

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 83 of 2014

In the matter of an application under section
47, 88, 101, 102, 103, 104, 108, 113 and 118
of the Building Maintenance and Strata
Management Act in respect of the
development known as **Pearlbank
Apartments** (MCST Plan No. 395)

Between

Tan Hee Chye

... Applicant

And

The MCST Plan No. 395

... Respondent

Coram: Mr. Alfonso Ang (President)
Mr. Richard Tan Ming Kirk (Member)
Mr. Lim Gnee Kiang (Member)

Applicant: Mr. Tan Hee Chye (In-Person)

Counsel: Mr. Yap Gim Chuan (M/s Soh Wong & Yap) for the Respondent

GROUND OF DECISION

1. The Applicant is a subsidiary proprietor in the strata title development called Pearl Bank Apartments (or Pearlbank Apartments as stated in the application). The Respondent is the management corporation of Pearlbank Apartments.
2. The Applicant initially sought 25 different orders from the Board against the Respondent in relation to, among others, alleged breaches of duty or improper acts or omissions by the Respondent.
3. After 2 mediation sessions and an interlocutory application hearing to amend the application, the Applicant withdrew the application for 9 orders and made amendments to the application for another 15 orders and also added the application for 7 new orders. These changes were allowed and were to form the basis of the hearing of the case with the issue of costs for the interlocutory application reserved.
4. On the first day of the hearing, the Applicant further withdrew his application for 6 orders. The hearing thus proceeded on the remaining 17 orders.
5. Briefly, remaining orders sought by the Applicant were orders for the following:-

Order 7 — That the Respondent give complete details in regards to General expenses and festive celebrations for year 2012, 2013 and 2014 (pursuant to section 47 of the Building Maintenance and Strata Management Act [“BMSMA”];

Order 8 — The Respondent give complete details in regards to disbursements of Legal and Professional Fees for year 2012, 2013 and 2014 (pursuant to section 47 of the BMSMA);

Order 9 — That the resolution/declaration and the results of voting done at the EOGM held on 13 April 2014 be invalidated;

Order 10 — That the Respondent and/or its council “reimburse back” (sic) the money disbursed out to URA for the application for Voluntary Conservation;

Order 11 — To enforce the performance of the Respondent’s By-Law 20(2) by the Respondent, its council and the managing agent;

Order 13 — To restrain the Respondent from unlawfully collecting more money than the amount of contributions stated in the AGM agenda which were approved and levied at general meetings for year 2013 to 2015;

Order 14 — That the Respondent refund back all unlawful money collected from subsidiary proprietors for maintenance and sinking fund in excess to the amount of contribution stated in the AGM agenda which were approved and levied at general meetings;

Order 15 — That the Respondent refund back the back dated goods and services tax ("GST") including any interest charged for year 2011 to year 2012 to the subsidiary proprietors who had paid and cancel the amounts for those who had not paid;

Order 16 — To restrain the Respondent from using MCST funds for solicitors' legal costs and/or expenses for matters other than seeking legal advice in regards to the Strata Titles Scheme, provisions of the BMSMA and other laws of relevant authorities;

Order 19 — To annul the AGM held on 26 October 2014 and declare it was held in an improper manner;

Order 21 — To declare that the council of the Respondent for year 2012, 2013 ,and 2014 had used MCST funds for additional, improvement and conversion of common property without approval from the general body at general meetings through resolutions were ultra vires and unlawful;

Order 26 — To enforce the performance of the Respondent's By-Law 22(5) and Supplementary By-Law 2.5;

Order 27 — To restrain the Respondent from collecting solicitors costs and disbursements from subsidiary proprietors without any court order;

Order 28 — To enforce the performance of or restrain the breach of sections 53, 60, 61, 68, 1st Schedule 1(2)(b) & (c) and 1st Schedule 12(1) of the BMSMA;

Order 30 — That the council and/or managing agent shall jointly and severally reimburse back to the Respondent all unlawful monies paid out for festive celebrations, social activities, faith praying, solicitors' costs and expenses, interest waived, bonus to managing agent staff and others not within the provisions of the BMSMA;

Order 31 — That, in the interim, the council and/or the Respondent be restrained from disbursing the Respondent's funds for matters other than those specified in the provisions of the BMSMA; and

Order 32 — That the council and/or Respondent produce audio recordings for the 35th AGM held on 26-10-2014.

6. The Board would first address two points that were raised by the Applicant at the beginning of his closing submission on 26 October 2015, viz., (i) insufficient time was given by the Respondent to the Applicant to consider the Respondent's written closing submission; and (ii) the Applicant was not furnished with the transcripts of the hearing.
7. In respect of the first point, the Board had offered the Applicant time for him to review the written closing submission of the Respondent and if he so required, an adjournment of the hearing on 26 October 2015. However, the Applicant stated that it was not necessary and that he was prepared to proceed with his oral submission.
8. With regard to the second point, it was noted that the Applicant did not comply with Strata Titles Boards' application procedure to settle the costs of transcription for the hearings on 15 June 2015 and 24 August 2015. Consequently, he was not entitled to the transcripts of the hearing.
9. As a number of the orders sought overlap, for convenience, the Board will as far as possible deal with them collectively in the order they were raised in the parties' submissions.

Summary of disputes

10. The various disputes between the parties mainly started with the initial handling of GST liability by the Respondent which resulted in the Applicant being denied his voting rights later on. It subsequently involved other disputes including those concerning the Respondent's duty to supply information, the correct procedures for carrying out the Respondent's duties and the exercise of the powers of the Respondent as a management corporation.

Supply of information (see Orders 7, 8 and 32 above)

11. The main issue concerning the Respondent's duties under section 47 of the BMSMA involved how they should be carried out. The Applicant's main argument was that the Respondent must provide the exact documents or items he requested while counsel for the Respondent argued that section 47 of the BMSMA only obliged the Respondent to make available for inspection the documents specified in the section upon payment of the prescribed fee. Counsel for the Respondent also argued that it was justified in its request for a deposit for the anticipated photocopying fees.
12. Furthermore, counsel for the Respondent argued that the Respondent need not allow for inspection nor allow copies to be made of the audio recordings of the 35th AGM held on 26-10-2014 because that is not a "document" or "information" under the BMSMA.

13. Section 47(1)(b)(viii) of the BMSMA mentions specifically “any other record or document in the custody or under the control of the management corporation” and whether the Respondent is right would depend on the meaning of 'record' or 'document'. No definition of either word is provided in the BMSMA or the Interpretation Act and so the Board has to rely on the ordinary meaning of those words.
14. According to the online Oxford Dictionaries (www.oxforddictionaries.com), 'document' means 'A piece of written, printed, or electronic matter that provides information or evidence or that serves as an official record' and 'record' means 'A thing constituting a piece of evidence about the past, especially an account of an act or occurrence kept in writing or some other permanent form'. These two definitions are reasonable and the Board accepts them and that the audio recordings fall within both definitions.
15. The Board is of the view that the Respondent's duties under section 47 of the BMSMA require the Respondent to make available for inspection the documents specified in the section upon payment of the prescribed fee. While the Board found that the legislative provisions did not provide for the collection of any deposit by the Respondent, the Board also found that Applicant had not properly tried to exercise his rights of inspection and of making copies under section 47 of the BMSMA. Neither had the Applicant paid the fees prescribed under the Building Maintenance (Strata Management) Regulations 2005 for the exercise of such rights.

Invalidating EOGM resolution (see Order 9 above)

16. At the EOGM held on 13 April 2014, the resolution to obtain a more than 90% mandate for the voluntary conservation together with upgrading and redevelopment of Pearlbank Apartments was passed.
17. The Applicant sought to invalidate the EOGM resolution on the ground that he was wrongfully denied the right to vote by the Respondent due to the disputed outstanding back-dated GST for 2011 as an outstanding contribution from him.
18. The Board agrees with the Applicant that the disputed outstanding back-dated GST for 2011 was not an amount that was previously levied by the Respondent and consequently it could not form the basis for denying the Applicant the right to vote under para 1(2)(e)(ii) of the 1st Schedule of the BMSMA.
19. However, the Board found that the Applicant did not comply with the time period allowed for him to file his application to invalidate the resolution i.e. within 21 days of the EOGM as provided for under section 104(2) of the BMSMA. Instead, his application for an order to set aside the EOGM resolution was made on 27 November 2014, months after said EOGM.

20. To invalidate the EOGM resolution would require a fresh resolution to be passed, which would make for a more costly and wasteful exercise. The Board found that even if the Applicant had been allowed to participate in the vote, the EOGM resolution would still have been passed.

Reimbursing money paid to URA for voluntary conservation (see Order 10 above)

21. The Respondent held an extraordinary general meeting on 13 April 2014 to, among others, discuss and approve the payment of an application fee of S\$18,000 (from the management fund) to the Urban Redevelopment Authority ("URA") for the voluntary conservation together with upgrading and redevelopment of Pearlbank Apartments as an 'iconic building'. This was meant to unlock the value of the development through a combination of factors, including attracting investors and developers to finance the proposal. The proposal and payment was supported by over 98% of the votes at the meeting.
22. The Applicant argued that there were no provisions in the BMSMA for the Respondent to use its funds for the voluntary conservation with upgrading and redevelopment of Pearlbank Apartments and consequently the funds were wrongly used. In addition, he was wrongfully denied the opportunity to vote against it.
23. Counsel for the Respondent argued that over 98.47% of subsidiary proprietors who attended the meeting voted in favour for the voluntary conservation and the Applicant's vote would not have affected the outcome of the matter and even if there was any non-compliance, the Applicant would not have been prejudicially affected.
24. The Board is of the view that while the proposed voluntary conservation with upgrading and redevelopment was unusual, it was within the Respondent's duty and power to 'to control, manage and administer the common property for the benefit of all the subsidiary proprietors'.
25. The Board also finds that this payment of the application fee of \$18,000 should be viewed not too differently from other disbursements for the purposes of carrying out the management corporation's powers, authorities or functions under the BMSMA.

Enforcing performance of duties (see Orders 11, 26 and 28 above), restraining orders (see Orders 13, 16, 27 and 31 above), invalidating 2014 AGM (see Order 19 above) and declaration of ultra vires (see Order 21 above)

26. The Applicant made numerous allegations and claims about how the Respondent did not follow the proper procedures or the law. However, the Board found that the Applicant did not succeed in discharging the burden of proving his case or persuading the Board that he was entitled to the various orders sought.

Refund of monies (see Orders 14, 15 and 30 above)

27. In respect of Orders 14 and 15, the Respondent collected the disputed GST in the following manner: all subsidiary proprietors of MCST Plan No. 395 were informed via a letter dated 16-01-2013 that the MCST Plan No. 395 had been registered for GST and that an appeal to IRAS for the effective date to be 01-01-2013 was made. In the same letter, the Respondent also informed the subsidiary proprietors that a levy of 7% GST share on the Management Fund and Sinking Fund was to be collected from them.
28. When IRAS rejected the Respondent's appeal on the grounds that its actual revenue was confirmed as exceeding the \$1 million threshold from September 2011 and consequently had to be backdated to this date, the Respondent informed all subsidiary proprietors via a letter dated 16-08-2013 of the mandatory GST liability for the period of September to December 2011 and the year 2012. The Respondent issued invoices to this effect in order to settle the outstanding GST payment accordingly.
29. However, no resolution was passed at the 32nd AGM held on 30-11-2011 for collection of the 7% GST on the Management Fund and Sinking Fund as the MCST Plan No. 395 was not yet registered for GST during the relevant period. Nor was any resolution passed to ratify the collection of the GST for this retrospective period at any of the subsequent annual general meetings or extraordinary general meetings.
30. While the Board found that the Respondent had collected the GST payable for the period September to December 2011 and 2012 and its late payment interest in an inappropriate way, the Board is of the view that it was a matter of internal management that can be ratified subsequently by the necessary resolution.
31. The Board also noted that with the exception of the Applicant, the other subsidiary proprietors of the development had all paid the GST requested by the Respondent.
32. In respect of Order 30, the Applicant claimed that the Respondent's council and/or managing agent should jointly and severally reimburse back to the Respondent all allegedly unlawful monies paid out for festive celebrations, social activities, faith praying, solicitors costs and expenses, interest waived, bonus to managing agent staff and others not within the provisions of the BMSMA.
33. While the Board may not have agreed completely with all the benefits of the various expenditure incurred by the Respondent, the Board did not find any evidence of impropriety and is of the view that the Applicant did not succeed in proving that he was entitled to Order 30.

Board's decision

34. Although counsel for the Respondent submitted to the Board that the application should be dismissed for the grounds stated in section 116 of the BMSMA including the ground that it was 'frivolous, vexatious, misconceived or lacking in substance', the Board did not entirely agree. In the Board's view the Applicant did raise a number of valid issues.
35. After considering all the evidence and the arguments, the Board dismisses the application for the various orders sought by the Applicant save that the Board makes the following orders:
 - a) Provided the Applicant pays the fees prescribed under the Building Maintenance (Strata Management) Regulations 2005, the Respondent shall make available to the Applicant for inspection all records and documents in the custody or under the control of the Respondent (including the audio recordings for the 35th AGM held on 26-10-2014). The Respondent shall supply all copies of the Applicant's requested information, if available, at the prescribed fee of \$0.50 per page as well as the actual cost of duplicating the number of CDs incurred by the Respondent; and
 - b) Unless the Respondent obtains the necessary ratifying resolutions from the next AGM or EOGM, whichever is held earlier, the Respondent shall refund all the monies collected under the application for Orders 14 and 15 above.

Costs

36. The parties did not dispute that the Board has the discretion on costs and that the conduct of a party should be taken into account in the award of costs.
37. After considering the submissions of the parties and taking into account all the relevant circumstances, the Board is satisfied that the appropriate orders for costs are as follows:
 - a) the Applicant pay costs fixed at S\$500 to the Respondents being costs for the interlocutory application; and
 - b) the parties are to bear their own costs for the rest of the matter.

Dated this 4th day of January 2016.

MR ALFONSO ANG
President

MR RICHARD TAN MING KIRK
Member

MR LIM GNEE KIANG
Member