

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

STB No. 64 of 2014

In the matter of an application under Section 103  
& 113 of the Building Maintenance and Strata  
Management Act in respect of the development  
known as **AA Centre** (MCST No. 918)

Between

- 1. Starlite Land Development Co. Pte. Ltd.**
- 2. Yu We Le**

... Applicants

And

- 1. The Management Corporation Strata  
Title Plan No. 918**
- 2. Mr. Joseph Lee Chin Keong**
- 3. Mr. Louis Lee Chin Beng**

... Respondents

Coram: Mr Remedios Francis George  
Deputy President

Panel Members: Prof Teo Keang Sood  
Mr Chan Kim Mun

Applicants:

- 1. Starlite Land Development Co. Pte. Ltd.**
- 2. Yu We Le**

Counsel: Mr. Joseph Lee  
(M/s Rodyk & Davidson LLP for the Applicants)

Respondents:

- 1. The Management Corporation Strata Title Plan No. 918**
- 2. Mr. Joseph Lee Chin Keong**
- 3. Mr. Louis Lee Chin Beng**

Counsel: Mr. Bernard Sahagar  
(M/s Lee Bon Leong & Co. for the Respondents)

## GROUND OF DECISION

### **Background:**

1. AA Centre at 336 River Valley Road (MCST Strata Title Plan No 918) is a mixed-use development comprising 30 strata lots with a total share value of 4000. Starlite Land Development Co Pte Ltd (Starlite) is the subsidiary proprietor of two strata lots of TS 20-U472X and TS 20-U461M (comprising commercial units at levels 1 - 6 of the building, #XX X to #XXX) and the aggregate share value is 3128 i.e. 78.2% of the total. The remaining 28 strata lots (872 shares) correspond to 28 residential units spread over the seventh to fourteenth storeys. Starlite is a wholly owned subsidiary of the Far East Organisation. Yu We Lei (YWL) is a director in the Far East Organisation and is the nominee of Starlite.
2. Lee Chin Keong also known as Joseph Lee (JL) and Lee Chin Beng also known as Louis Lee (LL) are not subsidiary proprietors in the building. They are nominees of the subsidiary proprietors in #XXX and #XXX.
3. At the AGM of MCST Plan 918 held on 31/03/2014, the meeting, *inter alia*, decided that the management Council (the Council) should comprise 3 members and YWL (18 votes) was elected as one of the 3 members. The other two were JL (13 votes) and LL (13 votes). At the 1<sup>st</sup> meeting of the management Council which was held on the same day, it was decided that JL, LL and YWL would be appointed as the Chairman, Secretary and Treasurer respectively. It was also decided that all three of them be *authorised as management corporation bank account signatories*.
4. At the 4th meeting of the Council on 06/08/14, YWL's appointment as Treasurer was terminated and JL was appointed in her place. Before the meeting on the 06/08/14, there were problems and disagreements between YWL and the other two members. *Inter alia*, YWL had expressed dissatisfaction with regard to access to the accounts of the estate and had queried as to whether her name had been included as signatory of the MCST's bank account.
5. YWL was present together with JL, LL and the property officer Mohamed Rafeeq when the meeting commenced at 8.50pm on 06/08/14. Shortly after the commencement of the meeting YWL was told, by LL to wait outside (RB2 pg 35) and at 9.08pm a record was made *via* an email on her iPhone (AB2 pg15) that she had been asked to leave the meeting room.

### **Orders Sought:**

6. When STB No 64 of 2014 was filed on 18/08/2014, it was an application for two orders. The first was for the supply of information/records/document under S 113 of the Building Maintenance and Strata Management Act Cap 30C (the Act). The Applicants are not pursuing with the application for this order as this was resolved in the course of mediations. The second application was for an order under S 103 of the Act and was as follows:

*That the following resolutions passed at the purported 4<sup>th</sup> Council Meeting on 6 August 2014 at the management corporation's office 336 River Valley Road at 8.50 p.m. be invalidated:*

- *That Ms Yu We Le be terminated from her office as Treasurer of MCST Plan No918 with immediate effect.*
- *That Mr Joseph Lee Chin Keong be appointed as the Treasurer cum Chairman immediately of MCST Plan No 918*

7. S 103 of the Act is as follows:

*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 –*

- *invalidate any resolution of or election held by the persons present at the meeting; or*
- *refuse to invalidate any such resolution.*

*(2) A Board shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers –*

- (a) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and*
- (b) that the compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.*

8. It is the case for the Applicants that the notice for the Council meeting where YWL's appointment as Treasurer was terminated and JL appointed in her place was in breach of Paragraph 4(1) of the Second Schedule to the Act. Paragraph 4(1) requires that a Council gives 3 days' notice before the time fixed for the meeting of the Council by displaying the notice, which must, *inter alia*, contain a detailed agenda of the meeting on the notice board of the management corporation and serving the notice on each member of the Council.
9. In this case the notice of the meeting was given via an email sent by the property officer at 9.14am on the 06/08/14 and was as follows:

***NOTICE IS HEREBY GIVEN that the urgent meeting ...will be held on 6 August 2014 at 8.30pm the Management Office of 336 River Valley.***

***AGENDA***

***1. Opening of Meeting***

***1. To discuss Ms Yu We Le as MCST 918 Treasurer issue...***

10. The Notice was signed by the Property Officer Mohamed Rafeeq.
11. At 10.49 am on the same day, YWL sent an email to Mohamed Rafeeq to inform that she would attend the meeting tonight and requested if it could be held earlier at 7.00 pm or 7.30



pm. At 12.38 pm, YWL sent another email. This email was addressed to [mcst918@singnet.com.sg](mailto:mcst918@singnet.com.sg) and gave notice that YWL was *taking objection to your Notice of Council meeting* on the grounds that the notice was defective as it contravened Paragraph 4(1)(a) and 4(1)(b) of the Second Schedule of the Act. YWL went on to inform that she would attend the meeting *on a without prejudice basis and to clarify the agenda of the proposed Council Meeting that has to be held after the proper notices of the Council Meeting have been given to the Council Members and posted on the notice board of the management corporation*

12. The proceedings of Councils of a management corporation are regulated by the provisions in the Second Schedule to the Act. Paragraphs 4 and 5 of the Second Schedule are as follows:

*4-(1) A Council...shall give notice of its intention to hold a meeting at least 3 days before the time fixed for the meeting - (a) by displaying the notice on the notice board of the management corporation... and (b) by serving the notice on each member of the Council...*

*(2) The notice referred to in sub paragraph (1) shall specify when and where the meeting is to be held and contain a detailed agenda for the meeting.*

*5-(1) A subsidiary proprietor who is a member of the management corporation shall be entitled to attend a meeting of the Council of the management corporation but may not address the meeting except with the permission of the Council.*

13. In *KLH Enterprises Pte Ltd & Chemical Industries Pte Ltd v MCST Plan No 1601 STB No 31* of 1994 reported in *Strata Titles Boards Decisions: FT Law and Tax* 449, the Board considered Paragraphs 4 and 5 of the Second Schedule to the Land Titles Strata Act Cap 158 and decided:

*"... Subsidiary Proprietors are thereby given the right to know how their Councils makes the decisions which affect their lives as members of the management corporation. To ensure that this said right is not denied the preceding para 4 makes it mandatory on the Council to put up on the notice board of the management corporation a notice of a proposed Council meeting and the agenda at least 24 hours before such meeting is scheduled to take place...."*

14. Paragraph 4 and 5 of the Second Schedule to the Land Titles Strata Act Cap 158 Act is the same as Paragraphs 4 and 5 of the Second Schedule to the Act except that the time for notice to be given of a Council meeting is now 3 days before the time fixed for the meeting.
15. It is in this case, not in dispute that there was breach of Paragraph 4(1) of the Second Schedule to the Act. It is the case for the Respondents that there were good reasons to remove YWL because she was *"..abusing her powers as a Treasurer..."* It was alleged that YWL was *abusing her position as Treasurer to advance the cause of one(1) SP viz Starlite*. It is not the finding of the Board that YWL had abused her powers as a Treasurer and even if such was the case, this will not justify non-compliance with Paragraph 4(1) of the Second Schedule to the Act.

16. It was a further submission of the Respondents that the Applicants had waived the breaches when YWL after receipt of the notice of the meeting from the property officer decided to attend the meeting. It is clear from the email sent by YWL at 12.38pm on 06/08/14 that she had not waived any breach of the provisions of the Act
17. It is also the case for the Respondents that under S 103(2) of the Act, *...the Board will not grant the application if notwithstanding the irregularity - the outcome would be the same and/or the Applicants suffered no prejudice...* i.e. it is the case for the Respondents that even if Paragraph 4(1) of the Second Schedule to the Act had been complied with, YWL's appointment as Treasurer would have been terminated at the meeting and there was *no evidence that had there been due notice, - the outcome of the meeting would be different*
18. It is not correct that *the Board will not grant the application if notwithstanding the irregularity, - the outcome would be the same and/or the Applicants suffered no prejudice...*
19. Under S103(2), a Board is given a discretion to invalidate or not to invalidate when the provisions of the Act have not been complied with. However there is no discretion when failure to comply has prejudicially affected another and compliance would have resulted in a failure to pass the resolution or affect the election. In such a case the Board must invalidate. It is not the case that when there has been breach of the provisions of the Act and no one has been prejudicially affected and compliance would not have resulted in a failure to pass the resolution or affect the election, a Board must not make an order to invalidate. In such a case the Board will have discretion to invalidate or refuse to invalidate.
20. The Board does not agree that there was *no evidence that had there been due notice, - the outcome of the meeting would be different*. It did not appear to be in dispute that the Applicants would have been able to garner support from subsidiary proprietors of at least one third of all of the lots to oppose the making of a decision to remove YWL if the required notice under Paragraph 4 of the Second Schedule had been given. Under S 58(3) of the Act a Council is prohibited from making the decision that is opposed by the subsidiary proprietors of not less than one third of all of the lots.
21. S.58(3) of the Act is as follows:  
  
*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, any decision if made by the Council shall have no force or effect*
22. It is the case for the Respondents that some of the subsidiary proprietors who would have supported the Applicants in opposing a decision to remove YWL as Treasurer were in arrears with regard to contributions due to the management corporation and it was submitted that subsidiary proprietors who are not eligible to vote at meetings because they are in arrears of moneys levied or recoverable by the management corporation are prohibited from giving a



notice under S 58(3) to oppose a proposed decision of the Council. Whilst it is provided in Paragraph 2(1) of the First schedule that only subsidiary proprietors who have paid all contributions and other moneys levied or recoverable under the Act would be eligible to vote at a meeting of the management corporation, this is not the case in S 58(3) of the Act. There is nothing in S 58(3) prohibiting subsidiary proprietors who are in arrears from giving notice of opposition to proposed decisions of the Council

23. It was also the Respondents submissions that when subsidiary proprietors have unanimously approved and empowered an incoming Council to elect its office bearers, S 58(3) of the Act will not be applicable because subsidiary proprietors of one third of all of the lots cannot oppose a proposed decision of a Council with regard to the office bearers in the Council i.e. after subsidiary proprietors have at a meeting of the management corporation unanimously approved and empowered an incoming Council to elect its office bearers, as in this case, the Council is at liberty to terminate and replace appointed office bearers at Council meeting even when more than one third of the subsidiary proprietors of all of the lots is opposed to the termination and replacement. The Board does not agree with this submission. The fact that subsidiary proprietors have unanimously approved and empowered an incoming Council to elect its office bearers, will not nullify or in any way overrule S 58(3) of the Act.
24. It is also a submission of the Respondents that the *main complaint (of YWL) was the lack of notice and/or meeting agenda*. Because this was the case, it is not an application where an order can be made under S 103(2) of the Act because according to the Respondents, S 103 of the Act *“deals specifically with the meeting itself – Order to Invalidate Proceedings (entire meetings)*. It was the submission of the Respondents that the application should have been under S 104 of the Act.
25. Inter alia S 104 provides that where *a Board is satisfied that a particular resolution would not have been passed...but for the fact that the applicant was not given due notice of the item of business to which the resolution was passed, the Board may order the resolution be treated a nullity.....*It is not the case for the Applicants that the resolutions at the meeting on the 06/08/14 terminating YWL from her office of Treasurer and appointing JL as Treasurer cum Chairman were passed because YWL was not given due notice of the item of business. The application was for the invalidation of the resolutions passed at the meeting on the 06/08/14 because provisions of the Act had not been complied with when the meeting was held. The Board is empowered to nullify as such under 103 (1) of the Act.

**The Order of the Board:**

26. After noting that there were no reasons whatsoever for noncompliance with Paragraph 4(1) of the Second Schedule to the Act and considering all of our findings, it is ordered that the resolutions passed at the meeting on 06/08/14 terminating YWL from her office as Treasurer and appointing JL as Treasurer cum Chairman are invalidated.
27. We will hear parties on costs.

Dated this 27<sup>th</sup> day of February 2015

**MR REMEDIOS FRANCIS GEORGE**  
Deputy President

**PROF TEO KENG SOOD**  
Member

**MR CHAN KIM MUN**  
Member

