

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 108 of 2019

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 as **PINE GROVE CONDOMINIUM** (MCST Plan No. **2032**)

Between

- 1. Mok Chik Pow**
 - 2. Audrey Chua Chwee Lan**
- ... Applicants

And

- 1. The Management Corporation Strata Title Plan No. 2032**
 - 2. Singaram Kogilambal**
 - 3. Lee Hoong Cheong**
- ... Respondents

FOUNDATIONS OF DECISION

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24 March 2020

Coram: Mr Remedios F.G (Deputy President)

 Mr Lawrence Ang (Member)

 Ms Vicki Loh (Member)

1. This is an application by two subsidiary proprietors of Pine Grove Condominium (MCST Plan No. 2032) in relation to an act of the management corporation, which at that point of time when the act was performed, was being managed by members of the 22nd management council. The act was the issuing of a notice of postponement of 23rd annual general meeting after the notice to convene the general meeting was properly issued under Paragraph 1 of the First Schedule of the Building Maintenance and Strata Management Act.

2. It will be in order to record that when the application was filed, the application was for eight orders including invalidation of the notice of postponement. The other orders were in relation to actions of the members of the 22nd management council that took place after the notice of postponement was issued. After it was determined that there was no scope for settlement by way of mediation, directions were given for an arbitration hearing and parties were directed to, inter alia file and exchange *Agreed Issues and Statement of Facts* (Exhibit marked SOF) and it was agreed that the issue for determination would be

Whether the Notice of Postponement of the 30 November 2019 AGM is effective.

3. In addition to the agreed issue, the respondents informed that they were also seeking determinations from the Board in relation to the general meeting that was held on 30 November 2019 (they were of the view that the meeting and the election of members of the 23rd management council were not valid) and whether or not the 2nd and 3rd respondents who were members of the 22nd management council are appropriate parties.
4. Parties in the SOF set out facts that were agreed, as well as *Respondents' Version of Facts* and *Applicants' Version of Events of 30 November 2019*.

Background:

5. The relevant facts are not in dispute:

As at 17 October 2019, the 22nd management council of Pine Grove Condominium (MCST Plan No. 2032) comprised eight members including Singaram Kogilambal (SK), Lee Hoong Cheong (LHC) and Raymond Tan Kim Seng (TKS). SK and LHC were, respectively the chairperson and secretary of the management council.

6. On 25 October 2019, a notice was given for the convening of the 23rd annual general meeting of MCST Plan No. 2032 (the 25 October 2019 notice) that was to be held on 30 November 2019 at 2.00 pm at the Pine Grove clubhouse function room. The notice was in accordance with Paragraphs 1(2) and 1(3) of the First Schedule of the Building Management and Strata Titles Act Cap 30 (the First Schedule) and it was signed by LHC.

7. On 29 November 2019 a notice headed,

“ADJOURNMENT OF THE 23RD ANNUAL GENERAL MEETING”

was issued *“By Order The Management Corporation Strata Title Plan 2032”*.

8. Subsidiary proprietors were, by way of the notice, informed that the meeting that was to be held on 30 November 2019 “*has been postponed*”; a police report “*has been filed and investigations are pending*”; “*Relevant authorities will be informed*” and “*we will reschedule a general meeting and keep all subsidiary proprietors informed*” (the 29 November 2019 notice).
9. At 2.00 pm on 30 November 2019, subsidiary proprietors turned up at the place of the meeting and by 2.30 pm, subsidiary proprietors having an aggregate share value of 716 out of the total of 2,640 were at the meeting. They proceeded with the scheduled meeting. SK (who was in the management office) was invited to chair the meeting. The invitation was done by TKS when he spoke to her via a loudhailer. She did not respond. TKS also invited LHC to chair but he declined. One Joseph Ignatius was then elected by the subsidiary proprietors to chair the meeting. The meeting proceeded in accordance with the agenda set out in the 25 October 2019 notice. *Inter alia*, eleven members were elected as members of the 23rd management council (before this two persons including LHC had attempted to adjourn the meeting without success; no motion for adjournment was passed; one person objected to proceeding with the meeting).
10. In *Respondents’ Version of Facts*, the respondent informed that on 28 November 2019 between 8.00 pm to 11.45 pm, the 22nd management council convened an emergency meeting and “[a]fter a lengthy discussion it was agreed that it would be in the MCST’s best interest for the 23rd AGM to be adjourned, pending a conclusion of the investigation into the proxy forms and misinformation that had been disseminated over the last few weeks”. The 29 November 2019 notice was issued because members of the 22nd management council, when they took office, discovered several lapses, including excessive expenditure from the management fund and formed the view that an independent auditor should be appointed to conduct a forensic audit on the accounts of the management corporation. A group of subsidiary proprietors started a smear campaign and although the 22nd management council responded to the misinformation, a decision was made to issue the 29 November 2019 notice of postponement after they uncovered tampering of proxy forms. In the Respondents’ Written Submissions (RWS) the respondents said that they “*were concerned that even if a motion to adjourn was raised at the general meeting it cannot be ascertained whether the people who are casting the votes for or against the same are indeed legally entitled to vote*”.
11. The Agreed Issue:

Whether the Notice of Postponement of the 30 November 2019 AGM is effective.

12. Parties agreed that the Board should make a determination on the agreed issue i.e. the Board was required to determine if the meeting that was convened by way of the 25 October 2019 notice of meeting was effectively postponed by the 29 November 2019 notice.

The Submissions:

13. It was the submission of the applicants that a general meeting had been convened by way of the 25 October 2019 notice and the respondents had by way of the 29 November 2019 notice sought to adjourn the meeting. The 29 November 2019 notice was ineffective because a meeting convened under Building Maintenance and Strata Management Act Cap 30C (the Act) can be adjourned only when Paragraph 3A of the First Schedule has been complied with.

Paragraph 3A of the First Schedule is as follows:

Adjournment of general meetings

3A.—(1) A general meeting of a management corporation or a subsidiary management corporation may be adjourned for any reason if a motion to adjourn the meeting is passed at the meeting.

(2) The person presiding at a general meeting adjourned under sub-paragraph (1) must fix the time and place the general meeting adjourned is to be resumed.

(3) The secretary of the management corporation or subsidiary management corporation (as the case may be) must give notice of the time and place fixed under sub-paragraph (2) at least 14 days before the time fixed for the resumed meeting, as follows:

(a) by displaying the notice on the notice board of the management corporation or subsidiary management corporation;

(b) by serving the notice on every subsidiary proprietor.

14. In this case there was inter alia no motion for adjournment passed; and the time and place of the adjourned meeting was not fixed.
15. Whilst the applicants submitted that the notice was ineffective because there was non-compliance of Paragraph 3A of the First Schedule (3A), it was the submission of the respondents that 3A was not applicable in this case as it applied to an *adjournment* of a general meeting and was not applicable to a *postponement*.
16. In RWS the respondents referred to Webster's New World Dictionary and submitted that there is the difference between an *adjournment* and a *postponement* viz for an adjournment the meeting must have already commenced and once commenced is then suspended until a future time whilst in the case of a postponement the meeting is put off until a later time without commencement. In this case, the 29 November 2019 notice referred to a meeting that was scheduled to take place on 30 November 2019

and the respondents who were responsible for issuing the notice were seeking a postponement rather than an adjournment.

17. The respondents noted that there are no provisions in the Act in relation to a postponement of a meeting and submitted that "*Parliament did not intend to regulate the procedure and circumstances under which a management corporation may postpone/cancel a general meeting*" i.e. it is the submission of the respondents that a general meeting that has been convened by way of a notice under Paragraph 1 of the First Schedule can be postponed before the meeting has commenced. The respondents in this case were carrying out their duties to manage the affairs of the estate and were acting in the best interests of the estate when they issued the 29 November 2019 notice.

Findings and Decision of the Board:

18. The Board agrees that there is a difference between an adjournment and postponement of a general meeting in that for an adjournment the meeting must have already commenced and once commenced is then suspended until a future time whilst in the case of a postponement the meeting is put off until a later time without commencement.
19. In this case the 29 November 2019 notice was a notice headed "*ADJOURNMENT OF THE 23RD ANNUAL GENERAL MEETING*" that notified subsidiary proprietors that the general meeting to be held on 30 November 2019 "*has been postponed*" i.e. it was headed "*Adjournment*" and subsidiary proprietors were notified that the general meeting was being "*postponed*". The words *adjournment* and *postponement* were being used interchangeably in the notice, but there was no doubt that the respondents who were responsible for issuing the notice were seeking a postponement rather than an adjournment.
20. There is no provision in the Act in relation to postponing a general meeting after a valid notice to convene has been given. A management corporation is a statutory creation with duties and powers that are spelt out in the Act. The Board cannot agree that it can have a power or duty to do an act which is not provided for in the Act and the Board notes that the Respondent has not tendered to the Board any authorities in support of this contention either. Under section 27 of the Act, a management corporation must hold a general meeting in each calendar year and not more than 15 months after the holding of the last preceding annual general meeting and it is clearly set out in section 27(3) of the Act that meetings and voting at meetings of a management corporation must be conducted in accordance with the provisions in the First Schedule. One can, from 3A of the First Schedule note that stringent requirements must be complied with before a general meeting can be adjourned and under these circumstances it is incongruous that anyone should be able to effect the postponement of a properly scheduled meeting by merely issuing an unsigned notice announcing that the meeting has been postponed.

21. The applicants have in paragraphs 8, 9 and 10 of the Reply Submissions (ARS) submitted:

*Once a general meeting has been duly called, in the absence of express provisions allowing the same, it cannot be postponed and/or cancelled. This is a proposition of long standing law that has been established in the case of **Smith v Paranga Mines [1906] 2 Ch 193 (“Smith”) (Annex A)**, has not been overruled, and has in fact been cited and relied on even as recent as 2019 in **Kaye & Anor v Oxford House (Wimbledon) Management Company Limited [2019] EWHC 2181 (Ch) (“Kaye”) (Annex B)**.*

*In the case of **Bell Resources Ltd v Turnsbridge Pty Ltd & Ors (1988) 13 ACLR 429 (“Bell Resources”) (Annex C)**, the Supreme Court of Western Australia also noted at 436 that:*

“The decision in Smith’s case, supra, has not been overruled. It is universally cited in law texts as authority for the proposition stated in its headnote: see Buckley on the Companies Act, Butterworths, 13th ed, 1957, p 834; Paterson, Ednie and Ford, Australian Company Law, Buttersworths, 3rd ed, vol 2, p 59, 605; Horsley’s Meetings: Procedure, Law and Practice, Butterworths, 2nd ed, 1983, p 20; A F Topham, Palmer’s Company Precedents, The Law of Meetings, 4th ed, 1984, 90, 172; Blackwell’s Law of Meetings, 9th ed, 1967, p 87; M Moore, The Law and Procedure of Meetings, 1979, p 75; Shackleton on the Law and Practice of Meetings, 6th ed, 1977, p 189; and Joske’s Law and Procedure at Meetings in Australia, 75th ed, 1982, p 90.”

Even though the English and Australian authorities were in the context of the annual general meetings of companies, the same provisions should apply to MCSTs in Singapore.

22. The Board agrees with the above.
23. It is the decision of the Board that the 29 November 2019 notice is not effective and it is ordered that the resolution/decision for the issuing of the 29 November 2019 notice be invalidated.
24. It is not for the Board at this time to consider whether or not the resolutions passed and elections held at the general meeting on 30 November 2019 were valid or otherwise. *Inter alia*, the parties who will be affected by any determination on this matter viz the the members elected as members of the 23rd Management Council are not before this Board. It will however not be out of order to note that a general meeting was held on 30 November 2019, resolutions were passed and elections held. There are provisions in the Act for the respondents to apply for necessary orders in relation to the resolutions passed and elections held at the meeting.

25. After considering all of the circumstances of this case, the Board is of the view that there will be no order for costs.

Dated this 24th day of March 2020

MR REMEDIOS F.G
Deputy President

MR LAWRENCE ANG
Member

MS VICKI LOH
Member

Ms Liesel Chong (M/s Gloria James-Civetta
& Co) for the Applicants.

Mr Subir Grewal & Ms Jasmin Kang
(M/s Aequitas Law LLP) for the Respondents.