

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 26 of 2014

In the matter of an application under Section 105,  
106, 108 and 113 of the Building Maintenance  
and Strata Management Act in respect of the  
development known as **VISION CREST** (MCST  
Plan No. 3400)

Between

Christopher Yau King Min

... Applicant

And

The MCST Plan No. 3400

... Respondent

Coram: Mr Francis George Remedios  
Deputy President

Panel Members: Mr Chan Kim Mun  
Ms Hairani Saban Hardjoe

Applicant: Christopher Yau King Min  
  
Counsel: Mr Deepak Natverlal  
(M/s Maximus Law LLC for Applicant)

Respondent: The MCST Plan No. 3400  
  
Counsel: Mr Lim Tat / Ms Gayathri Sivasurian  
(M/s Aequitas Law LLP for Respondent)

## GROUNDS OF DECISION

1. The development known as VisionCrest Residences (MCST Plan 3400) is located at 33-39 Oxley Rise/101-103 Penang Road, Singapore. It is a mixed use development and comprises three (3) buildings viz a commercial block with 81 office and retail units, a residential block with 265 residential units and a heritage building known as The House of Tan Yeok Nee. The total area in the commercial block is 13,440 sqm and the whole block is owned by Union Investment Real Estate GMBH (UIRE). The residential block has a total area of 23,460 sqm and there are 265 owners. The heritage building has a total area of 3,101 sqm. The aggregate share value of each block is as follows:

- (a) Commercial block – 48,599,
- (b) Residential block – 45,315,
- (c) Heritage building – 6,086.

Total aggregate share value is 100,000. Accordingly the commercial block has 48.599% of the total share value, the residential block, 45.315% and the heritage building, 6.086%.

2. The Applicant is Christopher Yau King Min (Yau). He is the owner of one of the residential units viz #06-12 and the Respondent is Management Corporation Strata Title Plan No. 3400 (the MC).
3. CBRE Pte Ltd (CBRE) is the managing agent (MA) of the estate. The developer (Winpeak Investment Pte Ltd) had in 2006, before the estate was handed over to the MC approached CBRE to manage the estate and at the 1<sup>st</sup> Annual General Meeting (AGM) of the MC on the 20/08/2010, CBRE was via a resolution passed without objections, appointed as the MA. CBRE was re-appointed as the MA at the 2<sup>nd</sup> and 3<sup>rd</sup> AGMs.
4. The 4<sup>th</sup> Annual General Meeting of the MC was held on the 22/08/2013. At that meeting a resolution was passed re-appointing CBRE as the managing agent for a further period of one year. Voting was by poll. The total share value voting was 71,804 and 57,176 (79%) voted in favour of the resolution while 14,628 voted against.
5. In this application the Applicant is applying for the following orders:

**Order No 1.**

*To seek an order that the resolution passed at the 4<sup>th</sup> AGM on 21<sup>st</sup> August 2013 on the appointment of the managing agent be invalidated*

**Order No 2.**

*To seek an order that the respondent be directed to fix the biometric gate at the BBQ area and to build a perimeter fence along the sides of the biometric gate within two weeks from the date of the order and to ensure that commercial employees from the units tenanted out by UIRE do not freely cross over and use the facilities*

**Order No 3.**

*To seek an order that directs the respondent to provide an explanation for failure to adhere to the Second Schedule of BMSMA Reg 3 and 4*

**Order No 4.**

*To order the respondent to indemnify the applicant for all costs arising from this application*

6. When this application was initially filed on the 05/05/2014 Orders No. 2, 3 and 4 above were numbered as 3, 5 and 6 i.e. the application was for 6 orders. The Applicant has since informed that he is not pursuing his applications for two of the 6 orders.

**Order No 1: To seek an order that the resolution passed at the 4<sup>th</sup> AGM on 21<sup>st</sup> August 2013 on the appointment of the managing agent be invalidated**

7. The submission on behalf of the Applicant is as follows:

*The Applicant submits that the said appointment of the Managing Agent is invalid. The Applicant submits that he is relying on Section 103 of the BMSMA ....*

8. S 103(1) of the Building Maintenance And Strata Management Act, Chapter 30C (the Act) is as follows:

*Where pursuant to an application by a subsidiary proprietor...a Board considers that the provisions of the Act have not been complied with in relation to a meeting of the management corporation, the Board may by order –  
invalidate any resolution...or  
refuse to invalidate any such resolution....*

9. The Respondent has in its written submissions referred to the following extract from *Strata Title in Singapore and Malaysia*:

*“... this provision allows a resolution...to be declared invalid only if the provisions of the BMSMA relating to management corporation... meetings have not been complied with....*

10. It was the submission of the Applicant that CBRE had a business relationship with the owner of the commercial block and this business relationship had not been declared.
11. CBRE has an Asset Management Division. This division has been engaged by UIRE to represent and assist it in various matters. There is no evidence that UIRE or CBRE had in any way tried to keep their relationship private or prevent it from being known by others in the estate.
12. S 66(4) of the Act is as follows:

*A managing agent who is in any way directly or indirectly related to a subsidiary proprietor of a lot...shall declare in writing the nature of his relationship prior to his appointment*

13. The MC has exhibited letters dated 27/09/2010, 24/10/2011, 20/09/2012, 10/04/2013 and 26/09/2013 wherein CBRE has declared its relationship with UIRE to the management council of the MC.
14. S 60 of the Act is as follows:

*Subject to subsections (2) and (3), if a member of a council has a pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is before any meeting...he shall at that meeting –  
declare the nature of his interest;  
not take part in any consideration or discussion of, or vote on any question with respect to, that contract or proposed contract or other matter, and  
...*

*(2) The requirements of subsection (1) shall not apply in any case where the interests of the member of a council consists of being only a member or creditor of a company which is interested in a contract or proposed contract with the management corporation if the interest of the member may be properly regarded as not being a material interest*

*(3) For the purposes of subsection (1) a general notice given to the members of the council by a member to the effect that he is an officer or a member of a specified company...and is to be regarded as interested in any contract which may, after the date of the notice be made with that company...shall be deemed to be a sufficient declaration of interest in relation to any contract so made....*

15. At the 1<sup>st</sup> AGM of the MC three (3) of UIRE's nominees were elected as council members. Two of them were employees of CBRE (R4A Tab 1 and R4B Tab

- 27). At that meeting it was resolved that CBRE be appointed as the MA of the MC up to the conclusion of the next AGM. The minutes do not record that any declaration was made by the 3 nominees of UIRE.
16. At the 1<sup>st</sup> council meeting of the 1<sup>st</sup> management council of the MC on the 27/09/2010 it is recorded (RB4 Tab 9) that declaration forms were distributed by the MA to the members of the management council for their execution. The declarations made by members of the council of the 1<sup>st</sup> management council (and also by members of the council of the 2<sup>nd</sup> and 3<sup>rd</sup> management councils) are exhibited at R-4B Tab 27.
17. It would appear from the submissions of the MC (para 16- of MC's Reply Submissions - R5) that no declarations in accordance with S 60 had been made when the meeting voted on the appointment of CBRE as MA at the 4<sup>th</sup> AGM. It was submitted that a S 60 declaration was not necessary because (i) the council members who were CBRE employees were employees of a different division of the company from the division of the company that obtained the managing agent contract; and (ii) as employees of a different division that obtained the managing agent contract, they did not have any material interest that had to be declared. The case of *Management Corporation Strata Title Plan No 2285 and others v Sum Lye Heng (alias Lim Jessie) [2004] 2 SLR(R) 408* was cited in support. It is the view of the Board that the case of *Lim Jessie* does not support the submission of the MC as the facts in that case were that the relationship and interest of *Lim Jessie* (who was the chairman of the managing council) in the company that was tendering for the managing agent contract was well known to all the members of the council. It is not clear in this case that the relationship between the nominees of UIRE in CBRE was known and the fact that they were employed in a different division from that which obtained the MA contract cannot be said that they did not have an interest that was not material. As employees of a company that was seeking to obtain the MA contract for the estate they definitely had an interest that was material. The interests should have been declared.
18. S 103(2) of the Act is as follows:
- A Board shall not make an order under subsection (1) refusing to invalidate a resolution ... unless it considers –*
- (a) that the failure to comply ...did not prejudicially affect any person; and*
- (b) that compliance with the provisions ...would not have resulted in a failure to pass the resolution ....*
19. It is clear that an order to invalidate must be made **when** failure to comply has prejudicially affected another **and** compliance would have resulted in a failure

to pass the resolution or affected the election i.e. compliance would have produced a different result.

20. Where a failure to comply had not prejudicially affected anyone or compliance would not have resulted in failure to pass the resolution a Board can under S 103(1)(b) of the Act refuse to invalidate. Where no one has been prejudicially affected, there would be no reason for the Board to invalidate. Similarly there would be no reason to invalidate when the failure to comply would not have affected the outcome. Invalidating when no one has been prejudiced or when compliance would not have affected the outcome would serve no purpose whatsoever.
21. The minutes of the meeting reveal that before the votes were cast on the motion the meeting was informed that no invitations had been sent to anyone to submit quotations; remarks had been made that it was good governance to obtain at least three quotations and that in future quotations should be obtained; there was a motion for the appointment of CBRE to be for a period of three months pending the outcome of an invitation for quotations; CBRE informed that the company would not accept an appointment of three months; the generally good reputation of CBRE was not in dispute.
22. The resolution was passed by a majority vote of 57,176 (79.63%) against a minority vote of 14,628 (20.37%).
23. It was the submission of the MC that the application for invalidation must fail because the Applicant had not shown how he had been prejudicially affected by the breach and how compliance with the provisions of the Act would have resulted in a failure to pass the resolution. At the arbitration hearing Teddy Khong, the representative of CBRE testified that the two employees of CBRE who were members of the council did not participate in the voting for the appointment of CBRE as MA. This was because Ms Eva Schulten-Baumer, an employee of UIRE was the only representative of UIRE who was authorised to cast all of UIRE's share value (aggregate of 54,685 which consists of 48,599 share value in the commercial block and 6,086 share value in the Heritage Building).
24. It is the finding of the Board that there was in this case a breach of the provisions of the Act viz S 60 of the Act when the resolution appointing CBRE as MA was passed. This was because two council members who were representatives of UIRE and who were also employees of CBRE had a pecuniary interest in the motion to appoint CBRE as MA had not declared their interest. No prejudice was caused by the breach. Inter alia the two council members did not participate in the voting and there is also no evidence

compliance would have resulted in the motion being defeated. It was in fact clear that compliance would not have affected the result of the voting.

25. The attention of the Board was also drawn to the fact that at the 5<sup>th</sup> AGM on the 01/10/14 the meeting had passed two resolutions viz to approve the appointment of a managing agent as recommended by the management council and for the management council to determine what powers, duties and functions should be delegated to the managing agent. In view of the fact that the incoming management council has been empowered to appoint a managing agent any invalidation of the resolution to appoint CBRE as managing agent at the 4<sup>th</sup> AGM would be redundant and superfluous once an appointment is made by the management council in accordance with the resolution passed at the 5<sup>th</sup> AGM.
26. The Applicant has also referred to S 112 of the Act in support of his application for Order No 1. Under S 112 of the Act the Board, pursuant to an application by a subsidiary proprietor, can when it is satisfied that it is in the interests of all the subsidiary proprietors to do so, order the management corporation to appoint a managing agent. It is clear that the provision is applicable when no managing agent has been appointed under S 66 of the Act. Other than the fact no application had ever been filed for an order to be made under this section of the Act there is no evidence or submissions as to how S 112 is relevant to the application for the order sought.
27. In addition to the above there were submissions on the fact that no quotations had been invited/asked for before the meeting voted on the motion to appoint CBRE as the MA (there is no provision in the Act that requires that quotations be invited from other interested parties before a management corporation can vote on a motion to appoint a managing agent); allegations that House Rules were not properly enforced by the MA. Yau was unhappy that tenants in the commercial block were using facilities on the common property and unhappy with the manner the MA was managing the estate. The MC did not agree with his views. The Board was not satisfied that these were in any way relevant to the application.

***Order No 2: To seek an order that the respondent be directed to fix the biometric gate at the BBQ area and to build a perimeter fence along the sides of the biometric gate within two weeks from the date of the order and to ensure that commercial employees from the units tenanted out by UIRE do not freely cross over and use the facilities***

28. It can be noted that in the above, the Applicant is seeking for orders against the MC to repair a gate and to build a fence.

29. The gate is located near the exit of the commercial block at the pond area and it is 0.5 metres high. It is the case for the Applicant that the order should be made because the MC has in this case breached its responsibilities.
30. According to Teddy Khong (R4A) the gate was erected by the developer and has been there since the estate was handed over to the MC by the developer. It is not clear what the intention of the developer was when the gate was erected. A query had been made to the developer as to the purpose of the gate and the reply received was not helpful. It was built "*in accordance with as approved plans*". It is 0.5 metres high and cannot cordon off the common facilities at the residential blocks from the commercial blocks.
31. It is the case for Yau that the reason for the gate is to ensure that only those who are authorized shall be allowed to have access to the residential areas.
32. There was nothing in the Applicant's case as to what was wrong with the gate that needs fixing. (In the minutes of the EOGM on 04/01/12 Yau had said that "*the low gate that segregated the commercial block from the residence block posed a security issue*" It would appear that he was asking for a replacement of the gate. *He expressed strongly that office tenants should not be entitled to use the facilities.*)
33. It was the evidence of Teddy Khong that the gate at the BBQ area never gave any trouble because it was hardly ever used. There was a period of time, when because biometric gates at other locations in the estate were faulty, some components from the gate at the BBQ area were taken out and used to fix the faulty gates. The components taken out have since been put back into the gate at the BBQ area and it is functioning as it is supposed to.
34. There is no evidence that the gate is faulty or that it is not functioning in the manner that it is supposed to.
35. With regard to the application for the installation of a perimeter fence, it must be noted that this must be considered as an improvement and/or an alteration to the common property. It is relevant to note that under S 29(1)(d) of the Act the MC is required to install and/or provide additional facilities and/or make improvements to common property when directed by a special resolution. It is not in dispute that the MC has not in this case been directed by a special resolution to install such a fence.
36. Under S 111 of the Act a Board can where "*...the management corporation... (a) has unreasonably refused to consent to a proposal by a subsidiary proprietor to effect alterations to the common property or (b) has unreasonably refused to authorise under S 37(4) any improvement which affects the*



*appearance of any building...make an order that the management corporation consents to the proposal.*

37. It is clear that under S 111 the Board can make an order only after the management corporation has unreasonably refused to consent to a proposal by a subsidiary proprietor to effect an alteration to the common property. There is no evidence that Yau had, before the filing of the application in this case made any proposal for the installation of a perimeter fence. The MC has submitted that at the 5<sup>th</sup> AGM on the 01/10/14, Yau *submitted a resolution for the construction of a perimeter fence*. The minutes of the meeting reveal that the motion was defeated by a vote of 4,240 share value (6.86%) for the motion and 57,547 share value (93.14%) against.
38. Considering that the proposal had been considered and rejected at a general meeting of the MC, the Board cannot find that that there has been any unreasonable refusal to consent.
39. In addition to the above there were submissions on owners of residential lots being not agreeable to the sharing of common property; the hand book for commercial owners were not distributed to the owners of the residential units until October 2013; the extent of usage of the facilities by employees in the commercial units was not known to the subsidiary proprietors in the residential block. The Board was not satisfied that these were in any way relevant to the application for the order sought.

***Order No 3: To seek an order that directs the respondent to provide an explanation for failure to adhere to the Second Schedule of BMSMA. Regulations 3 and 4***

40. It will be in order to note that whilst the Board has powers to make orders with regard to the various matters set out in the Act, there is no provision in the Act that empowers the Board to make an order for anyone to provide an explanation for an act done or not done. Where the Act requires an act to be done and it is not done, the Board will make an order for the act to be done. Where an act prohibited by the Act has been done, the Board will order the wrongdoer to do the necessary to comply with the Act.
41. In his Opening Statement and Applicant's Submission (A-1), it was on behalf of Yau submitted *The Applicant shall rely on S 113 of the BMSMA for an order to supply information or documents and for breach of Regulations 3 and 4 of the Second Schedule of the BMSMA. The Applicant shall also rely on S 60(7) wherein declarations of interests are supposed to be minuted but for the past 4 years this was not done.*

42. Under S 113 of the Act the Board can, where the management corporation has wrongfully withheld from an applicant any information or failed to make available for inspection records/documents that the applicant is entitled to receive or inspect, make an order for the management corporation to supply or make available the information, records or documents. S 47 of the Act identifies the information, records, and documents that an applicant is entitled to receive/inspect and the process with regard to the mode of application and provision of the information/records/documents. Yau referred to applications made for the commercial owner's handbook to be made available to him. His requests were initially rejected but eventually the handbook was made available. Other than this there is no evidence that Yau had made an application under S 47 of the Act and that the MC had wrongfully withheld or failed to make available any information, records or documents.
43. It was also submitted on behalf of Yau that he would also *rely on S60(7)* of the Act in support of his application for the order sought viz the relationship between the members of the council who were CBRE employees were not minuted anywhere. The Board has dealt with the non-declaration of the CBRE employees in the council when the meeting was voting on the appointment of CBRE at the 4<sup>th</sup> AGM. Other than this it is not clear how S 60 (7) of the Act is relevant to an application for Order No 3.
44. Regulation 3 of the Second Schedule of the Act provides for the keeping of minutes of council meetings and general meetings and Regulation 4 provides for the giving of notice of meetings of the council. Regulation 3 requires that the minutes be displayed on a notice board or if there is no notice board for a copy of the minutes to be given to the subsidiary proprietors. It is not Yau's case that such minutes are not kept or that notices have not been given. It is his case that only recently, after he brought up the issue with MC that minutes of council meetings were put up on the notice board and that there were errors in the minutes. It was the evidence of Teddy Khong that at all times Regulations 3 and 4 of the Second Schedule of the Act have been complied with. With regard to errors in the minutes they were corrected before the final set of the minutes were published.
45. There is no evidence that the MC had not adhered to Regulations 3 and 4 of the Second Schedule of the Act.
46. In addition to the submissions referred in the above there were submissions that the secretary should be removed because she had not minuted declarations of interest; the nature of a management council (likened to a board of directors in a company); that it was not right that UIRE who owned 81 office and retail units in the estate and held an aggregate of 54,685 shares (which consists of 48,599 shares in the commercial block and 6,086 shares in the

House of Tan Yeok Nee (Heritage Building)) i.e. 54.685 % of the total share value had three nominees in the council (the MC pointed out that the number was less than what was allowed under the Act (S53(8) of the Act). The Board did not consider these to be relevant to the application for the order sought.

47. In view of our findings, the applications for Orders 1, 2 and 3 are dismissed. We will hear parties on costs.

Dated this 12<sup>th</sup> day of December 2014

**MR FRANCIS GEORGE REMEDIOS**  
Deputy President

**MR CHAN KIM MUN**  
Member

**MS HAIRANI SABAN HARDJOE**  
Member