

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARD) REGULATIONS 2005

STB No. 11 of 2009

In the matter of an application under section
112 of the Building Maintenance and Strata
Management Act in respect of the
development known as **Robin Lane** (MCST
Plan No. 281)

Between

1. YEO CHIN HOO
2. SHANTI RAMCHANDANI

... Applicants

And

1. MCST PLAN NO. 281
2. SI-HOE KOK CHUN & TAN CHOON
LIAN

... Respondents

Coram: Mr Alfonso Ang
Deputy President

Panel Members: Mr Kong Mun Kwong
Mr Richard Tan Ming Kirk

Counsel: Mr Ramesh Appoo (Just Law LLC) for the Applicants
Ms Felicia Ng (ComLaw LLC) for the 2nd Respondents

GROUND OF DECISION

1. In this application, the Applicants sought from the Board an order for "the Management Corporation to appoint a managing agent to perform all the powers, duties and functions of the management corporation or subsidiary management corporation or of the chairperson, secretary or treasurer thereof, or, the Council of that management corporation or the executive committee of that subsidiary management corporation" pursuant to section 112 (1) and (2) of the Building Maintenance and Strata Management Act ("BMSMA").

2. The first Applicant is a subsidiary proprietor together with his wife of Unit X Robin Lane and the second Applicant is the subsidiary proprietor of Unit XX Robin Lane. The first Respondent is the management corporation of the Robin Lane development and the second Respondents are the subsidiary proprietors of Units X and XX Robin Lane.

Facts

3. There is a long history of differences between the second Respondents and the Applicants that have resulted in a number of proceedings including STB No. 1 of 2005 and Originating Motion No. 28 of 2005.

4. The last successful annual general meeting of the management corporation took place in 2001 and what the 2nd Respondents claimed was an annual general meeting held on 16 June 2009 was, in fact, not an annual general meeting. It was just a meeting to discuss how to resolve differences between the parties suggested by the Board during a mediation session earlier in this proceeding.

5. Due to the differences and prejudices between the parties, it is easy to misinterpret the actions of the other side. To give one example, what was clearly a proposed notice for approval for a meeting dated 20 September 2008 from the 2nd Respondents was interpreted by the Applicants as the act of the 2nd Respondents simply fixing the date and venue of the meeting without seeking the relevant prior consent.

6. The parties have not been able to agree on many things and as a result the management corporation has not been able to function properly.

7. Suffice to say, the parties have still not come to the realization that they have got to learn to live together as neighbours as advised by the Judge in Originating Motion No. 28 of 2005.

Issues to be determined by the Board

8. For the Board to order the management corporation to appoint a managing agent to perform all the power, duties and functions sought by the Applicants, the Board would need to be satisfied that it is in the interests of the subsidiary proprietors of "all the lots" in the subdivided building concerned. This is a requirement under section 112(1) of the BMSMA.

9. This would also require the Board to consider whether the order is in the interest of each and every subsidiary proprietor of the Robin Land development.

Arguments of parties

10. Counsel for the Applicants argued that the appointment of a managing agent under section 112(1) of BMSMA is in the best interests of all the subsidiary proprietors as it would prevent or reduce further unpleasant encounters between them and ensure that the duties of the management corporation are carried out properly and in a timely manner in accordance with the BMSMA.

11. The Applicants based their argument on the ground that the management corporation has been dysfunctional and unable to hold an annual general meeting since 2001.

12. Counsel for the 2nd Respondents argued that the Applicants have filed the application without thought as to the facts and circumstances of the case by seeking the widest order possible and that this may be shown by their inclusion of "subsidiary management corporation" and "executive committee of that subsidiary management corporation" in the application when they are clearly not applicable.

13. Counsel for the 2nd Respondents also argued that the 1st Applicant conceded in cross-examination that the Applicants sought the appointment of a managing agent merely for the purposes of the following:

- (i) prepare the accounts of the management corporation
- (ii) take care of the insurance obligations of the management corporation
- (iii) call for annual general meetings
- (iv) submit the annual return
- (v) maintain the common property.

14. Counsel for the 2nd Respondents submitted that a managing agent is either unnecessary or not the right solution given the small size and nature of the development. It was argued that the development has no facilities other than the garden and driveways and these have already been partitioned since the 1st Applicant became a subsidiary proprietor in 1986 and none of the subsidiary proprietors have sought to remove them. It was also argued that there were limited things that need to be done by the management corporation.

15. Finally, Counsel for the 2nd Respondents also submitted that, contrary to what the Applicants have argued, the management corporation has actually been able to perform certain functions like the issuing of cheques, paying for insurance and meeting to discuss some matters.

Decision

16. After carefully considering the evidence, the Board found that both the Applicants and the 2nd Respondents have contributed to the current state of affairs in the management corporation.

17. In order to grant the order sought, the Board would need to be satisfied that it is in the interests of the subsidiary proprietors of "all the lots" in the subdivided building concerned.

18. However, the Applicants have not shown how the appointment of a managing agent will be for the benefit of all the subsidiary proprietors when half the subsidiary proprietors are opposed to the appointment.

19. In addition, an economic analysis provided by Counsel for the 2nd Respondents based on figures mentioned in the affidavit of the 2nd Applicant's husband showed that the estimated costs to appoint a managing agent (of \$18,000 to \$24,000 annually) is disproportionate to the proposed tasks of the managing agent for a small development of

only four units. On the other hand, the Applicants have not disputed this analysis nor shown why it is still in the best interests of every subsidiary proprietor to pay these costs.

20. Finally, the Board also found that the management corporation has been able to function in some ways through the years (e.g. issue cheques, pay for insurance and meet to discuss some matters) and that the 2nd Respondents have been willing to meet to discuss with the Applicants.

21. Like the judgment in the previously mentioned case between the parties, this decision can only deal with the current legal dispute between them. Unfortunately, it will also not prevent further proceedings nor will it resolve the differences between the parties.

22. Having carefully considered the application, the evidence and the submissions of the parties, in the opinion of the Board, the Applicants have not discharged the burden to prove that it is in the interests of the subsidiary proprietors of all the lots in the subdivided building concerned for the Board to order the Management Corporation of the Robin Lane development to appoint a managing agent to perform all the wide-ranging powers, duties and functions sought by the Applicants.

23. Accordingly, the application is dismissed by the Board.

Legal Costs

24. Although the application is dismissed, the Board is of the view that the application was not made in bad faith. Both parties have contributed to the state of affairs in this present action. Therefore the Board orders that parties bear their own costs in this matter.

Dated this 20th day of October 2009

MR ALFONSO ANG

Deputy President
Strata Titles Boards

MR KONG MUN KWONG

Member
Strata Titles Boards

MR RICHARD TAN MING KIRK

Member
Strata Titles Boards