

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 52 of 2008

In the matter of an application under section
103 of the Building Maintenance and Strata
Management Act in respect of the
development known as **Katong Plaza**
(MCST No. 975)

Between

Cheang Wai Yew

... Applicant

And

Management Corporation Strata Title Plan
No. 975

... Respondent

Coram: Mr Tan Lian Ker
President

Panel Members: Dr Lim Lan Yuan
Mr Richard Tan Ming Kirk

Counsel: Mr Toh Kok Seng and Ms Esther Yee (Lee & Lee) for the Respondent

GROUND OF DECISION

1. In this application, the Applicant sought an order "TO INVALIDATE THE RESOLUTION ON THE ELECTION OF THE MANAGEMENT COUNCIL FOR KATONG PLAZA MCST 975 PASSED AT AGM HELD ON 29TH JUNE 08 AT PARAMOUNT HOTEL" pursuant to section 103 of the Building Maintenance and Strata Management Act ("BMSMA").

2. The Applicant is the immediate past chairman of management council of Management Corporation Strata Title Plan No. 975 ("MCST No. 975") of Katong Plaza and also the past chairman of the En Bloc Sale Committee of Katong Plaza. The Respondent is the management corporation of Katong Plaza.

3. The Applicant and the Respondent are the remaining parties to this application as a result of two interlocutory applications both filed on the 3rd day of October 2008 and heard on the 23rd day of October 2008.

Facts

4. The Applicant has been a past chairman of MCST No. 975 for 17 years. He said he encountered "no problems" in any of the previous annual general meetings except for the 2006 annual general meeting ("AGM") when he was unsuccessfully challenged by Mr Tng Tai Meng, the present chairman of MCST No. 975.

5. In the weeks leading up to the 2008 AGM, subsidiary proprietors of Katong Plaza received a number of anonymous letters containing various allegations of misconduct against the Applicant and the other members of the previous management council of MCST No. 975. The subsidiary proprietors also received letters from Ms Serena Goh Mui Hong, the subsidiary proprietor of unit #XXX, Ms Lily Tan, the subsidiary proprietor of units #XXX and #XXX and Huttons, the proposed marketing agent for the en bloc sale of Katong Plaza, discrediting the Applicant as chairman of the En Bloc Sale Committee of Katong Plaza along with his fellow committee members.

6. The 2008 AGM of MCST No. 975 began shortly after 1 pm on 29 June 2008 at level 4 of Paramount Hotel and it was called to order by the Applicant after informing the meeting that there was a quorum.

7. The Applicant began the meeting by highlighting a standing order said to be for the purposes of controlling the meeting and to allow the chairman to "do the proceedings peacefully and orderly." The standing order provided, among other things, that every subsidiary proprietor (SP) "will be allowed five minutes to speak on any one subject... If any SP disobeys the above Standing Orders and behaves in a disorderly manner, the Chairman has the authority to request that SP to leave the meeting and if that SP refuses to comply with the ruling from the Chairman, he will be ruled out of the meeting. The Secretary of the MCST is being authorized by the Chairman to assist him in monitoring the order of the proceeding... The ruling from the Chairman will be final".

8. The Applicant also informed the meeting that there were two CISCO security guards to maintain order as some subsidiary proprietors had informed him that they "are quite worried to attend meeting because of anonymous letters that have been sent out." This was the first time that CISCO security guards have been deployed in an AGM of Katong Plaza.

9. The standing order was not well received by a number of subsidiary proprietors present at the AGM who felt that they were having their rights to speak unfairly curtailed and they made their objections known. Some subsidiary proprietors also objected to the Applicant chairing the AGM and there was a proposal to remove the Applicant as chairman of the meeting. The Applicant eventually agreed to put the proposal to a vote and in the course of putting the proposal to a vote, some of the proxy votes obtained by the Applicant were strongly challenged as being improperly obtained by the Applicant through the use of an employee of the management corporation. At this point in the meeting, the Applicant consulted his fellow council members and Mr Chan Khay Gin, the managing agent's representative and decided to walk out of the meeting. Mr Tng Tai Meng who was proposed to be the chairman was then asked to take the chair. He chaired the proceedings from then onwards.

10. The proceedings of the 2008 AGM up till the point when the Applicant walked out was recorded on videotape by the Applicant and the Board had the opportunity to view the video tape during the hearing.

Applicant's Arguments

11. The Applicant discharged his counsel before the hearing and argued in person. His arguments may be broadly grouped into three points. The first is that as the chairman of the management corporation the Applicant was the proper person to be the chairman of the AGM and it was wrong for the subsidiary proprietors to replace him. Secondly, the Applicant argued that he was justified in walking out of the meeting because it went out of control. Thirdly, the Applicant submitted that the current management council members were not properly elected because of irregularities in the procedure and non-compliance with the BMSMA.

12. The Applicant based his first argument on the wording of "Part III section 25 of the Byelaw of Katong Plaza" and also on paragraph 6 of the First Schedule of the BMSMA which provided that the "chairperson of the management corporation or subsidiary management corporation shall preside at any general meeting". The Applicant argued that both provisions and the use of the word "shall" in the BMSMA meant that it was mandatory that he be the chairman at any general meeting.

13. Secondly, the Applicant argued that it was not possible for him to continue with the meeting because:

- a. It was out of his control.
- b. The Applicant was not allowed to use the proxies that he had obtained and that deprived him of the proxy votes in his favour.
- c. There was disruptive and unruly behavior which warranted the calling off of the meeting.

14. Thirdly, the Applicant argued that the current management council members were not properly elected because of irregularities in the procedure and non-compliance with

the BMSMA. He said that Mr Tng Tai Meng was not duly elected as chairman because there was no motion to elect him and no vote taken by a show of hands by the subsidiary proprietors present at the meeting. The Applicant also argued that the meeting was not entitled to rely on paragraph 6 of the First Schedule of the BMSMA to elect another person to the chair due to the chairman's absence because he was still in the meeting room at the relevant point in time and therefore not absent from the meeting.

15. The Applicant submitted that there was no mention in the AGM minutes of whether the whole management council was elected en bloc or otherwise and no record of the actual voting process and its results. He also took issue with the fact that the resolution mentioned a "Proposal of New Council Members" and that did not amount to a proper election and the entire process lacked transparency and fair play and was completely irregular.

Respondent's Arguments

16. Counsel for the Respondent argued that the Applicant had not discharged the burden to show that the council election was irregular and in fact there was nothing irregular about the council election.

17. Counsel for the Respondent also argued that the Applicant was not justified in walking out of the AGM and the evidence did not support the Applicant's contention that he was entitled to do so. This was because the Applicant had admitted in cross-examination that although there was commotion, there was no disorder and the two Cisco security guards did not have to do anything.

18. Counsel for the Respondent submitted that the meeting was entitled to elect Mr Tng Tai Meng as chairman when the Applicant refused to continue with the AGM and walked out of the meeting. This was because the Applicant by walking out of the meeting had effectively "absented" himself and paragraph 6 of the First Schedule of BMSMA allowed for another person to be elected to the chair in the absence of the chairman. Counsel for the Respondent also submitted that in any event, the Applicant had in fact agreed to a vote to elect another chairman and Mr Tng Tai Meng was accepted as the chairman by the meeting since there was no other contender for the post.

19. Finally, Counsel for the Respondent submitted that the Applicant had not shown how the alleged failure to comply with the provisions of the BMSMA had prejudiced anyone or affected the outcome of the council election.

Board's Decision

20 The Board agrees with the Applicant that the chairman of the management corporation was the proper person to be the chairman of the AGM as provided in paragraph 6 of the First Schedule of the BMSMA. Therefore, the Applicant has every right to preside at the AGM. However, the Board does not agree that it was necessary or justified for the Applicant to walk out of the meeting.

21 While there were clearly loud and sometimes rude remarks made by some of the subsidiary proprietors, there was no disorder or violence. This is also borne out by the fact that it was not necessary for the CISCO security guards present to do anything. In addition, while there were objections to the Applicant's use of the proxy, the Applicant as chairman did not rule on it. The Board believed that the Applicant, in particular, walked out of the meeting after it appeared that the majority of the subsidiary proprietors present at the meeting were against the Applicant over many things including the proposed use of the Applicant's proxy votes.

22 The Board agrees with the Respondent that with the Applicant walking out of the meeting and refusing to continue with the meeting, the meeting was entitled to elect Mr Tng Tai Meng as chairman. It would appear that a large majority of the subsidiary proprietors and some of the council members present supported this move as there was no other contender for the post of chairman.

23 At common law, if a chairperson of a meeting uses a power of adjournment to defeat the wishes of members, then the meeting may remove the chairperson and appoint someone else to take over as chairperson – see *National Dwelling Society v Sykes* (1894) 3 Ch 159. Gary Bugden and Michael Allen in their book *New South Wales Strata and Community Titles Law* in paragraph 9-680, page 15,271, take the view that this common law principle may be applied to a strata title corporation where a chairperson purports to adjourn a meeting of his own volition or fails to continue. The Board agrees with this view since the BMSMA was based partly on the New South Wales Strata Schemes Management Act ("SSM Act") and clause 15 of Schedule 2 to the SSM Act is similar to paragraph 6 of the First Schedule to the BMSMA.

24 The Board also disagrees with the Applicant that the current management council members were not properly elected because of irregularities in the procedure and non-compliance with BMSMA. The Applicant argued that a formal procedure should be adopted, that is, a formal motion to be tabled and a vote to be taken. The Board is of the view that in this case as there were no other nominations and also no objections expressed by the subsidiary proprietors present at the meeting, strict compliance with formality need not be followed.

25 The Board notes that even if the Applicant and those who walked out had stayed on and voted against the current members of the management council, the votes they had would not have been sufficient to prevent the current members of the management council from being elected.

26 Finally, even if the election was irregular because the provisions of the BMSMA have not been strictly complied with, the result of the council election would not have prejudiced anyone including the Applicant. The Applicant, had, in fact, testified at the hearing that he was not interested in seeking re-election to the new management council.

27 Having considered the evidence, the submissions of both parties and the authorities cited, in the opinion of the Board, the Applicant has not discharged the burden to prove that the election was irregular. The Applicant has also not shown that the failure to comply with the provisions of the BMSMA had prejudicially affected any person or that compliance with its provisions would have affected the result of the council election.

28 Accordingly, the application is dismissed by the Board.

Fees and Costs

29 On the issue of fees and costs, the Board orders that the Applicant pays the administrative and hearing fees applicable for the matter and also costs fixed at \$12,000 to the Respondents.

30. The Board also orders that the Applicant, Tan Sek Loon Jimmy, Yeo Chin Seng, Bernard Lim, PCA Holdings Pte Ltd, Tan Eng Ui Terence and Andrew Ong Teck Chye pay costs fixed at \$500 each, the total amount to be distributed equally to Tng Tai Meng, Koh Poh Hwa, Peter Cheng, Lily Tan, Koh Poh Geok, Patrick Hing, Victor Sng, Serena Goh, Eileen Hoe and Kong Siew Lan in respect of the 2 interlocutory applications both dated the 3rd day of October 2008 filed by the various parties mentioned.

Dated this 8th day of January 2009

MR TAN LIAN KER

President

Strata Titles Boards

DR LIM LAN YUAN

Member

Strata Titles Boards

MR RICHARD TAN MING KIRK

Member

Strata Titles Boards