to control, manage and administer common property for the benefit of all subsidiary proprietors ie in order to ensure that there is orderly use and enjoyment of common property it will not be out of order to pass by-laws that spell out the conditions for the use of common property eg booking time limits and the imposition of fees.
26. The applicants concede that it is a common practice in other strata title plans to charge for the parking of additional vehicles even when there are ample lots available and submit that *it would be credulous for the Respondents to suggest that such practices are now accepted as lawful via acquiescence*. In response, the respondents referred to the remarks of Tay Yong Kwang J in *ERA Realty Network Pte Ltd v Puspha Rajaram Lakhiani and anor [1998]2 SLR(R) 721* at paragraph 21
- Where existing market practice is not contrary to public policy then the law should recognize that market practice.*
27. The Board does not consider that the charging of parking fees by a strata title plan is contrary to public policy.

28. S 38 of the Act provides for the establishment and maintenance of management and sinking funds for meeting actual and expected liabilities. The money that is to be paid into the funds can originate from various sources. It can be noted that in addition to the sources listed in S 38(2) (a) to (e), S38(5) (a) (b) and (d), money can be received from other sources (S38(5)(c))and this would include fees for the use of common property.
29. It was also submitted that the by-law should be repealed because the management corporation when passing the by-law was acting contrary to S 29 (1)(a) of the Act.
30. S 29(1)(a) of the Act provides that it is the duty of the Management corporation to control, manage and administer common property *for the benefit of all subsidiary proprietors*. The submission of the applicants was that the by-law did not benefit *all the subsidiary proprietors* but only befitted the majority who owned less than two vehicles. It was not the view of the Board that the management corporation had, when passing the by-law breached its duty under S 29(1)(a) of the Act. Inter alia the by-law was passed so that funds could be generated to meet liabilities and expenses arising from the management corporation's duty to control, manage and administer the common property. A deficit of \$353000 for the financial year commencing 01/07/13 had been forecasted and the fees collected could partially offset this deficit. This would definitely be *for the benefit of all subsidiary proprietors*.
31. The applications in STB 54/2013 are dismissed. We will hear parties on costs.

Dated this 15th day of January 2014.

Mr Francis George Remedios
Deputy President

Mr Raymond Lye
Member

Mr Edwin Choo
Member