

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 12 of 2013

In the matter of an application under Section
103, 104 and 113 of the Building Maintenance
and Strata Management Act in respect of the
development known as **SYMPHONY HEIGHTS**
(MCST Plan No. 2318)

Between

Teo Guat Khim, Colleen / Chan Yew Wai

... Applicant(s)

And

The MCST Plan No. 2318

... Respondent(s)

Coram: Mr. Francis George Remedios
Deputy President

Panel Members: Mr. Richard Tan Ming Kirk
Mr. Lim Gnee Kiang

Applicants: Teo Guat Khim Colleen / Chan Yew Wai

Counsel: Mr. Kenneth Au-Yong
(M/s Ramdas & Wong for Applicants)

Respondents: The MCST Plan No. 2318

Counsel: Mr. Ronnie Tan
(M/s Central Chambers Law Corporation for Respondents)

GROUNDS OF DECISION

1. The Applicants are subsidiary proprietors in the development known as Symphony Heights at 33 Hume Avenue S598734 and the Respondents are the management corporation. The Applicants have applied for the following orders:
 1. *An order that the Respondent provides all information and documents relating to the EOGM that took place on 12 Jan 2013. Such information to include*
 - a. *all proxy forms submitted for the EOGM*
 - b. *attendance records for the EOGM indicating which attendees are in person and which are by proxy; and*
 - c. *records and evidence of the vote count for the resolution passed at the EOGM with the numerical count of the number of votes for and against the resolution.*
 2. *An order that the resolution removing the Applicant from the position of Secretary of the Council of the Respondent which was passed at the EOGM be declared null and void and/or alternatively that the said resolution be invalidated.*
 3. *That the Council members of the Respondents be personally ordered to bear all the costs of this Application.*

The orders were sought under SS 113, 103 and 104 of the Building Maintenance and Strata Management Act 2004 (the Act).

Background

2. Before the 12/01/13 the Applicant, Teo Guat Kim Colleen (Teo) was a council member and secretary in the management corporation. It will be sufficient to state that she did not have a good relationship with some of the other council members and the managing agents of the estate. Before the EOGM on the 12/01/13 she, together with other subsidiary proprietors had requisitioned for the convening of an EOGM to inter alia remove the managing agents. The council did not convene the meeting that had been

requisitioned for. There are provisions in the Act that allowed for Teo and/or any of the subsidiary proprietors who had requisitioned for the meeting to proceed to convene a meeting. This was not done.

3. At the EOGM on the 12/01/13 there was only one motion on the agenda viz *to consider and resolve by way of an ordinary resolution that the secretary of the 12th management council (i.e. Teo) be removed by Management Corporation Strata Title Plan 2318.*
4. Voting was by poll and subsidiary proprietors with 332 share values (67.48%) voted in favour of the motion and subsidiary proprietors with 160 share values (32.52%) voted against.

The Applicants' case

5. Following the EOGM Teo submitted a written request to *check the proxy for the 12th January 2013 and inspect the attendance and the total numbers of the quorum for the meeting with the end result of the total numbers of the vote for the agenda for the EOGM.*
6. Her requests were not acceded to. The refusal according to Wee Keng Jong (Wee), council member and treasurer of the management corporation was due to Teo having *"...demonstrated propensity to confront and intimidate those who stood in her way or challenged her..."* Wee also informed that solicitors for the management corporation had advised that what had been requested should not be released *"...on the basis of amongst other things, that these documents had been the subject of legal advice to the MCST...the subject of Legal Professional Privilege or Legal advice Privilege. We were also advised that there exists substantial risks that (Teo) would confront and intimidate those SPs who had given proxies against her interests. We were also advised that the MCST bears the duty to ensure that the identities of those SPs are protected given (Teo's) propensity to cause problems..."*

7. With regard to nullification of the resolution, it was the Applicants' case that the notice in connection with the EOGM on 12/01/13 was insufficient i.e. did not comply with paragraph 1 of the First Schedule of the Act. Teo in her AEIC said that she received the notice on the 03/01/13 and the date stamp on the envelope showed that it was posted on the 31/12/12.
8. In connection with the application for the nullification/invalidation of the resolution it was the Respondents' case that that the notices and necessary documents were served in accordance with the requirements in the First Schedule of the Act i.e. *at least 14 days before the meeting*. A Certificate of Posting from Singapore Post evidencing that the documents were posted on the 29/12/12 was exhibited.

Considerations

The application for information and documents

9. The Applicants have applied for orders with regard to provision of information and documents. Requests had been made for the documents under S 47 of the Act and these were not made available. The Respondents in paragraph of their written submissions accept that *"...S 47 of the BMSMA...in the normal course of business would entitle (the applicants) to the documents."*
10. There is no dispute that the documents and information have not been made available. It the case for Respondents that MCST does not have to make them available of the ground that the information/documents are protected by legal professional privilege and because Teo is seeking to discover the names and identities of the proxies in order to harass and intimidate them. It is not the case that the documents and information do not exist and it is also not the case that the information or documents have since been made available or supplied.

11. General meetings of management corporations must be conducted in accordance with the First Schedule of the Act. Paragraph 7 of the First Schedule requires that secretary of the management corporation must be *put up a list of names of the persons who are entitled to vote on the notice board on the notice board maintained on the common property at least 48 hours before the general meeting*. Paragraph 5 provides that votes can be cast by persons who are entitled to vote *personally or by his duly appointed proxy*. The provisions in connection with the instrument of proxy are set out in Paragraphs 17, 18, 19 and 20 i.e. it must be *in writing; under the hand of the person appointing the proxy or his attorney duly authorised in writing*; If it is a company appointing, it must be *either under seal or under the hand of an officer or its attorney duly authorized*. Where it is intended to *afford subsidiary proprietors an opportunity of voting for or against a resolution* the format of the proxy form must set this out. The instrument appointing a proxy must be deposited at the registered address of the management corporation or such other place as is specified in the notice convening the meeting not less than 48 hours before the time for the holding of the meeting. In default the instrument of proxy shall not be treated as valid. A *proxy need not be a subsidiary proprietor*; is entitled to cast a vote on behalf of himself if he entitled to vote at the same time when he casting a vote as a proxy. One person can be a proxy for more than one i.e. several subsidiary proprietors may decide to appoint the same person as their proxy and this person *may vote separately as a proxy in each case*. A *proxy cannot exercise a vote in relation to a matter if the person who appointed the proxy is exercising personally a power to vote on the matter*. Votes given in accordance with the terms of the proxy instrument will be valid so long as there is no information (in writing) of revocation or other defect received by the management corporation before the meeting.
12. It is clear from the provisions that any subsidiary proprietor who is dissatisfied with the results of a vote count where there were votes cast by

one or more proxies will have a right to inspect the instruments appointing the proxy.

13. It can be noted that the minutes of the meeting had recorded all the attendees at the meeting – *Subsidiary Proprietors as per Attendance List*. The attendance list was however not attached to the minutes.
14. As noted above it was not the Respondents' case that the Applicants are not, under S 47 of the Act, entitled to the documents and information requested. It was their case that the Applicants are not entitled to the documents and information because they are protected by legal professional privilege and because Teo was seeking to discover the names and identities of the proxies in order to harass and intimidate them.
15. It is the law that documents and information covered by legal advice privilege need not be supplied under S 47 of the Act and this is not disputed or in any way challenged by the Applicants. It is their case that the information and documents requested for are not covered by the privilege.
16. Legal advice privilege at common law is a substantive legal right that may be claimed and is available even when there are no judicial or quasi-judicial proceedings pending or contemplated. In the case of *Balabel v Air India* [1988] 1 Ch 317 which was cited with approval by the Court of Appeal in *Skandinaviska Enskilda AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd* [2007] SGCA 9 Parker LJ said “...*the purpose and scope of the privilege is to enable legal advice to be sought and given in confidence. In my judgement therefore the test is whether the communication or other document was made confidentially for the purpose of legal advice....*”
17. It was the submission of the Respondents that the information and documents sought were privileged because advice was sought by the council in connection with the removal of Teo from the council and what

could be done with regard to remarks made that were considered to be defamatory. It appears that advice was given to the effect that Teo could be removed via votes during an EOGM and voting could be via proxies. Advice on use of proxies was sought and given because there was concern that Teo would confront and harass those who wanted to remove her.

18. Accordingly the council had sought advice and advice was given in connection with the provisions in the Act that enabled the removal of a council member.
19. The Board is of the view that the fact that advice was sought and given in connection with the provisions in the Act that enabled the removal of a council member did not and cannot clothe privilege on the proxy forms submitted at the EOGM; the attendance records for the EOGM; and the records and evidence of the vote count. The proxy forms submitted at the EOGM; the attendance records; the records and evidence of the vote count were not communications and/or documents that passed between the Respondents and their lawyers when advice was being sought and given. The documents were also not “made confidentially for the purpose of legal advice” and therefore did not qualify for legal advice privilege under the test approved by the Court of Appeal in *Skandinaviska Enskilda AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd [2007] SGCA 9*.
20. The Board is also of the view that there is no merit in the submission that it was in order for the Respondents not to disclose the information/documents to Teo on the ground that Teo would use the information/document to harass and intimidate those who voted for her removal. It appeared to be the submission of the Respondents that there was a duty on the part of a management corporation to protect subsidiary proprietors from harassment and intimidation in connection with voting at general meetings. There was first of all no evidence that Teo would use the information/documents to harass and intimidate subsidiary proprietors who

had voted for her removal and there is no provision in the Act that provides that a management corporation has a duty or responsibility to protect voters in a meeting from harassment and intimidation.

The application for nullification /invalidation of the resolution

21. Under S 103 of the Act the Board can invalidate any resolution where the Board considers that the provisions of the Act have not been complied with.
22. Under S 104 the Board can order that a particular resolution be treated as a nullity where the Board is satisfied that it would not have been passed...but for the fact that the applicant ...was improperly denied a vote on the motion for the resolution; or was not given due notice of the item of business pursuant to which the resolution was passed.
23. Everyone who has an interest in a meeting and wants to attend should receive sufficient notice of the date time and place. In Paragraph 1(1) of the First Schedule of the Act it is provided that *at least 14 days'* notice be given. The notices in this case were posted on the 29/12/12. Including the day of the meeting, there were exactly 14 days between the posting of the notices and the meeting. Whilst Paragraph 1(1) First Schedule of the Act does not require that there should be 14 **clear** days (the number of days intervening between the day on which the notice is given and the day of the meeting) it provides that *at least 14 days'* notice be given. Section 2(5) of the Interpretation Act provides that, unless the contrary is proved, service of a document by post shall be deemed to have been effected at the time at which the letter (containing the document) would be delivered in the ordinary course of post. The notices in this case were posted on 29/12/12, a Saturday, and would have been be delivered two days later at the earliest since Sunday is not a working day. Even if the notices were delivered on the day they were posted, there were only 13 days between the posting of the notices and the meeting. Paragraph 1(1) of the First Schedule of the Act is substantially the same as Paragraph 1(1) of the Third Schedule of

the Land Titles (Strata) Act Cap 158 which was in force before the passing of the Act. This was referred to in *Isetan (S) Ltd v Wisma Development Pte Ltd & Anor* [1992] 1 SLR (R) 845. In that case Chao Hick Tin (J) as he then was, said:

Paragraph 1 of the Third Schedule to the Act provides that "notice of a general meeting of a management corporation shall be served on each subsidiary proprietors ... at least 14 days before the meeting". This means that there must be 14 clear days between the issue of the notice and the day of the meeting

The Board therefore cannot find that notice in accordance with the First Schedule of the Act had been given.

24. S 103 of the Act provides for applications to invalidate a resolution made/passed or election held at a meeting of the Management Corporation due to noncompliance of the provisions of the Act. An order to invalidate must be made **when** failure to comply had prejudicially affected another **and** compliance would have resulted in a failure to pass the resolution or affect the election. If failure to comply had not prejudicially affected anyone or compliance would not have resulted in failure to pass the resolution the Board can refuse to invalidate even if there was failure to comply.
25. It was submitted that the Applicants had been prejudiced in that if proper notice had been given they would have had more time to obtain support to defeat the motion. There was no evidence that more supporters could have been gathered if the meeting was held after 14 or more clear days had been given. There was no evidence (including any evidence to the effect that one or more who wanted to attend did not attend because of the shortage of notice) that the failure to comply had prejudicially affected anyone including the Applicants or that compliance would have resulted in a rejection of the motion to remove Teo.

26. The Board is satisfied that the resolution passed at the EOGM on the 12/01/13 should not be *be declared null and void and/or alternatively that the said resolution be invalidated.*

27. There were no submissions from the Applicants as to how and why an order

That the Council members of the Respondents be personally ordered to bear all the costs of this Application

can be and should be made. Whilst the management corporation was a party and the Respondents in this application the council members were not and there is no basis for any order to be made against any of them.

28. In view of all of the above it is ordered:

(a) That the Respondents provide the Applicants with all information and documents relating to the EOGM that took place on 12 Jan 2013. Such information to include

(i) all proxy forms submitted for the EOGM;

(ii) attendance records for the EOGM indicating which attendees are in person and which are by proxy; and

(iii) records and evidence of the vote count for the resolution passed at the EOGM with the numerical count of the number of votes for and against the resolution.

(b) The application for an order that the resolution removing the Applicant, Teo, from the position of Secretary of the Council of the Respondent which was passed at the EOGM be declared null and

void and/or alternatively that the said resolution be invalidated is dismissed.

- (c) There will be no order as to costs.

Dated this 3rd day of September 2013

MR FRANCIS GEORGE REMEDIOS
Deputy President

MR RICHARD TAN MING KIRK
Member

MR LIM GNEE KIANG
Member