

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 28 of 2018

In the matter of an application under Section 103 of
the Building Maintenance and Strata Management
Act in respect of the development known as
Braddell View Estate (MCST No. 4340)

Between

- 1. Chan Yoon Sun**
- 2. Loke Choon Hoe**
- 3. Vaishnavi Jayakumar**

... Applicant(s)

And

The MCST Plan No. 4340

... Respondent(s)

FOUNDATIONS OF DECISION

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2018

Coram:	Mr Remedios F G	(Deputy President)
	Mr Lawrence Ang	(Member)
	Mr Edward D' Silva	(Member)

INTRODUCTION

1. In this case an application for orders under the Building Maintenance and Strata Management Act Cap 30C (Cap 30C) was filed by three subsidiary proprietors for orders against the management corporation in connection with a collective sale process *ie* an application has been made for orders under Cap 30C in connection with a process under the Land Titles (Strata) Act Cap 158 (Cap 158).

THE FACTS:

2. Following requisitions for an extra ordinary general meeting (EOGM) to be convened to consider a collective sale of Braddell View Estate a meeting was convened by the management corporation on 10 October 2017.

3. The meeting was convened in compliance with paragraph 2 of the Second Schedule of Cap 158. Under this provision, a management corporation is required to convene a general meeting of the management corporation after a requisition signed by subsidiary proprietors who hold at least 20% of the aggregate share value of all of the lots or 25% of the total number of subsidiary proprietors. There was overwhelming support for a collective sale (“For” – 493: “Against” -28) and a collective sale committee (CSC) with 14 members was elected. A resolution in connection with the powers, duties and functions of the CSC was passed unanimously.
4. Following requisitions for an EOGM to be convened by the management corporation to deliberate on the matters listed in the agenda a meeting was convened on 06 Feb 2018. The meeting was convened in compliance with Paragraph 7 of the Third Schedule of Cap 158 which is as follows:

7-(1) The collective sale committee shall convene one or more general meetings of the management corporation in accordance with the Second Schedule for the following purposes

5. The purposes are listed at (a) to (c) in Paragraph 7 viz to appoint any advocate and solicitor; any property consultant or marketing agent where the CSC is not already authorised to make such appointments; to approve the apportionment of sale proceeds; and to approve the terms and conditions of the collective sale agreement (CSA).
6. The Second Schedule of Cap 158 sets out various provisions in connection with *General Meetings For Purposes Of Collective Sale* and there can be no doubt that this is so as it is stipulated in Paragraph 1 of the Second Schedule that *This Schedule shall apply only to any general meeting convened by a management corporation for the purposes of a collective sale.*

543 subsidiary proprietors with a total share value of 59,101 attended the meeting

7. In the minutes of the meeting it is *interalia* recorded
 - i) the opening address by the chairman, Mr Alex Tio;
 - ii) minutes of the EOGM held on 10 Oct 2017 were *unanimously confirmed without an amendment*. It is not recorded that there were votes cast on this.
 - iii) a declaration by the chairman that Colliers International (Singapore) Pte Ltd was appointed as sole property consultant and property agent after the vice chairman of the CSC, Mr Charles Chan had informed the meeting that the CSC had been empowered by the subsidiary proprietors at the EOGM on 10 Oct 2017 to decide on the appointment of the property consultant and property agent and as such there was no necessity for the resolution to be voted upon;
 - iv) a declaration by the chairman that M/s Lee and Lee was appointed as advocate and solicitor after the vice chairman of the CSC had informed the meeting that the CSC had been empowered by the subsidiary proprietors at the EOGM on 10 Oct 2017 to decide on the appointment of the advocate and solicitor and as such there was no necessity for the resolution to be voted upon;
 - v) votes were cast in connection with apportionment of the sale proceeds. The meeting approved the apportionment of the proceeds of sale by a majority of 91.6% v 8.4%. Before casting of the votes the representative from Colliers International (Singapore)

Pte Ltd spoke on the reserve price; there was a discussion that the valuation method used was wrong; comments on the rate disparity between shop houses and flat owners; comments that information provided by Colliers International (Singapore) Pte Ltd was misleading; and comments with regard to fairness of the valuation report.

vi) votes were cast in connection with the terms and conditions of the CSA. The meeting approved the terms and conditions of the CSA by a majority of 93.7% v 6.3%. Before casting of votes the solicitor from M/s Lee and Lee spoke on some of the points and clauses.

vii) votes were cast on the resolution for *MCST extend all assistance to facilitate the Collective Sale*. The result was 96% v 04%. There is no record of any discussion before votes were cast.

8. The applicants are three subsidiary proprietors in the estate and they have under section 103 of Cap 30C applied for the following order

...that resolutions (1),(2), (3), (4),(5), and (6) purportedly passed at the Extra Ordinary General Meeting of the MCST Strata Title Plan No 4340 convened on 06 Feb 2018...be invalidated

9. The applicants were in effect applying for all the resolutions passed at the meeting on 06 Feb 2018 to be invalidated. In section E of Form 8 where applicants are required to set out the reasons for seeking the orders applied for the applicants informed that the meeting was “*marred with procedurally irregular and not carried out in accordance with the with the Building Maintenance and Strata Management Act (Cap 30C). The procedural irregularities are not mere technicalities but in fact reflect serious issues with the collective sale process in the lack of open communication and transparency from the CSC.*” In essence the complaint was that there were procedural irregularities, lack of transparency, unfairness, conflict of interest and bias.

10. Section 103 of Cap 30C is as follows:

Order to invalidate proceedings

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 or election.

(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 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.

APPLICANTS' CASE:

11. With regard to the procedural irregularities it was the case for the applicants that the chairman of the management corporation who, under Paragraph 6 of the First Schedule of Cap30C is required to *preside at any general meeting of the management corporation* had relinquished all control over the meeting when he “*passed*” the microphone to the vice chairman of the CSC. It was the contention of the applicants that the result of this was that it led to the vice chairman of the CSC, who was motivated to ensure success of the collective sale to become the *de facto* chairman of the meeting. In connection with the various resolutions it was contended that there was no proposer or seconder for the adoption of the minutes of the meeting on the 10 October 2017 and there was no vote taken; there was also no voting on the appointment of the property consultant/marketing agent and the lawyers; and that the resolution in connection with the apportionment of proceeds of sale was passed under questionable circumstances. It was contended that the meeting had been misinformed of the legal requirement before the apportionment of proceeds of sale was approved and that the resolution approving the terms and condition of the CSA should be invalidated because the reserve price was not discussed or fixed without sufficient discussion. It was contended that the resolution in connection with the management corporation extending all assistance to facilitate the collective sale was vague, very wide and not understood could lead to a violation of section 38(9A) of Cap30C in the event that funds were expended from the management and sinking funds for the purposes of the collective sale.
12. It was submitted that the applicants had in this case *suffered real prejudice*. Other than the fact that the meeting had resulted in advancing the interests of subsidiary proprietors who were in favour of a collective sale over the interests of those who were not, it was not clear as to what was the prejudice suffered by the applicants.

RESPONDENT'S CASE:

13. It was the submission of the respondent that because the applicants were seeking to invalidate resolutions in connection with a collective sale, it was not within the jurisdiction of the Board to make a decision in favour of the applicants. The applicable legislation was Cap 158 and there was no breach of the provisions in Cap 30C.
14. It was also the submission of the respondent that there were no irregularities at the meeting on 6 Feb 2018; that under paragraph 8 of the Second Schedule of Cap 158 *it is not a strict requirement that the actual chairperson of the management corporation to be the chair of the general meeting for a collective sale*; that there is also no legal requirement that a chairperson must have control of the microphone throughout a meeting and passing the microphone to the chairman of the CSC was not irregular; there was no necessity for votes where votes were not taken and *given the overwhelming majority by which the resolutions have been passed,...it would be difficult for the applicants to make the case (and they have not) that the resolutions would not have passed if there was no alleged irregularities*.

BOARD'S DECISION

15. Strata Titles Boards were established for the purpose of adjudicating disputes between subsidiary proprietors and management corporations and between one subsidiary proprietor and another *i.e.* disputes arising from the use or occupation of lots and the common property. The intention was that the courts would not be overloaded with such disputes. It can be noted that the dispute in this case is in fact, not between subsidiary proprietors and the management corporation but between the applicants and the CSC.
16. Part VA of Cap 158 sets out the various provisions in connection with collective sales. It was enacted to facilitate collective sales *i.e.* to allow for all the lots and the common property in a strata title plan to be sold collectively and ensure sufficient safeguards to balance the interests of the majority owners and the minority. Whilst it is provided that an application for a collective sale under Cap 158 must be made to a Board constituted under Cap 30C, the powers of the Board have since Cap 158 was amended on 15 July 2010 been significantly reduced. It was the intention of parliament when amending Cap 158 that in connection with a collective sale the Board when dealing with an application for a collective would be focused on mediation.

We therefore propose that the STB focus on its mediatory function for en bloc sale application per The Minister for Law at the Second Reading of the Land Titles (Strata) (Amendment) Bill on 18 May 2010

17. When the Board is involved in an application for a collective sale under Cap 158 it is provided in section 84G of Cap 158 that

Part VI of the Building Maintenance and Strata Management Act (Cap 30C) and any regulations made under that Act shall apply in respect of applications under this Part with the necessary modifications
18. Part VI of Cap 30C is *interalia* concerned with the composition of a Board; the manner as to how it is to execute its duties, its powers for the making of orders; specific orders that it can make and the legal effects of its orders. With regard to the specific orders that it can make, it can be noted that unlike Part V of Cap 158 (where specific powers have been given to a Board to *interalia*, mediate; subject to section 84A (9) make an order for a collective sale when no objections have been filed; and when mediation is not successful, make a section 84A stop order) there is in Part VI of Cap 30C no power to make a specific order in connection with a collective sale.
19. The application in this case is for the Board to make an order pursuant to its powers under section 103 of Cap 30C, specifically for an order to invalidate resolutions made at a meeting of the management corporation on 06 Feb 2018 because provisions in relation to meetings (paragraph 6 of the First Schedule of Cap 30C) had not been complied with. Was the meeting on the 6 Feb 2018 governed by the First Schedule of Cap 30C? Both Cap 158 and Cap 30C provide for the convening of general meetings, and regulations have been made in connection with general meetings under the respective Acts. It can be noted that in Cap 30C the regulations in connection with general meeting viz the First and Second Schedules of Cap 30C are applicable to

matters in Part V of Cap 30C i.e they are not applicable to matters under Cap 158. In Cap 158 the regulations viz Second Schedule of Cap 158 are applicable to a *general meeting convened by a management corporation for the purposes of a collective sale*

20. When a Board is involved in a dispute or any matter in connection with application for a collective sale, it will have jurisdiction, duties and powers spelt out in Part VI of Cap 30C. The jurisdiction, duties and powers of a Board in connection with a collective sale will arise only when there is an application for a collective sale under Cap 158. This is clear from section 84G of Cap 158. Part VI of Cap 30C *shall apply in respect of applications under Part VA of Cap 158*. There is no provision that allows for a Board to have jurisdiction, duties and powers in connection with a collective sale, including powers to invalidate resolutions at meetings regulated by the Second Schedule of Cap 158 when there is no application for a collective sale.
21. There is in this case, no doubt that the meeting on 06 Feb 2018 was convened in compliance with paragraph 2 of the Second Schedule of Cap 158. It was not a meeting under any of the provisions of Cap 30C. The subsidiary proprietors of Braddell View Estate were on 10 Oct 2017 and 06 Feb 2018 complying with relevant laws and requirements before an application for a collective sale could be made under section 84A(2A) of Cap 158. Part VI of Cap 30C including section 103 of Cap 30C was not applicable because there was at that point of time no application for a collective sale under Part VA of Cap 158 in existence. As far as the Board is aware there was also no application for a collective sale pending when the applicants filed their applications in this case. The meeting on 06 Feb 2018 was not a meeting under the provisions of Cap 30C and accordingly it is not possible to make a finding that there was non-compliance with any of the provisions of Cap 30C. The application for an order under section 103 of Cap 30C is dismissed.
22. The respondent had submitted that under paragraph 8 of the Second Schedule of Cap 158 it was not a strict requirement that the chairperson of the management corporation to be the chair of the general meeting for a collective sale and any person present at the meeting *would suffice if properly elected and that person would be the chairperson of the management corporation*. The Board does not agree that this is correct. The chairperson of the management corporation must preside at any general meeting of a management corporation where he is present. It is only when he is absent that the persons present and who are entitled to vote can elect one of their number to preside.
23. It will be in order to record that it is not the finding of the Board that there was any irregularity at the meeting on 06 Feb 2018; and if Cap 30C was applicable, there is no evidence that the applicants had been prejudiced and that compliance with the provisions would have resulted in a failure to pass the resolutions.

24. The applicants will pay costs fixed at \$5,000.

Dated this 6th day of August 2018

MR REMEDIOS F G
Deputy President

MR LAWRENCE ANG
Member

MR EDWARD D'SILVA
Member

Applicants in person
Mr Kevin Kwek (M/s Legal Solutions LLC) for the Respondent.