

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

**STB No. 90 of 2012**

In the matter of an application under section 105, 106 108 & 113 of the Building Maintenance and Strata Management Act in respect of the development known as **Park Oasis** (MCST Plan No. 2054)

Between

- 1. Tan Chor Kheng**
- 2. Roland Yeo Peng Sin/Chan Mei Yoke**
- 3. Thomas Ng Cheng Nam/Ng Guat Hong**

... Applicants

And

**The MCST Plan No. 2054**

... Respondent

Coram : Mr Alfonso Ang  
Deputy President

Panel Members: Mr Richard Tan Ming Kirk  
Mr Tang Tuck Kim

Counsel : Mr Deepak Natverlal (M/s Maximus Law LLC) for the Applicants  
Mr Toh Kok Seng & Ms Yik Shu Ying (M/s Lee & Lee) for the Respondents

## **GROUNDS OF DECISION**

1. The Applicants are subsidiary proprietors of their respective units in Park Oasis and they sought various orders from the Board against the Respondent who are the management corporation of Park Oasis. The orders the Applicants sought included orders to postpone the AGM, withdraw the proposed amendment of the by-law regarding the parking of 3<sup>rd</sup> and subsequent cars and revoke the amendment of the by-law regarding increase in management fund and sinking fund, pursuant to various sections of the Building Maintenance and Strata Management Act (“BMSMA”).
2. After two rounds of mediation by the Board, the parties could not reach any settlement although a number of the issues appeared to be resolved. The Board therefore gave directions for the arbitration hearing of the dispute to be heard on 6<sup>th</sup> and 7<sup>th</sup> March 2013.
3. On 4<sup>th</sup> February 2013, which was two days before the date for the filing and exchange of the Affidavits of Evidence-in-Chief, the Applicants’ solicitors wrote a letter to the Board to withdraw the application with a request that there be no order as to costs. The solicitors for the Respondent wrote to the Board on the same day to state they were applying for costs to be ordered against the Applicants.
4. As a consequence, the Board fixed a hearing for the parties to make their arguments on costs on 6 March 2013.

### **Applicants’ Arguments**

5. Although the Applicants’ solicitors’ letter dated 4<sup>th</sup> February 2013 requested there be no order as to costs, the Applicants subsequently sought to claim costs against the Respondent amounting to S\$8,234.54.
6. The Applicants submitted that in the light of the events that have transpired since the filing of their application, the core prayers of the Applications application had become academic and as a result the Applicants saw it fit to withdraw the application altogether save for the issue of costs.
7. The Applicants also argued that the Applicants have withdrawn the application not because the Board has no jurisdiction to hear the matter but because events subsequent to the filing of their application have resulted in an outcome that has resolved the prayers sought for in favour of the Applicants.

### **Respondent’s Arguments**

8. The Respondent argued, among other things, that:
  - (a) It is trite law and usual practice that a party, who having commenced an action, decides to discontinue the action, will generally be liable to pay costs to the other party to the action;
  - (b) Almost all of the orders sought by the Applicants were not within the jurisdiction of the Board and hence the application should not have been made in the first place; and

(c) Even if the orders sought had been within the jurisdiction of the Board (which the Respondent disputed), the circumstances had changed by the time of the first mediation, making matters academic.

9. The Respondent also submitted that the Applicants had raised various issues which were not in the application and which were irrelevant.

### **Board's Decision**

10. The Board has the power to order that the Applicants pay the costs up to the time of service of the Applicants' written notification to withdraw the application by virtue of Regulation 21(3) of the Building Maintenance and Strata Management Act (Strata Titles Boards) Regulations 2005 (the "Regulations").

11. The Board agrees with the Respondent that the usual practice is that a party, who having commenced an action, decides to discontinue the action, will generally be liable to pay costs to the other party to the action.

12. However, the Board has the discretion not to make an order as to costs under Regulation 21(3) of the Regulations.

13. After considering the submissions of Applicants and the Respondent and taking into account all the circumstances, the Board orders that there be no order as to costs.

**Dated this 6th day of March 2013**

MR ALFONSO ANG  
Deputy President

MR RICHARD TAN MING KIRK  
Member

MR TANG TUCK KIM  
Member