

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 54 of 2019

In the matter of an application under Section 103 and of the Building Maintenance and Strata Management Act in respect of the development known as **OXLEY BIZHUB** (MCST No. 4111)

Between

1. **Koh Chong Chiah**
2. **Low Kim Hiang**

... Applicant(s)

And

The Management Corporation Strata Plan No. 4111

... Respondent(s)

STB No. 55 of 2019

In the matter of an application under Section 102 of the Building Maintenance and Strata Management Act in respect of the development known as **OXLEY BIZHUB** (MCST No. 4111)

Between

3. **Koh Ghee Heng**
4. **Ng Tiang Hong**

... Applicant(s)

And

The Management Corporation Strata Plan No. 4111

... Respondent(s)

GROUND OF DECISION

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and of the Building Maintenance and Strata
Management Act in respect of the development
known as **OXLEY BIZHUB** (MCST No. 4111)

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4111**

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Between

3. **Koh Ghee Heng**
4. **Ng Tiang Hong**

... Applicant(s)

And

**The Management Corporation Strata Plan No.
4111**

... Respondent(s)

29 November 2019

16 December 2019

Coram: Mr Remedios F.G (Deputy President)
Mr Lawrence Ang Boon Kong (Member)
Mr Lim Gnee Kiang (Member)

Background

1. Koh Chong Chiah/Low Kim Hiang (“**KCC/LKH**”) are the applicants in STB 54 of 2019. Koh Ghee Heng/Ng Tiang Hong (“**KGH/NTH**”) are the applicants in STB 55 of 2019.
2. The applicants are subsidiary proprietors in the development known as Oxley Bizhub at 61 Ubi Road 1. They applied for the following orders against the management corporation of the development (“**the respondent**”):
 - a *To invalidate the 4th AGM of MCST 4111 and call for EOGM; and*
 - b *To convene a general meeting of MCST 4111.*
3. At a pre-mediation conference, the applicants indicated that what they wanted were invalidation of all resolutions and elections at the 4th annual general meeting (“**the AGM**”) of the respondent held on the 1 December 2018. Whilst every effort was made to resolve the dispute between the parties at two mediation sessions, the Board was not successful in resolving the dispute and the applicants informed that they wanted the dispute to be resolved by way of an arbitration hearing.
4. The applicants, during the mediation, clarified and confirmed that the orders that they were seeking were invalidation of the election of the council members at the AGM when nine (9) persons were elected as members of the council, and that the grounds for invalidation were that fraudulent and incomplete letters of authority and proxy forms were used in the elections.
5. It was noted that whilst the applicants were seeking orders for invalidation of the elections of the nine (9) persons, including one Derrick Chan, as council members; it was apparent from the contents of Form 8 where the applicants are required to narrate the nature of the dispute that it was in fact the manner and conduct of some council members, especially Derrick Chan, in carrying out their duties as council members that was the source of the applicants’ displeasure.
6. It was also noted that the next annual general meeting, when new council members would be elected was due to be held shortly and in these circumstances the Board had expressed its concern with regard to the resources of the Board being expended in an arbitration hearing under the provisions of the Building Maintenance and Strata Management Act Cap 30C (“**the Act**”).

Applicants’ case

7. In their affidavit of evidence in chief marked “AW1”, KCC/LKH referred to requests for inspections of letters of authority and proxy forms made by KCC and other subsidiary proprietors on 1 December 2018 and since 31 May 2019. It was, inter alia, alleged that the conditions for inspection were unreasonable. It was the evidence of KCC/LKH that

after sighting the documents, 60 letters of authority/proxy forms were either fraudulent or incomplete. They were, according to the applicants, fraudulent/incomplete because there was no company stamp, no letter head/company address, no signature, and not an original in that it was a faxed or photocopied document.

8. At Tab 3 of AW1, KCC/LKH tabulated particulars of the 92 letters of authority/proxy forms that they contended were incomplete/fraudulent. At Tab 4 of AW1, KCC/LKH attached documents that appeared to be declarations from one Lim Kai Ling dated 3 September 2019. The declarant identified himself as a director of Lim Soo Seng and Sons Pte Ltd (the subsidiary proprietor of seven (7) lots in the development) and declared that he had not authorised or appointed anyone as his proxy to participate and vote at the AGM. He also declared that he had not given his consent to be nominated as a candidate for election as a member of the council. He was one of the candidates who was successfully elected as a member of the council at the AGM.
9. It did not appear from Tab 3 that a proxy form had been submitted by Lim Kai Ling. From the particulars in Tab 3, the subsidiary proprietor of the seven (7) lots owned by Lim Soo Seng and Sons Pte Ltd had submitted a letter of authority that did not bear the company's stamp. There was however at Tab 4 a document that purported to be a letter of authority dated 20 November 2018 from Lim Soo Seng and Sons Pte Ltd that did not bear a company seal and had portions redacted/erased.
10. KCC/LKH also submitted what they alleged were whatsapp exchanges in relation to the completing of a letter of authority and a letter of authority authorising Derrick Chan to represent the subsidiary proprietor of one lot (Quan Ting Trading and General Contractor Pte Ltd, #XXX) as its representative at the AGM. It appeared that KCC/LKH were alleging that the letter of authority was fraudulent because the signature on the letter of authority did not appear to be the same as on the whatsapp. In Tab 3 of AW1, it appeared that the subsidiary proprietor of #XXX had submitted a letter of authority that did not have an address and company stamp.
11. In AW1, KCC/LKH also attached what they referred to as an "Opening Statement" and a response to the written submission filed by the respondent when the application was filed wherein it appeared that they were seeking orders other than the invalidation of the election of the council members at the AGM including orders for invalidation of resolutions that were not passed and orders that the Board did not have power to make, e.g. the barring of a candidate from standing for election as a council member when he was not ineligible under the Act.
12. KGH/NTH did not submit any affidavits of evidence/documents in accordance with the directions given for the arbitration hearing. On its own accord, the Board extended the time fixed for submission and on the last day of the extended time, KGH/NTH filed their affidavit (marked "AW2"). In AW2 they, as in the case of KCC/LKH, affirmed that fraudulent and/or incomplete letters of authority and proxy forms were used in the elections. Inter alia, KGH also referred to his election as council member and alleged that

he was asked to step down because, according to him, he had *revealed Derrick Chan's wrongdoing*; and he also made a number of allegations of wrongdoing on the part of Derrick Chan.

Respondent's case

13. On the part of the respondent, it was submitted that there were no valid reasons for the invalidation of the elections. With regard to Ricky Lim (Lim Kai Ling) who was successfully elected as a member of the council, the respondent submitted that a written consent under section 53B(4) of the Act *was not a requirement yet at the time of the 4th AGM*. (It was with effect from 1 February 2019, the commencement date of the Building Maintenance and Strata Management (Amendment) Act 2017, that a nomination for election to be a member of the council of a management corporation would be of no effect unless the nomination was inter alia accompanied by the consent of the candidate).
14. With regard to “incomplete/fraudulent” documents it was submitted that there is no legal requirement for a letter of authority to be printed on a company letterhead; no legal requirement for the letter of authority to state the company's Goods and Services Tax (“GST”) number; that it could be signed by an authorised officer or contain a company seal; and that there is no requirement for it to be both signed and stamped.

Board's Decision

15. The Board is, under section 103 of the Act, empowered to invalidate resolutions of or elections held at a meeting of the management corporation.

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.*

16. It can be noted that a Board has a discretion as to whether or not an order for invalidation should be made when the provisions of the Act in relation to a meeting of the management corporation has not been complied with. It is only when a person has been prejudiced by the non compliance and the non compliance affected the result of the election or the

resolution would have failed if there was compliance that an order for invalidation must be made. Accordingly, if the failure to comply had not prejudicially affected anyone or compliance would not have resulted in failure to pass the resolution or affected the result of an election, the Board can refuse to invalidate when provisions of the Act in relation to a meeting of the management corporation have not been complied with. When no one has been prejudicially affected and compliance would not have affected the result of the election there would be no good reason for the Board to invalidate the election.

17. Considering the evidence adduced it could, at the very highest, be submitted that 92 “invalid” votes were cast in the election the nine council members. The number of votes cast in favour of the nine (9) members were who were elected as council members were between 173 and 184. The unsuccessful members received between 8 and 25 votes. Accordingly, if the “invalid” votes were not to be counted, the electoral success of the nine elected would not have been adversely affected. Discounting of the “invalid” votes would also not have resulted in success on the part of the unsuccessful candidates.
18. In this case there were, other than documents purportedly made by Lim Kai Ling/M/s Lim Soo Seng and Sons Pte Ltd/Quan Ting Trading and General Contractor Pte Ltd, only allegations of incomplete/fraudulent letters of authority and proxy forms. The “incomplete/fraudulent” documents which were alleged to have been used in the elections were not adduced in evidence and even though the applicants had, when directions were given (on 14 October 2019) informed that Lim Kai Ling and Jenny Kwok would be called as witnesses for the applicants, there was no evidence from Lim Kai Ling or anyone from M/s Lim Soo Seng and Sons Pte Ltd or Quan Ting Trading and General Contractor Pte Ltd to clarify the documents that were supposed to have been made by them. It is not the finding of the Board that “incomplete/fraudulent” letters of authority and proxy forms were used in the elections. Even if there were in fact invalid votes and they had been counted in the election of the nine (9) council members there was no evidence that it prejudicially affected another *and* compliance would have affected the results of the election.
19. The applications are dismissed.
20. It will be in order to note that in this case subsidiary proprietors from 207 lots attended the AGM and 165 had given letters of authority or a proxy to Derrick Chan to represent them at the meeting. There was no doubt that the outcome of voting on any resolution or election at the meeting was dependent on how votes were cast by Derrick Chan. Determinations of elections and resolutions via accumulation of proxies cannot now be achieved because with the recent amendments to the Act, a person can only be appointed as a proxy holder for either 2% of the total number of lots in the development or two (2) subsidiary proprietors, whichever is higher.

21. We have considered the submissions with regard to costs and the Board is of the view that it will be appropriate that in addition to fees payable in connection with the applications the applicants pay costs fixed at \$4000.

Dated this 16th day of December 2019

MR REMEDIOS F.G
Deputy President

MR LAWRENCE ANG BOON KONG
Member

MR LIM GNEE KIANG
Member

Mr Koh Chong Chiah (in person) for the Applicants in STB 54 of 2019.
Mr Koh Ghee Heng (in person) for the Applicants in STB 55 of 2019.
Ms Teh Ee-von (M/s Infinitus Law Corporation) for the Respondent.