

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 7 of 2009

In the matter of an application under
Section 102,103,104 of the Building
Maintenance and Strata Management Act in
respect of the development known as **The
101** (MCST Plan No. 1432)

Between

1. Lim Lay Hoon
2. Saw Soon Jin
3. Tan Fung Chuan
4. Hannah Irene Tan Ai Ling
5. Tay Bin Tin
6. Lee Kok Choon
7. Ng In Kiat
8. Mei Wai Luen
9. Wu Yi Daniel
10. Serviceproperty.com Pte Ltd
11. Beach City Singapore Pte
Ltd
12. Beach City Asia Pte Ltd

... Applicant(s)

And

Thomas Tan Lay Siong

... Respondent(s)

Coram: **Mr Francis George Remedios**
Deputy President

Panel Members: **Prof Teo Keang Sood**
Mr Lim Lee Meng

Counsel: **Ms Teh Ee-von**
(M/s Infinitus Law Corporation for the Applicants)

GROUND OF DECISION

THE AMENDED APPLICATION

1. This is an application by 12 subsidiary proprietors (SPs) in MCST 1432 (the development) against Mr Thomas Tan Lay Siong, Chairman MCST 1432.(the respondent). The respondent is an SP in the development.

Background

2. There was an AGM held on the 15/01/09 where several resolutions were passed including:

4.0 - 4.1
14.0 - 14.1.
18.0 - 18.1

Resolution 4.0 - 4.1 was with regard to the raising of a one time levy of a sum of \$95929.60 under S.39 of the BMSA. The money was to repay a judgment entered against the MCST in civil suit No.DC 4250 of 2004/R. There were 27 units in the development with a total share value of 1000. Accordingly each share value would have to pay \$95.93.

Resolution 14.0 - 14.1 was with regard to the election of the council members.

Resolution 18.0 - 18.1 was with regard to alleged wrongdoing on the part of a subsidiary proprietor Mr Tan Fung Chuan.

3. From the attendance list of the AGM (exh C in the joint affidavit of the Applicants) it can be seen that the development is a six storey building with 27 units. The share values of all the units were not the same and the share values ranged from 20 to 97. The total share value of all the units was 1000.

4. The 12 Applicants owned 13 of the 27 units and the total share value of their units was 365. The 4th Applicant Hannah Irene Tan had been given the proxy to vote by the SPs of #04-03 (23sv) and #06-02(34sv) (*The SPs of the two units are not Applicants in this application – if they had joined with the Applicants in this application the Applicants would have a total share value of $365 + 23 + 34 = 422$*).

5. From the attendance list of the AGM, it appeared that the SPs of all the units except for the SP of #02-02 (share value of 51) were at the meeting. Accordingly SPs with a total share value of (1000-51) 949 were at the AGM.

6. In the case where votes were counted according to share values the Applicants did not have the majority of the votes and controlled slightly more than one third of the total of the votes at the meeting. If one were to count the proxy votes held by the 4th Applicant then the Applicants would have controlled less than half of the total votes at the meeting.

The Application

7. The application in this case was for the Board to nullify the abovementioned 3 resolutions and the Applicants also wanted an order for a fresh general meeting to be held.

8. The Board is a statutory body that was established for the purpose of adjudicating disputes between SPs and management corporations and between one SP and another. The Board does not have unlimited jurisdiction and the orders that the Board can make are confined to those set out in SS 101 to 118 of the Building Maintenance and Strata Management Act (the Act).

9. It was the case for the applicants that the Board could make the orders sought under SS 102, 103 and 104 of the Act.

10. Under S 102: the Board can make an order appointing a person nominated by the Applicants to convene:

- a) a meeting of the management corporation if after the first AGM there is no council or exco or if there is a council or exco, the council or exco have not appointed anyone to fill vacancies and have not held AGMs;
- b) a meeting of the council or exco if there is no elected chairperson, secretary and treasurer after the first meeting of the council; for the purpose of electing or appointing persons to fill vacancies.

11. It was not clearly spelt out but it appears that the Applicants were relying on this provision in support of the application for a fresh general meeting to be held.

12. In addition to the fact that the Applicants had, in this case, not nominated anyone to convene any meeting; that it was not the case that after the first AGM there was no council or exco, or that there was a council or exco after the first AGM and the

council or exco did not appoint anyone to fill vacancies and have not held AGMs, there was absolutely nothing in this case to show how the Board could make an order under this section.

13. Under S 103 the Board can invalidate a resolution made/passed or election held at a meeting of the management corporation due to non-compliance of the provisions of the Act.

14. Under S 104 the Board can nullify a resolution because Board is satisfied that

a) the resolution would not have been passed **but for the fact that** the Applicants were improperly denied a vote on the motion for the resolutions (ie the Applicants had not been allowed to vote on the resolution and if they had voted, the motion would not have been passed.)

or

b) the Applicants were not given notice of the item of business pursuant to which the resolution was passed (ie Applicants did not have notice that a vote was being held on the resolution) An application to nullify a resolution under this section must be made within 21 days of the date of the meeting at which the resolution was passed.

15. The two sections ie SS 103 and 104 empower the Board to rectify wrongdoings that occur at meetings of the management corporation.

16. A management corporation is, under S 24 of the Act a body corporate capable of "suing and being sued and having perpetual succession and a common seal" It is a separate legal entity from the individual subsidiary proprietors and the management council. Legal proceedings should under S 24(2) of the Act be brought in the official name of the management corporation.

17. The application in this case, which sought to rectify alleged wrongdoings that occurred at a meeting of the management corporation held on the 15/01/09 was not brought against the management corporation but was brought by the Applicants against Mr Thomas Tan Lay Siong who was the chairman of the management corporation on the 15/01/2009.

18. Mr Thomas Tan had at the first mediation held by the Board queried the Applicants as to why the Applicants were seeking orders against him rather than against the management corporation; and at the conclusion of the hearing on the 17/06/09 learned counsel for the Applicants was specifically asked by the Board to submit on this point ie was it in order for the Board to order Mr Thomas Tan Lay Siong, the chairman rather than the management corporation itself to rectify the alleged wrongdoings.

19. In the written submissions of the Applicants filed on the 08/07/09 there were no submissions with regard to whether or not it was in order for the application to have been brought against Mr Thomas Tan Lay Siong. Instead the Applicants sought to explain why the action was brought against Mr Thomas Tan rather than the management corporation. The reason for this was that Mr Thomas Tan had not complied with a consent agreement reached between Mr Thomas Tan and the Applicants in another action between the parties viz STB 86/2008.
20. The Board does not in this case, intend to deal with and consider whether there was any breach with regard to any agreement reached between the parties in another action before another Board as, *inter alia*, this Board is of the view that the Board does not have the jurisdiction to do so.
21. It is the finding of the Board that the Board cannot make an order against Mr Thomas Tan with regard to alleged wrongdoings by another party viz the management corporation under SS 103 and 104 of the Act. An order against Mr Thomas Tan in connection with alleged wrongdoings under SS 103 and 104 of the Act cannot bind the management corporation who were not parties to the proceedings and who never had an opportunity to defend the action brought by the Applicants.
22. The application of the Applicants is accordingly dismissed.
23. Notwithstanding the fact that the Applicants had brought this action against the wrong party, and notwithstanding that the proper party was not before the Board and had not had an opportunity to present its case to the Board, the Board proceeded to consider the merits of the application.
24. Was there non-compliance of any provision of the Act in respect of any one or all of the 3 resolutions or any other resolution passed at the meeting on the 15/01/2009.
25. Was there non-compliance of any provision of the Act in connection with any election at the meeting on the 15/01/2009.
26. Was any one of the 3 resolutions or any other resolution passed because the Applicants were improperly denied the right to vote on the motion for the resolution or because the Applicants were not given notice of the item of business pursuant to which the resolution was passed?

The Evidence

27. The evidence in support of the application was set out in a joint affidavit filed by all the Applicants and a supplemental affidavit filed by the 3rd Applicant Mr Tan Fung Chuan.

- i) Reference was made to a consent agreement entered into for another general meeting to be held before the 16/01/09 and for all SPs to be entitled to vote without restrictions.
- ii) That a general meeting was held on the 15/01/09 in accordance with the agreement
- iii) That Mr Tan Fung Chuan who held proxy form given by Beach City Serviced Residences Pte Ltd was not allowed to vote. (Beach City Serviced Residences Pte Ltd was not an SP on the strata roll. It was the case for the Applicants that Beach City Serviced Residences Pte Ltd was the new name of Serviceproperty.com Pte Ltd the registered owner of #03-03 on the strata roll and that they were one and the same)
- iv) That the SPs of #04-03 and #06-02 who had given proxies to the 4th Applicant were not allowed to vote. *(It is to be noted that applications under S.104 can only be made by SPs who were denied voting rights or who did not receive notice of the item of business pursuant to which the resolution was passed and that the SPs of the 2 units were not applicants in this application)*
- vi) That some SPs (in the supplemental AEIC the "some" was said to be Hannah Irene Tan - 4th Applicant) were denied the right to vote because because they were late in paying maintenance/sinking funds.
- vii) That the votes of 4 SPs viz Lim Lay Hoon-1st Applicant; Saw Soon Jin-2nd Applicant; James Ng-7th Applicant and Daniel Wu-9th Applicant who owned their units together with a co-SP were not accorded full voting rights because the co-owners were not present at the meeting.
- viii) That there was no special resolution with respect to item 4 of the agenda – the one time levy for repayment of the judgment debt. *(It was not the evidence of the applicants or in the submissions at the close of the case that there was any legal requirement for a special resolution)*
- ix) The 5 Council members elected at the meeting were elected because of under handed tactics (Applicants' supporters denied voting rights)
- x) Item 18 of the agenda which required Mr Tan Fung Chuan to reinstate the common areas that he had encroached into when renovating his premises within 30 days of the AGM (30 days from 15/01/09) should not be the subject matter of a vote at the meeting because it was a matter pending before another Board viz STB 84 of 2008. (In the supplemental affidavit the applicants set out the contents of the resolution which showed that the reinstatement was to be "after STB 84 of 2008 had been concluded" ie compliance with the resolution would not conflict with orders flowing from STB 84/2008.

- xi) That the Applicants whose votes would have amounted to 15 of total of 27 had walked out of the meeting without casting their votes when they realized that their voting rights would be restricted.
28. The evidence of the Respondent as set out in his affidavit was, *inter alia*, as follows:
- i) Tan Fung Chuan held a proxy given by Beach City Serviced Residences Pte Ltd in respect of #03-03 when the records in the strata roll and the SLA registry showed that the owner was Serviceproperty.Com Pte Ltd. In spite of the discrepancy the Managing Agent "decided to proceed with the matter" ie the discrepancy would not affect his voting rights.
 - ii) No one was denied a right to vote. Attendance at the meeting was recorded by way of a tick on the attendance sheet. Representatives of 4 units had initially neglected to tick their attendance but this was rectified before the meeting commenced (*During cross-examination Mr Tan Fung Chuan conceded that his evidence that the SPs of #04-03 and #06-02 had been denied a right to vote was based on there being no ticks against their names.*)
 - iii) As long as statutory requirements were complied with including the payment of all contributions and other monies levied by the management corporation within 3 days of the AGM, no one was denied voting rights.
 - iv) Voting was to be by poll ie value of votes would be according to share values.
 - v) In the case of units that were owned by more than one SP the value of the vote would be according to the percentage owned by the owner present if all the owners were not present (*the Board was of the view that this was not correct as para 2(3) of the First Schedule to the Act provides that with regard to votes of co-proprietors the vote of the senior who casts his vote will be counted to the exclusion of the votes of the others.*)
 - vi) Applicants had walked out of the meeting when the meeting was going to decide on whether those who were late with respect to payment of maintenance and sinking funds viz 3rd, 4th and 12th Applicants should be allowed to vote.
 - vii) The applicants do not understand the concept of voting by poll - where value of the vote is according to share value The total share value of the 13 lots owned by all the applicants according to the share value of the lots in exh C of Applicant's AEIC was

365 out of total of 949. Including their supporters ie owners of #04-03 and #06-02 who were not applicants in this case the total would be 422 out of 949 ie the applicants and their supporters did not control a majority of the votes at the meeting. If voting was by lot then the applicants including their supporters would have 15 out of 27.

29. It was from the evidence before the Board and this was in fact not in dispute that the Applicants had walked out of the meeting before voting on the 3 resolutions took place ie it was not the case that the Applicants had been denied a right to vote on any of the resolutions. From the evidence before the Board the Applicants had walked out when the meeting was going to decide on whether the Applicants who were about 2 ½ hours late in making their payments should be allowed to vote.

30. There was no evidence that the Respondent or anyone had made a decision to deny any of the Applicants a right to vote on the 3 or any of the other resolutions passed at the meeting.

31. Even if the Applicants had been denied a right to vote, they, in view of the fact that voting was by poll, controlled only 365 (422 if the votes of #04-03 and #06-02 are counted) out of the 949 votes at the meeting. They did not control the majority of the votes at the meeting and their votes would not have affected the result with regard to the passing of resolutions 4.0-4.1, and 18.0-18.1.

32. With regard to resolution 14.0-14.1 on the election of the 5 council members, paragraph 8 of the First Schedule provides that

Each person entitled to vote on an election of members of the council or executive committee shall have one vote in respect of each lot which he is entitled to vote

ie voting should have been by lot rather than by poll. Accordingly it would appear that there was non-compliance with S.103 of the Act when this resolution was passed. Under S.103 (1)(b) and S.103(2) the Board can refuse to invalidate such a resolution where the failure to comply did not prejudicially affect any person and the non-compliance would not have resulted in a failure to pass the resolution or affected the result of the election.

33. In this case the Applicants had walked out of the meeting before this resolution was passed. It was the 14th item on the agenda and the minutes of the meeting (annexed to the joint affidavit of the Applicants) showed that the 5 council members were "unanimously elected" by the meeting ie the result would have been the same even if the election was by lot.

34. In view of all of the above the application of the Applicants was dismissed.

Dated this 6th day of August 2009.

MR FRANCIS GEORGE REMEDIOS

Deputy President
Strata Titles Boards

PROF. TEO KEANG SOOD

Member
Strata Titles Boards

MR LIM LEE MENG

Member
Strata Titles Boards