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

STB No. 6 of 2022

In the matter of an application under Sections 103(1)(a), 101(1)(c), 113 & 117(1) of the Building Maintenance and Strata Management Act in respect of the development known as PALM GARDENS (MCST No. 2553)

Between

1. Chia Yew Liang and Lim Yi Fei
2. Randy Chiu C K and Soh Beng Suan
3. Tan Chian Eng and Teng Khar Imm

...Applicants

And

The MCST Plan No. 2553

...Respondent

GROUNDS OF DECISION

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21 June 2022

11 August 2022

Coram:	Mr Alfonso Ang	(President)
	Mr Tan Kian Hoon	(Member)
	Mr Rajaram Ramiah	(Member)

BACKGROUND

1. The present dispute concerns the 19th Annual General Meeting ("19th AGM") of MCST Plan No. 2553, held on 20th November 2021. The property forming the setting for the dispute is Palm Gardens ("the Property"), a strata title development comprising 695 strata lots – specifically 694 separate residential units and one separate shop unit (the "Shop").

2. At the 19th AGM, members for the 19th Management Council were elected. While 13 members of the Management Council were elected through the regular nomination process, one seat on the Management Council was reserved for Mr Zhang Zhibin ("Mr Zhang"), the subsidiary proprietor of the Shop. Accordingly, Mr Zhang became a confirmed member of the Council without having been nominated. Although not formally recorded in the minutes of the 19th AGM, it was not disputed by the parties that a seat on the Management Council was reserved for Mr Zhang. It was also not disputed that the representative of the managing agent who assisted in the conduct of the AGM adopted the position that the Property was a mixed development and hence Sections 53(A)(1) and 53(A)2 of the Building Maintenance and Strata Management Act ("BMSMA") applied. Under these provisions, in a case of a mixed development there must be reserved for each class of use at least one office as member of the council of the management corporation. The owner of the sole commercial unit, Mr. Zhang, was appointed to the reserved council office.

3. The Applicants, being subsidiary proprietors of three residential units in the Property, brought these proceedings against the Respondent the MCST challenging, *inter alia,* the reservation of the seat for Mr. Zhang, certain consequential outcomes of the 19th AGM and documents to be furnished pursuant to Section 47 Building Maintenance and Strata Management Act 2004 ("BMSMA").

4. During the 19th AGM, one of the Applicants, namely Mr. Randy Chiu, sought to amend Resolution 10.1. This Resolution was to empower the Management Council to appoint a managing agent. Mr. Chiu proposed at the AGM to amend Resolution 10.1 by inserting the word "accredited" before the words managing agent. However, Mr. Chiu's proposal to amend the Resolution was disallowed by the Chairman on the basis that the proposal would change the whole intent of the said resolution.

   The Applicants also sought orders relating to the MCST's failure to produce various documents which were requested sometime in October 2021 prior to the 19th AGM.

ORDERS SOUGHT BY THE APPLICANTS

5. The Applicants are seeking the following orders:

(A) **Order No. 1 –**

Pursuant to Section 103 (1)(a), the Applicants seek an order from the Board to invalidate the election result of the 19th Annual General Meeting (19th AGM) of MCST 2553, which was held on 20th November 2021.

(B) **Order No. 2 -**

Pursuant to Section 103 (1)(a) and Order No. 1, the Applicants seek an order from the Board to direct the Respondents to make immediate rectification by notifying each and every subsidiary proprietor, via notices to be displayed on the MCST notice boards (physical and electronic) and via letters mailed by post, that the nomination and election proceedings, concluded at the 19th AGM, were in breach of Section 53(A)(1) & (2) and Section 61(1).

(C) **Order No. 3 -**

Pursuant to Section 103 (1)(a) and Order Nos. 1 & 2, the Applicants seek an order from the Board to direct the Respondents to hold an Extraordinary General Meeting (EOGM) at the first available date & time, no later than the 30th day from the date of the order made by the Board, for the purpose of re-nomination and re-election of council members to the 19th Management Council.

(D) **Order No. 4 -**

Pursuant to Section 101 (1)(c), the Applicants seek an order from the Board to direct that the then-Chairperson, Mr. Eric Ng, who was presiding at the 19th AGM held on 20th November 2021, had made a completely unwarranted decision to disallow an amended proposal made orally at the said meeting by one of the Applicants, Mr. Randy Chiu, with respect to the meeting resolution 10.1. Mr. Ng's decision and actions were completely unwarranted and constituted a wilful breach of Section 1 (4)(b) of the First Schedule.

(E) **Order No. 5 -**

Pursuant to Section 101 (1)(c) and Order No. 4, The Applicants seek an order from the Board to direct the Respondents to make immediate rectification by conducting a new tender exercise at the first available date/time, no later than the 30th day from the date of the order made by the Board, to select and appoint an accredited managing agent with respect to Resolution 10.1 of the 19th AGM, in accordance with the accreditation schemes that are recognized by the BCA.

(F) **Order No. 6 -**

Pursuant to Section 113, the Applicants seek an order from the Board to direct the Respondents to make available the full list of documents to one of the Applicants, Mr. Randy Chiu, with respect to Mr. Chiu's application on 4th October 2021 to the Respondents made pursuant to Section 47(1)(b)(viii).

(G) **Order No. 7 -**

Pursuant to Section 113 and Order No. 6, the Applicants seek an order from the Board to determine that the Respondents have committed a breach to Section 47 (2) and Section 56 (d), (e) & (g).

(H) **Order No. 8 -**

Pursuant to Section 117 (1), the Applicants seek an order from the Board to direct that all relevant and incidental costs incurred by the Applicants, with respect to this application, be fully borne by the Respondents.

ISSUES BEFORE THE BOARD

6. The 8 Orders sought by the applications can be categorized under 3 issues:

(1) The first issue that the Board considered was on the applicability of Section 53A of the BMSMA to the Property. The issue centered on whether the presence of one shop unit, particularly one in the form of a minimart or a like use, is sufficient to render an otherwise fully residential development to be a mixed-use development for the purposes of Section 53A BMSMA and hence entitling the only non-residential subsidiary proprietor an automatic seat in the Management Council.

(2) The second issue was whether the MCST was wrong in disallowing the amendment to Resolution 10.1 which was sought by one of the Applicants to stipulate that only accredited managing agents would be eligible for selection.

(3) The third issue was whether the MCST ought to have furnished the documents that were requested by the Respondents. The Board was, however, informed at the hearing of the matter that the documents which are in the possession and or control of the MCST were being made available to the Respondents upon payment of the prescribed fees.

APPLICANTS' CASE

7. The Applicants maintained that the Property is not a mixed-use development. Hence, if the Property is not a mixed-use development, Section 53(A) BMSMA would not be applicable. Accordingly, the Applicants maintained that the Respondents have erred in reserving the one seat for Mr. Zhang on the Management Council.

8. The Applicants adduced evidence of the written permission obtained for the development of a condominium on the land – constituting residential use of the land. They also maintained that subsequent approval of an ancillary shop within the said

development does not alter the use of the land from residential to mixed-use commercial and residential.

9. The Applicants also highlighted the definition of "development" under Section 3 Planning Act 1998 ("PA").

10. Section 3 PA, *inter alia*, states:

> *"3 — (1) Subject to subsections (2) and (3), in this Act, except where the context otherwise requires, "development" means the carrying out of any building, engineering, mining, earthworks or other operations in, on, over or under land, or the making of any material change in the use of any building or land, and "develop" and "developing" are to be construed accordingly.*
>
> …
>
> *(2) The following operations or uses of land are not to be deemed for the purposes of this Act to involve development of land:*
>
> ….
>
> > *(h) in the case of any building or land which is used for a purpose of any class specified in any rules made under section 61, the use of the building or land or any part thereof for any other purpose within the same class."*

11. As regards Section 3 above, the Applicants submitted that the first Grant of Written Permission ("WP 1"), dated 19th February 1997, permitted the erection of a condominium housing development, but not the erection of a mixed-use development. The Applicants' witness, AW2, testified that the written permission obtained was for the development of a condominium on the land, which constitutes residential use of the land. In addition, the Applicants also contended that the URA Space – Interactive Map of the Master Plan also zoned the site of the Property as residential.

12. AW2's testimony also referred to the subsequent Grant of Written Permission ("WP 2") dated 1st October 2000. This permitted the subdivision of the development to include one shop unit that was specified to be part of the club house. The Applicants maintained that WP 2 was merely an approval for an additional shop unit within the said development and that in itself, did not amount to a change of use of the land from residential to mixed-use commercial and residential.

13. The Applicants also relied on the Planning Act – Master Plan Written Statement 2019. This provides that the competent authority may allow ancillary or non-residential uses in a condominium development without altering its development class.

14. The Applicants also highlighted the guidelines on ancillary shops under the Development Control Guidelines of URA. These Guidelines state, *inter alia*, that "[a]

limited number of units for shops to provide personal services may be allowed in flats and condominium developments subject to evaluation."

15. It was also adduced in evidence that following the said AGM, the Applicants wrote to the Building Construction Authority ("BCA") and Urban Redevelopment Authority ("URA") to seek clarification on matters related to the issue in question. Notably, the BCA confirmed that Section 53(A) BMSMA only applies to mixed-use developments, and both the BCA and URA unequivocally indicated that the Property is classified as a residential development.

16. Based on the foregoing, the Applicants contended that the Shop is ancillary to the residential estate. This, they reasoned was so, because the shop is meant for the provision of personal services to its residents of the Property. Additionally, it was established during the hearing that only residents and their authorised guests are permitted to enter the condominium. References were also made to Palm Garden's Handbook which states that the club house, where the Shop is located, is in its entirety a common property for the exclusive use and enjoyment of the residents and invited guests. In other words, it is not intended to be accessible to the general public.

17. The Applicants drew references to the Grant of Written Permissions of neighbouring developments, to reiterate their point that the absence of the words "mixed development" in WP 1 and WP 2 indicates that the Property was not approved as a mixed-use development.

18. The Applicants further adduced in evidence the Commercial Handbook under the Development Control Guidelines of URA, which states that "[t]he residential component within a mixed commercial and residential development ***will not be accorded condominium status*** as it is not developed in accordance with condominium guidelines" [emphasis added]. Therefore, the Applicants submitted that it would be contradictory to the said Guidelines to categorise the Property as a mixed-use development.

19. The Applicants also relied on the decision in *Bayfront Realty Pte Ltd v MCST Plan No. 4404* ("*Bayfront Reality*") in support of their case. In *Bayfront Realty*, a condominium housing development comprising 582 residential units and three commercial units was held to be a residential development, instead of a mixed development.

RESPONDENT'S CASE

20. The Respondent's position was that the Shop is a commercial unit. The Property is hence a mixed-use development for the purposes of Section 53A BMSMA. Consequently, pursuant to Section 53A(4) BMSMA, as the only person eligible for election in the commercial class of use, Mr Zhang was rightly allotted a reserved seat on the Management Council without having to be elected by voting.

21. The Respondents also made the following submissions. Firstly, that the Shop falls under the category of "commercial" use specified in Section 53A(1)(c) BMSMA. The Respondent further submitted that Section 53A BMSMA applies, and that it is in accordance with Parliamentary intent. Secondly, the Respondent took issue with the Applicant's arguments premised on the BCA and URA emails, the comparison with other neighbouring developments, and the decision in *Bayfront Realty*.

22. The Respondents in their submissions highlighted that under WP 2, the Shop was approved for use as a minimart under the Planning Act. Later it was granted temporary permission for change of use from a minimart to a pizza making and delivery outlet for a period of three years. Mr Zhang's resolution at the 19th AGM for the MCST's approval to change the use of his shop was rejected, the Shop has remained as a minimart. The Respondent therefore maintained that irrespective of whether the Shop is a minimart or a pizza making and delivery outlet, its use is still commercial in nature, and it falls under a separate class of use from the other residential units. The Respondent further maintained that the Property has strata lots authorised by the URA for two classes of use specified under Sections 53A(1) BMSMA – residential units (Section 53A(1)(a) BMSMA), and a commercial unit (Section 53A(1)(c) BMSMA). Consequently, the Respondent has argued that the Property is a mixed-use development for the purposes of Section 53A BMSMA.

23. The Respondents additionally submitted that this interpretation of Section 53A BMSMA is also consistent with the Parliamentary intent underlying its enactment – to give a voice to subsidiary proprietors of different classes of use, especially when they are the minority in a strata development. This would address problems of the underrepresentation of particular classes of use on the Management Council.

24. As regards the email correspondences from BCA and URA to the Applicants, the Respondent submitted that these emails are merely opinions of the Authorities. Accordingly, the Board is not obliged to act in accordance with them. Additionally, the Respondent also raised the issue of the URA not having a category for Mixed-use developments, to argue that the zoning categories under the URA Master Plan differ from what is contemplated under the BMSMA. It was contended that the URA Master Plan was never meant to fetter the Authorities' power to approve a use of land differing from what the land in question is zoned as. Therefore, land zoned residential may be used for a different class of use, as long as such use is approved under the Planning Act. The Respondent also highlighted that notwithstanding its zoning, the land in question may be used for other uses that are ancillary, related or compatible with the permissible predominant use.

25. The Respondent also wrote to the BCA. Notably BCA in their reply did not state that Section 53A BMSMA is not applicable in the case of the Property. Instead, the BCA instructed the Respondent to ascertain the class of use corresponding to the Shop with reference to the Grant of Written Permission. From this response, the Respondent attempted to reinforce its argument that the approved use of the Shop as a minimart or pizza making and delivery outlet constitutes commercial use.

26. Regarding the neighbouring developments, in respect of two of the properties cited by the Appellants, the Respondent has argued that the interests of subsidiary proprietors engaged in different classes of use have already been protected by Section 80 BMSMA, on account of the two-tier MCST operating within those properties. For the remaining property with a single-tier MCST, the Respondent has asserted that Section 53A BMSMA should operate to protect the interests of subsidiary proprietors engaged in different classes of use.

27. On the *Bayfront Reality case*, the Respondent has argued that judgment in that case turned on a different issue altogether. It has taken the position that the Board did not make a finding on whether Section 53A BMSMA was applicable, but merely stated that the property in question was a residential development and not a "mixed development".

28. Lastly, the Respondent submitted that having different classes of use in the same development is not uncommon, notwithstanding the fact that an area of land may be zoned residential or commercial. To substantiate this, the Respondent cited examples of condominiums with shops, cafes and commercial schools permitted under the Planning Act, in areas zoned residential. The Respondent also highlighted developments zoned commercial with different classes of use present within each of them.

BOARD'S FINDINGS

The Board's findings are as follows:

29. Sections 53(A) and 53A(1) BMSMA apply to a parcel in a strata title plan consisting of buildings authorised under the Planning Act 1998 for 2 or more of the stated classes of use. Such classes include residential and commercial use. Examples of commercial use would include the operation of a shop, food establishment or theatre. Section 53A(2) shows that such a parcel as detailed under Section 53A(1) is a "mixed-use development". The definition of a "mixed-use development" under Section 2(1) of the Building Maintenance and Strata Management (Strata Units) Regulations 2005 ("BMSMA (Strata Units) Regulations") is substantially similar to Section 53A(1) and reads : "*a development that consists or is to consist of 2 or more different classes of use*". The classes of use under the BMSMA (Strata Units) Regulations are also substantially similar to those stated in Section 53A(1) BMSMA, and need not be distinguished for present purposes.

30. The Board did not agree with the Respondent's submission that the presence of both residential units and a commercial unit in the Property would render it a mixed-use development for the purposes of Section 53A BMSMA. The Board noted that the statute does not specify the requisite number of lots or units for the constitution of a different class of use, or even whether there is a minimum scale required. Against this context, the overarching issue to be addressed is thus whether the presence of one shop unit, particularly one in the form of a minimart or a pizza making and delivery outlet, is sufficient to render an otherwise fully residential development a mixed-use development

for the purposes of Section 53A BMSMA. Based on the facts before us, the Board was of the view that the Property is not a mixed development.

31. The Board agreed with the submission of the Applicants that the grant of written permission is a pre-condition for a development to be a mixed-use development. However, the presence of such permission does not necessarily mean that a development is a mixed-use one. As mentioned above, Section 53A applies in relation to a parcel in a strata title plan "consisting of *buildings authorised under the Planning Act 1998* for 2 or more of the [stated] classes of use" [*emphasis added*]. Hence, the grant of written permission does not in itself resolve the ambiguity surrounding the requisite scale of a distinct use for a given development to be regarded as mixed-use.

32. The Board also noted that although the BMSMA is administered by the Commissioner of Buildings of the BCA, the BCA itself does not appear to have an independent authority on use or zoning of land. The absence of such authority is unsurprising as land use planning falls under the purview of the URA. Hence, any examination of land zoning should be conducted with reference to the Master Plan published by the URA.

33. The Board also considered the replies that the Applicants received from both BCA and URA following the 19th AGM. Both the authorities unambiguously stated that the Property is classified as a residential development. Notably, BCA in its reply also highlighted that 53(A) of the BMSMA only applies to mixed-use development.

34. The Board also agreed that in line with these principles, the applicable guidelines for condominium developments on land zoned "Residential" indicate that shops are only permitted to operate in such developments under limited circumstances. Such shops, known as "ancillary shops", are limited to a maximum of 0.3% of the proposed residential gross floor area, and may only engage in personal service trades, such as that of a mini-mart or laundromat business. Independent offices are not allowed. Further, the permissibility of such a shop's operation hinges on considerations such as the character of the surrounding developments, and the planning intention of the surrounding area. It was established at the hearing that only residents and their authorised guests are permitted to enter the condominium. As the shop is not open to the public, the Respondent's contention that the Property is a mixed-used development is not supported.

35. The Respondent sought to cast doubt on the significance of URA's zoning categories in the present case, by observing that a mixed-use development under the BMSMA could be developed on land zoned "Commercial" by the URA and arguing that the URA's zoning categories consequently differ from what is contemplated under the BMSMA. In so doing, the Respondent has sought to dismiss the URA's and BCA's recognition of the Property as a residential development. However, the URA's zoning categories expressly provide for the development of "mixed commercial and residential developments" on land zoned "Commercial and Residential" or "Commercial". Hence, rather than understanding the URA's zoning categories as being entirely different from the categories contemplated under the BMSMA, it is best to understand the URA's system as having allocated mixed-use developments to these two categories instead. Such an

understanding, then, would render the URA's recognition of the Property as a residential development to be significant, especially in light of its situation on land zoned "Residential", from which mixed commercial and residential developments have been excluded. Separately, the Board also noted that there is no meaningful distinction between "mixed-use developments" and "mixed developments", contrary to the Respondent's case.

36. In summary, Section 53A BMSMA only applies to mixed-use developments. Since the Property is not a mixed-use development, Section 53A BMSMA does not apply and there is no reserved seat for the owner of the commercial unit to sit in the Management Council. The applicable section in such a case would be Section 53 BMSMA, which has no provision for reserved seats. Section 53(4) states that "[a]ll the members of the council of a management corporation must be elected at each annual general meeting of the management corporation." The other provisions only contain stipulations on the parties ineligible for election as members of the Council, rather than stipulating any parties that must be elected.

37. On the second issue of the proposed amendment to the Resolution 10.1 which was disallowed at the 19th AGM, the Board took the view that the proposed amendment to that resolution by adding the words "accredited" did not alter the substance of the Resolution that was original proposed and circulated to the subsidiary proprietors.

38. Any proposal to amend a Resolution at a meeting prior to the passing of the Resolution may be undertaken with a qualified person proposing the motion to amend. This proposal must then be seconded by another qualified person. This process was not followed during the 19th AGM.

39. The Board was also of the view that the substance of the amendment to have an accredited managing agent would not be detrimental in any way to the subsidiary proprietors. The Board also agreed with the submission that Mr. Joe Oh of the managing agent was also in a position of conflict when he advised the presiding chairman Mr. Eric Ng on the ruling on the proposed amendment of Resolution 10.1. This is on account of the fact that the managing agent, Smart Property Management Pte Ltd, was at the material time not an accredited managing agent. Mr. Joe Oh ought to have disqualified himself from advising Mr. Eric Ng given that he was an employee of an unaccredited managing agent.

40. On the third issue as previously mentioned, it was brought to the Board's attention that all the documents in the possession and control of the MCST are now available to the Applicants upon the payment of the prescribed fee.

BOARD'S DECISION

41. As regards the various Orders sought by the Applicants the Board's decision is as follows:

(A) Order No: 1

The Board finds that the decision to entitle Mr Zhang to the reserved council seat is wrong in law as Section 53(A) BMSMA does not apply. No reserved seat is permitted as the Property is not a mixed development. Mr Zhang does not have automatic right to be on the council and his appointment should therefore be invalidated. Therefore, he must cease with immediate effect to be a member of the council. The existing council members can continue to operate and manage the Property without the need to call for an election to fill the vacancy and this will not be detrimental in any way to the management of the Property, although they are at liberty to do so.

(B) Order No: 2

As regards to the Applicants' 2nd order sought, the Board makes no order. This Grounds of Decision, which is a public document is accessible to all. This would more than sufficiently address the concerns raised in Prayer 2.

(C) Orders No: 3 and 4

The Board is fully in agreement with the Applicants that the council has erred in reserving the seat for Mr Zhang. However, the Board notes that the current office bearers' term will expire on 24 September 2022, and it would be a waste of time, effort and money to call for an EOGM to elect a replacement for Mr Zhang, although they are at liberty to do so. As such, the Board will decline the application to order a replacement for Mr Zhang. The Board makes no order on Prayers 3 & 4.

(D) Order No: 5

The Board finds that the decision not to allow an amendment to the Resolution 10.1 by inserting a requirement that the proposed managing agent must be accredited did not comply with the due process which is applicable to meetings. The fact that Smart Property Management Pte Ltd was granted accredited status by the association of strata managers on 29 June 2022 was irrelevant as it cannot have retrospective effect. However, although the Board was in full agreement with the Applicants on this irregularity, it will not grant the order requested, i.e. that a new tender be conducted in accordance with the accreditation scheme recognised by the BCA. Accordingly, the Board will make no order on Prayer 5.

(E) Order Nos: 6 and 7

The Board finds that the Respondents have failed in their obligations to comply with the requirement to furnish the documents sought. As these documents have since been made available and if in the event any of the documents have not been provided, the Respondent shall supply such documents within 14 days on payment of the prescribed fees by the Applicants.

(F) Order No: 8

The Applicants are justifiably aggrieved by the manner in which the AGM was conducted. The Board having heard parties on costs, order that the Respondent to pay the Applicants a total sum of $1,600.00.

Dated this 11th day of August 2022

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MR ALFONSO ANG
President

_____

MR TAN KIAN HOON
Member

_____

MR RAJARAM RAMIAH
Member

Randy Chiu C K for the Applicants.
Toh Kok Seng (M/s Lee & Lee) for the Respondent.
Desiree Chong Ci En as young amicus curiae.