BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 94 of 2012

In the matter of an application under section **103 and 104** of the Building Maintenance and Strata Management Act in respect of the development known as **YONG AN PARK** (MCST No. 1267)

Between

Yap Sing Lee

... Applicant(s)

And

MCST Plan No. 1267

... Respondent(s)

Coram: Mr Remedios F.G (Deputy President)
Prof Teo Keang Sood (Member)
Mr Chua Koon Hoe (Member)

Counsel: i) Mr Ian De Vaz and Ms Loh Bee Kee (WongPartnership LLP) for MCST Plan No. 1267
ii) Mr Yap Sing Lee (in person)

GROUNDS OF DECISION

1. In this application, Yap Sing Lee (Yap) the subsidiary proprietor of Blk 327 River Valley Road #XXX Yong An Park applied, in addition for *Costs and fees,* for an order to invalidate the following resolution passed by The Management Corporation Strata Title Plan No 1267 (the MC) at the Extraordinary General Meeting (EOGM) held on 13 October 2012.

   Resolution 3.0

   No further action be taken by Council in respect of the roof structures at the penthouse and town house units, as set out in the URA and MND Correspondence, unless otherwise empowered and authorized by the

Management Corporation in a General meeting or if the Management Corporation is compelled by any demands, actions, claims and/or proceedings relating to, arising from and/or in connection with the roof structures at the penthouse and town house units.

2. In the application form (Form 8) filed by Yap on 5 November 2012, there was an application for another resolution *(Resolution 5.0)* to be invalidated. At a mediation/ direction hearing before the Board, Yap confirmed that he was not seeking the invalidation of that resolution.

BACKGROUND:

3. From the Joint Statement of Background Facts (AB1) and Documents (AB2) submitted, the facts that led to the passing of the resolution were as follows:

   3.1 The *penthouse and town house units* in the resolution comprise 16 penthouse units and 8 town house units in Blocks 325, 327, 329, 331 and 333 in Yong An Park.

   3.2 On 22 November 1996, the URA had, following an application by the MC, issued under S10(1) of the Planning Act Cap 232 1990 Ed, a Notice of Grant of Written Permission for *Proposed addition and alterations to existing condominium housing development on (the five abovementioned blocks) involving conversion of roof terraces to family hall and internal additions/alterations…..* (the 1996 WP)

   S 20(1) of the Planning Act *inter alia* provides that

   every planning permission and every conservation permission shall lapse if the development or works authorized by it are not completed or effected within 2 years of the date of the grant of the planning permission or conservation permission

   3.3 After the 1996 WP, the MC required the affected penthouse and townhouse owners to sign a Deed of Undertaking to agree to a common design and construction of the proposed works to ensure uniformity. There was no consensus on this.

   3.4 Alteration works were carried out at a number of units including Block 327 #XXX. The works were carried out without the approval of the MC and although it is not known when they were carried out, it is the case for the MC that they were not carried out within the validity period of the 1996 WP.

   3.5 In March 2007, the MC issued a newsletter. *Inter alia* the contents were as follows:

   Yong An Park has eight townhouse and 16 penthouse units.

   Several units contain addition and alteration works that were carried out from 1996 to 2003 without prior approval being obtained from the management corporation. Owners of three units have also recently applied

for additions and alterations to be carried out. These additions and alterations (A&A) if constructed or retained (as the case may be) consume Yong an' gross floor area (GFA)

The subsidiary proprietors (SPs) of these three units are presently engaged in legal proceedings with the management corporation in connection with these A&A

…

On 4 July 1996 the 9th Management Council approved the design of A&A for penthouse/townhouse and subsequently applied to URA for permission to carry out A&A for the penthouses/townhouses. On 22 November URA granted approval with written permission lapsing on 22 November 1998

The 10th MC decided that the management corporation would grant permission to the penthouses/townhouses for A&A to be carried only if all the penthouse/townhouse SPs execute a Deed of Undertaking (Deed). The paramount objective of requiring all the penthouse/townhouse SPs to jointly agree to the terms of the Deed was to ensure consistency and uniformity of design of the A&A and not to compromise the façade of the buildings in Yong An Park. The penthouse SPs did not execute the Deed. Although the Deed was signed by the townhouse SPs the 10th MC did not issue written approval to the townhouse SPs to carry out A&A because 2 of the townhouse SPs did not make the requisite deposits to the architect (as required under the terms of the Deed)

Subsequent MCs from 1997 (10th MC) to 2005 (18th MC) took the approach that council had no authority to approve A&A to the penthouses/townhouses where they involved the use of GFA of Yong An Park.

Yong An Park was built without fully utilising its GFA. However, if the unused GFA was used by SPs for their A&A, Yong An may be left with insufficient GFA should the management corporation decide in future to carry out upgrading works involving GFA (eg building of a clubhouse etc

...

At the 18th AGM held on 15 January 2005 the managing agent briefed the meeting on the status of unauthorised structures constructed within the SPs units in Yong An Park. Members who attended the meeting were noted to have raised various concerns over the existence of such structures. The discussion culminated with the meeting stating that "there was a strong consensus at (the) meeting that such unauthorised structures and alterations must be addressed and removed"

…

…

…

…

It is paramount that all SPs should now consider the future of the unauthorised structures/alterations in the penthouse/townhouse. Resolutions have been tabled at the forthcoming AGM which deals with these issues

3.6 On 28 June 2007, M/s Drew and Napier on behalf of the MC wrote to the URA. *Inter alia*, the letter referred to the 1996 WP; that upon the issuance of the 1996 WP Yong An Park was deemed to have incurred additional GFA of 1034.94 sq m (rising from 80041 sq m to 81075.94sq m); that there was no development charge incurred because the paid up GFA was 82,593.028; the 1996 WP had lapsed without any of the approved works being carried out on the basis that the MC had not given any approval for any work because there was no consensus on the Deed of Undertaking; that some owners had proceeded to construct structures on their roof terraces without the knowledge and permission of the MC (a table of the units involved was provided); MC's view that these were illegal structures; referred to an application by Yap, who had purchased his unit in or around March 2006, to carry out extensive renovations on the basis of the 1996 WP; the MC's rejection of Yap's application because GFA was affected; Yap enclosing an email from a Clement Lim from the URA informing that URA had no issue with GFA because there was existing GFA from the approved roof terrace structures which could be used to offset from and secure to his proposal; the MC's view that URA's position that GFA had already been consumed by the roof terrace constructed at Yap's unit was mistaken because as far as the MC was concerned it was an illegal structure and could not be considered to have been installed in accordance with the 1996 WP; referred to an earlier stand taken by the URA involving another penthouse unit that did not appear to be consistent with the stand in Yap's case; called upon the URA to clarify the apparent contradiction.

3.7 On 3 August 2007, Catherine Lau from URA replied and pointed out that the URA's dealings with Yap's and the other penthouse referred to by the MC was not inconsistent. *Inter alia*, she informed that Yap's proposal did not involve additional GFA and that an additional GFA of about 10sqm was involved in the other.

3.8 On 12 September 2007, the MC wrote to the URA to seek clarification in connection with the Perspex cover in Yap's unit and *inter alia* queried if the additional 1034.94 GFA incurred by the issuance of the 1996 WP had reverted back to Yong An Park since (because the Deed was not signed) the MC had not given any approval for work to be done in accordance with the 1996 WP. On 27 September 2007, URA replied that the installation in Yap's unit was in accordance with the 1996 WP and "we *do not see any issue of unconsumed GFA that need to be reverted back…"*

3.9 On 1 July 2008, the MC wrote to Mr Tan Tee How, Permanent Secretary of the Ministry of National Development (PSND). *Inter alia*, the MC stated its position that the installation in Yap's unit had been *illegally installed;* it

questioned URA's acceptance that it was *rightly installed pursuant to the 1996 Written Permission;* repeated its query in connection with the 1034.94 GFA; repeated its position that the 1996 WP had lapsed without any A & A work carried out; its view that A& A works that Yap was seeking to carry out would incur GFA; that it was of the view that the position taken by URA was "*…in error….";* asked what action did URA intend to take in connection with structures constructed without the MC's approval or written permission from URA

3.10 On 26 August 2008, Ms Nonnie Thoo, Assistant Director/Strategic Planning, on behalf of PSND replied and *inter alia* informed that *the lightweight roof over the trellis at the unit known as Block 327#XXX was found to be erected in accordance with the WP ie at the same location and extent. The fact that not all the approved A&A works in the 1996 WP were carried out at the subject unit does not render the erection of the lightweight roof cover unauthorised as there is no requirement under the Planning Act that all works approved under a written permission must be carried out and completed. The MCST has claimed that the roof cover at the subject unit was built outside the validity of the WP. Other than the reason that the MCST's requirements for the execution of the works had not been satisfied there is no evidence substantiating this claim. As the roof cover was built in accordance with the 1996 WP and in the absence of evidence that the works were carried out after the 1996 WP had lapsed, URA has no good reason to regard the roof cover as unauthorised for the purpose of the WP and Planning Act.*

3.11 Ms Thoo went on to inform that proposed works in a fresh application (by Yap) would not result in any increase in the total approved GFA and in accordance with URA's submission guidelines the MC's endorsement (for Yap's application) was not required. Ms Thoo also referred to the MC informing that MC's clearance had not been given to the SP's between 1996 and 1998 to carry out A&A works and said *We would like to stress that the requirement for the SPs to obtain MCST's clearance under the by-laws is a matter between the MCST and the SPs and failure to obtain such clearance does not render the works unauthorised under the Planning Act.*

4. Accordingly it can be noted that the views of the MC and URA/MND with regard to works carried out and GFA consumed following the 1996 WP were not congruent. On the part of URA and MND, there were no unauthorised works carried out following the 1996 WP and there was no issue with regard to unconsumed GFA because work in accordance with the WP had been carried out.

5. It was under these circumstances that the EOGM was held on 13 October 2012. It will be in order to set out that Resolution 3.0 was considered by the meeting only after another resolution *viz* Resolution 2.0 was not carried. Resolution 2.0 called upon the meeting to accept URA/MND's position and it was as follows:

To consider, and if thought fit, approve and resolve by way of an Ordinary Resolution that:

(a) URA's and MND's position in relation to the roof structure at the penthouse and townhouse units as set out in URA's email to Drew and Napier dated 27 September 2007 as well as MND's letter to Drew and Napier dated 26 August 2008 be fully and unconditionally accepted by the management corporation Yong An Park;

(b) Council be empowered and authorised to execute all documents and do or procure to be done all such acts and things as may be necessary in order to give full and valid effect to the matters set out in the URA and MND correspondence;

6. The voting on Resolution 2.0 was by poll. The total share value of votes cast was 468 and the resolution was declared to be defeated after 450 representing 96.15% voted against and 18 representing 3.85% voted in favour. The meeting had accordingly rejected that the MC should fully and unconditionally accept the position taken by URA and MND. After Resolution 2 was rejected, the meeting considered Resolution 3.0. There was no voting on the resolution because there were no objections and the chairman declared *"…that Resolution 3.0 is unanimously carried by this meeting, in other words, the floor has resolved that no further action will be taken by council in respect of the roof structures at the penthouse and townhouse units as set out in the URA and MND correspondence unless otherwise empowered and authorised by the MC in general meeting or unless the MC is compelled by demands, actions claims and/or proceedings relating to, arising from and/or in connection with the roof structures at the penthouse and townhouse units.* With the rejection of Resolution 2.0 and the passing of Resolution 3.0, the state of affairs was that the MC did not accept the position taken by URA and MND but would not be taking any action with regard to the roof structures at the penthouse and townhouse units referred to in the correspondence. Hereinafter Resolution 3.0 will be referred to as R3.

DECISION OF THE BOARD:

7. Yap has applied for R3 to be invalidated under the provisions of SS 103 and 104 of the Building Maintenance and Strata Management Act Chapter 30C (the Act).

8. S 103 of the Act provides for the invalidation of a resolution passed at a meeting where provisions of the Act were not complied with when the meeting was held.

S 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.

9. It can be noted that the provision requires that one or more provisions of the Act has/have not been complied with in relation to the meeting where the resolution was passed. Subsection (2) provides that 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. Where failure to comply had not prejudicially affected anyone or where compliance would not have resulted in a failure to pass the resolution the Board can refuse to invalidate.

10. S 104 of the Act provides for the nullification of a resolution where the *Board is satisfied that a particular resolution would not have been passed…but for the fact that the applicant (a) was improperly denied a vote...; or (b) was not given due notice of the item of business pursuant to which the resolution was passed* (ie the applicant had not been allowed to vote on the resolution and if he had been allowed to vote, the motion would not have been passed.)

11. In Form 8 which was completed by Yap when he filed the application in this case, he, with regard to SS 103 and 104 of the Act, referred to the notice that was given for the EOGM and it was his case that Paragraph 1(1) of the First Schedule of the Act had not been complied with because only 12 days instead of 14 days' notice had been given before the EOGM. In his Opening Statement (YSL1) and written Submission (YSL2), no reference was made to insufficient notice. It was now his submission that R3 which was passed by way of an ordinary resolution was not in order because a special resolution was required.

12. Yap has, in his submissions, detailed interactions between him and the MC; and between the MC and other subsidiary proprietors. He also made submissions on how he had been adversely affected by the actions of the MC. Submissions were also made in connection with advice given by the lawyer at the meeting before R3 was passed. The Board will not deal with these matters as the Board is of the view that they are not relevant.

13. In his Reply Submissions (YSL 3), Yap referred to S 61(1) of the Act (the section provides that a member of a council *shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office)* and submitted that the MC had not acted honestly because, according to him, untrue statements had been made in the 2007 newsletter. A perusal of the newsletter (AB2 Tab 19) will reveal that the MC had in the newsletter expressed its views with regard to additions and alterations works consuming GFA and works carried out without the approval of the MC are described as "unauthorized". It appeared to be Yap's submission that if the subsidiary proprietors present at the EOGM on 13 October 2012 had been informed of the untrue statements R3 would not have been passed. It is to be noted that the meeting was not concerned with the contents of the 2007 newsletter and it is not the finding of the Board that there are untrue statements in the newsletter. There is also no evidence that R3 would not have been passed if the meeting had been informed of what Yap considered to be untrue statements and no evidence upon which a finding can be made that there was dishonesty on the part of anyone including any member of the council.

14. For a motion to be decided by way of an ordinary resolution, 14 days' notice specifying the motion must be given. It is not required that voting should be on a poll and only a simple majority is necessary. For special resolutions, 21 days' notice must be given. Voting has to be on a poll and at least 75% of the aggregate share value of the lots must cast their votes in favour of the motion (SS 2(2) and 2(3) of the Act).

15. S 32(3) of the Act provides that "… *a management corporation may pursuant to a special resolution make by-laws, or amend, add or repeal any by-laws made under this section…"*

16. It was the submission of Yap that a special resolution was required because it was his submission that R3 was a resolution that repealed another by-law *viz* Clause 15.14 and Clause 15.16 of the Supplementary By-Laws of the MC.

17. Clause 15.14 is concerned with the obtaining of written approval from the MC with regard to installation of rooftop covers. It *inter alia* provides for the timeline for plans and details of proposed works; nature of materials used and manner of installation. Clause 15.16 provides that the MC *"…shall not approve any application for renovation works…which affects the GFA* and *it shall be the onus of the subsidiary proprietor to obtain written confirmation* that GFA has not been affected

18. Yap had, on 11 August 2006, made an application (AB2 Tab 15) for A/A works at his unit which were *"…in accordance with planning approval granted..."* under the 1996 WP. It was stated in the letter of application that *"…there will not be any increased in GFA …"* On 19 October 2012, Yap was, *via* an email from the MC, informed *that "…in view of the resolution that has been passed (R3) the Council is unable to grant any approval in respect of your roof terraces…"*

19. It was the submission of Yap that in relying on R3 to reject the application for his A/A works, R3 was a resolution that repealed Clauses 15.14 and 15.16 of the Supplementary By-Laws of the MC.

20. It is not necessary for the Board in this case to comment and decide on whether the passing of R3 prevented the MC from granting approval for Yap's application and it is also not necessary for the Board in this case to comment and decide if the MC's decision to reject Yap's application was in order or otherwise. The MC's decision to reject Yap's application was in "…*the exercise or performance of…a power, duty or function conferred by this Act or the by-laws*…" and any dispute between Yap and the MC with regard to this should be dealt with *via* an application under S 101(1)(c) of the Act. The application in this case is not such an application. The application in this case is an application for the Board to invalidate R3 on the ground that the provisions of the Act had not been complied with when it was passed. It was submitted that there was breach of S32 (3) of the Act and the Board has to decide whether R3 is a resolution to "…*makes by-laws, or amend, add or repeal any by-laws …"* It is clear that it is not such a resolution. R3 is not a resolution where a by-law is made; it is not a resolution where an

existing by-law is amended, added or repealed. As noted earlier, it was a resolution for the council not to take any action in "…*respect of the roof structures at the penthouse and town house units, as set out in the URA and MND Correspondence, unless otherwise empowered and authorized by the Management Corporation in a General meeting or if the Management Corporation is compelled by any demands, actions, claims and/or proceedings relating to, arising from and/or in connection with the roof structures at the penthouse and town house units."*

21. The Board is not satisfied that there are any grounds to order that R3 be invalidated and it is ordered that the applications in STB 94 of 2012 be dismissed.

22. We will hear parties on costs.

Dated this 4th day of March 2014

MR REMEDIOS F.G
Deputy President

PROF TEO KEANG SOOD
Member

MR CHUA KOON HOE
Member