

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 1 of 2020

In the matter of an application under **sections 103 and 104** of the Building Maintenance and Strata Management Act in respect of the development known **CHANGI GREEN** (MCST Plan No. 2298)

Between

Lim Kim Seng

... Applicant(s)

And

MCST Plan No 2298

... Respondent(s)

GROUND OF DECISION

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Coram:	Mr Remedios F.G	(Deputy President)
	Mr PO Ram	(Member)
	Mr Tan Kian Hoon	(Member)

INTRODUCTION

1. In this case the applicant, a subsidiary proprietor of the development known as Changi Green (the “Development”) applied for an order to invalidate all resolutions passed and elections held at the annual general meeting of Management Corporation Strata Title Plan No 2298 (“the respondent”) held on 7th December 2019.

BACKGROUND

2. Pursuant to paragraph 1 of the First Schedule of the Building Maintenance and Strata Management Act (the “First Schedule”), a notice was, on 11th November 2019 served on all subsidiary proprietors of the Development in relation to the convening of 21st annual general meeting (the “21st AGM”) that was to be held on 7th December 2019.
3. There were thirteen (13) items, including “Opening of the Meeting” in the Notice and Agenda. There was, however no motion for the meeting to approve the proposed annual budget for the new financial year. This was in contravention of paragraph 1(3)(b)(vi) of the First Schedule.
4. The requirement of a motion to approve the proposed annual budget was a change made to the First Schedule following amendments made to the Building Maintenance and Strata Management Act Cap 30C (the” Act”) which came into force on 1st February 2019. It will be in order to note that whilst there was no motion to approve the annual budget, the *Proposed Annual Expenditure Budget and Sinking Fund Schedule for 2019/2020* were among the documents that accompanied the Notice and Agenda and the budget was discussed at the 21st AGM when the meeting was considering a motion to increase the contributions for the management fund.
5. In addition to the default in connection with approval of an annual budget, the Proxy Form that was provided with the notice of the meeting was not in accordance with paragraph 17 of the First Schedule, in that it did not provide for votes on i) approving the annual budget and ii) the number of persons to be elected as members of the management council.
6. Except for two (2) motions, namely a motion to increase the amount of the contribution to the management fund and a motion to transfer moneys from the management fund to the sinking fund (5.1 and 5.2 of the agenda), all of the motions in the Notice and Agenda for the meeting to consider and pass were unanimously passed. With regard to the management council, there were seven (7) nominations and it was unanimously resolved that the number of members of the 21st Management Council be fixed at seven (7) and all the seven (7) were unanimously elected.

APPLICANT'S CASE

7. The applicant applied for an order to invalidate all the resolutions passed and elections held at the 21st AGM.
8. The grounds for the application were that that the notice of the meeting and agenda did not include a motion to approve an annual budget for the new financial year and the proxy form that was enclosed with the notice of the meeting did not provide for a proxy to vote on a resolution with regard to the annual budget and the number of members to be voted as council members.
9. It was the submission of the applicant that because an annual budget had not been approved there was no authority on the part of the respondent to spend any money in the management and sinking funds. With regard to the defective proxy form, it was his submission that the proxy holder would not have the authority/right to vote on the number of members of the management council.
10. The applicant did not link the non-compliance with any of the resolutions passed. It was the case for the applicant that the Board should invalidate all the resolutions passed and elections held to signify/send a message to all management corporations that non-compliance is unacceptable and will not be tolerated.
11. It was also the submission of the applicant that it is to be presumed that whenever there is a breach/non-compliance with provisions of the Act, someone would have been prejudiced or it would have affected the passing of a resolution or an election and this will have to be rebutted by whoever is responsible for the non-compliance.

RESPONDENT'S CASE

12. It was the case for the respondent that the application should not be approved because the default/non-compliance did not have any bearing on the resolutions passed and elections held.
13. From the written submissions of the respondent, it appeared that the defaults, which were not disputed were oversights following the amendments to the Act and the First Schedule.

BOARD'S FINDINGS AND DECISION

14. It will be in order to first consider the submission of the applicant that until an annual budget has been approved, moneys in the management funds cannot be spent by the respondent. In support of his submission, the applicant relied on the following statement made by 2M Desmond Lee in reply to a question raised in Parliament:

Ms Chan also asked how to ensure that the tightened proxy system is not circumvented. She raised the possibility of councils forming sub-committees to approve and oversea certain projects thereby making decisions without the general body's involvement. There is a natural check against this happening. While a council can establish sub-committees to oversee projects the allocation of overall annual budget is a decision that only the general body can take at the AGM

(Building Maintenance and Strata Management (Amendment) Bill 2017 Round-up Speech by 2M Desmond Lee. Sept 11 2017 23:15)

15. 2M Desmond Lee was in the above referring to allocation of funds for “*certain projects*” where sub-committees were established to oversee the projects. The Minister was not pronouncing that moneys cannot be expended from management funds until an annual budget has been approved at a general meeting.
16. Annual budgets are necessary for planning purposes with respect to sources of income and necessary expenses. Management corporations do not solely derive power and authority to spend money from management funds from a resolution passed at the annual general meeting approving an annual budget. In fact, it is not always the case that annual budgets presented at annual general meetings are passed. Management corporations have powers and authority to use moneys in the management and sinking funds for the purpose of meeting liabilities and expenses specified in sections 39(1) and (2) of the Act. A submission that the respondent cannot use moneys in the funds to meet liabilities and expenses specified in section 39(1) and (2) of the Act because there was no motion to approve an annual budget at the meeting on 7th December 2019 is unsound and without merit.

17. Pursuant to section 103 of the Act, a Board has the power to invalidate resolutions passed and elections held at a meeting of the management corporation. The section is as follows:

S103 –(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.*

(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.*

18. It was the case for the applicant that because there was a breach of provisions of the Act, specifically paragraphs 1(3)(b)(vi) and 17 of the First Schedule, all the resolutions passed and elections held at the meeting must be invalidated.
19. There is, in this case no dispute with regard to the breach. There was no motion for approval of the annual budget in the Notice and Agenda and the proxy form did not provide for votes on i) approving annual budget and ii) number to be elected as members of management council.
20. There is no ambiguity in section 103 of the Act. The section does not provide that meetings, resolutions passed at meeting and elections held at meetings become invalid when regulations and by-laws in respect of a meeting are breached. A Board is given a discretion to invalidate or not to invalidate when the provisions of the Act in connection with meetings have not been complied with, but 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. When a failure to comply with provisions of the Act has prejudicially affected someone and compliance would have resulted in failure to pass the resolution or affected the result of an election, the tainted resolution/election must be invalidated. The Board does not agree with the submission of the applicant that it is to be presumed that whenever there is a breach/non-compliance with the provisions of the Act, someone would have been prejudiced or it would have affected the passing of a resolution or an election and this will have to be rebutted by whoever is responsible for the non-compliance.

21. There was no evidence as to how and whether the absence of the motion to pass the annual budget had affected any of the resolutions that were passed and the elections held. In fact, it will be in order to find that it had not. There was also no evidence that the fact that the proxy forms did not provide for proxy holders to vote on a motion for adoption of the annual budget and on the number of persons to be elected as members of the 21st Management Council had affected any of the resolutions passed and elections held.
22. Whilst there was no evidence that the failure to comply had prejudicially affected anyone and that compliance would have resulted in a failure to pass any of the resolutions or affected the result of any of the elections, the Board was conscious that this did not absolve the Board from a proper exercise of the discretion that was granted by the Act. The Board considered if invalidation of any of the resolutions passed or elections held could possibly be beneficial to anyone or be beneficial in any manner or way. The Board was not able to find that it would be beneficial. The consequences of invalidation would be that the respondent would be required to unnecessarily spend money and time to reconvene another general meeting where there was going to be no change in the resolutions previously passed and elections held.
23. For the above reasons, the application for orders to nullify all the resolutions passed and elections held at the annual general meeting on 7th December 2019 is dismissed with no order as to costs.

Dated this **6th** day of **May** 2020

Mr Remedios F.G
Deputy President

Mr PO Ram
Member

Mr Tan Kian Hoon
Member

Lim Kim Seng (in person) for the Applicant
Ronald Han Kia Kwang (Chairman) and Yeo Gim
Meng (Managing Agent) for the Respondent.