

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

STB No. 24 of 2015

In the matter of an application under **Section 101**
of the Building Maintenance and Strata
Management Act in respect of the development
known as **Solaris Residences** (MCST Plan No.
3641)

Between

Loh Mary / Tan Kar Keong

... Applicants

And

1. The MCST Plan No. 3641
2. Gilbert Koh Chin Wang
3. Beverly Koh Jane Wy

(formerly known as Poon Ee Loo (Pan Yiru))

... Respondents

Coram: Mr. Alfonso Ang (President)
Ms. Lee Lay See (Member)
Mr. Tan Kian Hoon (Member)

Counsels:

- i) Mr. Jeremy Nonis/ Mr. Alfred Lim
(Quahe Woo & Palmer LLC) for the Applicants
- ii) Ms. Vicki Loh/ Ms. Lau Yoke Mun
(Kennedys Legal Solutions) for the 1st Respondent
- iii) Mr. Gilbert Koh Chin Wang (in person)
- iv) Ms. Beverly Koh Jane Wy (formerly known as Poon Ee Loo
(Pan Yiru)) (in person)

GROUNDS OF DECISION (ON COSTS)

BACKGROUND

1. On 19 May 2015, the Applicants filed an application for an order by a Strata Titles Board (the “Board”) under a Form 8 application, against:-
 - (a) The 1st Respondent, the MCST of Solaris Residences, for the alleged failure to take any steps to enforce the by-laws and/or directions made by the MCST; and
 - (b) The 2nd and 3rd Respondents for the alleged failure to comply with the directions of the MCST.
2. The 2nd and 3rd Respondents acted in person. The 2nd Respondent is an in-house legal counsel whilst the 3rd Respondent is an advocate and solicitor of the Supreme Court and practices law with a law firm. The 3rd Respondent did not contest the matter through her firm but in her individual capacity. They tendered a joint submission on 17 June 2015 and the MCST tendered its submission on 19 June 2015 in respect of the Applicants’ Form 8 application.

Mediation

3. Where a Board has been constituted in respect of any dispute or matter to which it has jurisdiction under the Building Maintenance and Strata Management Act (Cap 30C) (the “Act”), it shall endeavour to mediate all matters that are in dispute and to bring about an agreement between the parties on those matters, pursuant to Section 92(1)(a) of the Act. Accordingly, the parties attended a total of three mediation sessions before the Board on 18 August 2015, 22 September 2015 and 29 September 2015.
4. At the first mediation on 18 August 2015, the 2nd and 3rd Respondents objected to the Applicants then solicitor (M/s Tan Rajah & Cheah) from acting for the Applicants as

they had previously advised the 2nd and 3rd Respondents on issues related to the matters arising out of the Applicants' Form 8 application. Consequently, the Board adjourned the mediation session in order for the Applicants' solicitor to consider the objection and to engage new solicitors, if required. M/s Tan Rajah & Cheah discharged themselves from acting and M/s Quahe Woo and Palmer LLC acted in their place.

5. At the second mediation on 22 September 2015, parties were unable to settle the dispute. Amongst other orders given by the Board, the Board also ordered for parties to attend another mediation and for parties to attempt to resolve the matter at the next mediation.
6. At the third mediation on 29 September 2015, parties were still unable to settle the matter. As a result, the Board gave further directions to hear parties, arbitrate the matter and render a decision and make an order, pursuant to Section 92(1)(b) of the Act. The Board fixed the matter for a two-day arbitral hearing on 3 and 4 November 2015 and directed parties to submit and exchange their affidavits of evidence-in-chief ("AEIC") beforehand by 15 October 2015.

Arbitral hearing before the Board

7. On the first day of the hearing on 3 November 2015, the Applicants' solicitors requested for an adjournment and leave to amend the application. Objections were raised by all the Respondents regarding the oral application that was made at the day of the hearing, more so when affidavits of evidence-in-chiefs had been filed and they were ready to proceed with the hearing. The Board directed the Applicants to file their interlocutory application to amend their application by way of Form 11 and to do so by 17 November 2015 and the hearing dates were vacated. The Board reserved costs of the adjournment to the Respondents.

8. The Applicants' solicitors filed their interlocutory application to amend their application by way of Form 11 on 19 November 2015 and the application was heard on 15 January 2016 allowing the application to amend. Costs of the application and consequential amendments were awarded to the Respondents.
9. On 15 February 2016 the Board gave directions for the hearing of the amended application and fixed the case for hearing on 25 and 26 April 2016. Leave was also given to the Respondents to file supplementary affidavits and submissions to address issues that were raised as a result of the amendments by 7 March 2016.
10. On 1 March 2016, the Applicants withdrew their entire application of STB 24 of 2015.

Costs ordered in favour of the Respondents

11. The Board reserved its decision on the amount of costs in respect of the following items:-
 - A. Applicants' adjournment of the arbitral hearing on 3 and 4 November 2015;
 - B. Applicants' interlocutory application to amend their initial Form 8 application;
and
 - C. Applicants' withdrawal of their application and the matter being discontinued.
12. The Board provides hereto the grounds of their decision for awarding costs in favour of the Respondents in respect of the abovementioned items.

BOARD'S DECISION ON COSTS

A. *Adjournment of hearing*

13. On the first day of the hearing on 3 November 2015, the Applicants' solicitors raised different issues from that of their prayers in the Applicants' AEIC. The Applicants had not provided prior warning to the Board and/or the Respondents of their intention to amend their prayers.
14. Subsequently, the Applicants' solicitors sought leave of the Board to amend the Applicants' initial Form 8 application. The hearing on 3 November 2015 was therefore adjourned to allow the Applicants to file their interlocutory application to amend their Form 8 application.
15. The Board is of the view that after parties had submitted and exchanged their AEICs on 15 October 2015, the Applicants had more than sufficient time to write to the Board and the Respondents to inform them of their intention to amend their initial application, and not attempt to amend their prayers by oral submission on the hearing of 3 November 2015.

B. Amendment of application

16. At the 15 February 2016 hearing, the Board had already ordered costs of the interlocutory application to amend the Applicants' application and consequential amendments in favour of the Respondents.
17. Whenever a party amends his pleadings, in this case, the Applicants amending their initial Form 8 application, there are costs incurred by the amendment and "costs thrown away" by reasons of the amendment.
18. In relation to 'costs thrown away', the author of Singapore Court Practice 2009 states at paragraph 59/1/14:

Costs thrown away refers to the specific situation in which costs have been wasted by a party...

The order is also appropriate when costs have been occasioned by an amendment (see State of Perak v PRALMM Muthukaruppan Chettiar [1938] MLJ 247) or adjournment... The important question of exactly what costs are recoverable as costs thrown away by reason of an adjournment (sometimes referred to as ‘costs of the day’) was considered in Choo Ah Kiat v Ang Kim Hock [1983] 2 MLJ xciv, which concerned the adjournment of a trial at the behest of the plaintiff. The deputy registrar accepted the principle that ‘costs thrown away’ by an adjournment refer to ‘costs that have been incurred and which must be incurred over again’, and therefore have been thrown away in consequence of the adjournment.

19. Upon the Board’s leave for the Applicants to amend their application, the costs incurred from the Respondents’ preparation of their initial AEICs would have been “wasted” or “thrown away”. The Respondents would also have to prepare and file their supplementary AEICs in response to the Applicants’ amended application.
20. Accordingly, the Board is of the view that insofar as the Applicants had amended their initial Form 8 application, the Respondents are entitled to wasted costs and costs consequential to the amended application.

C. Applicants’ withdrawal of their application and the matter being discontinued

21. On 1 March 2016, the Applicants withdrew their entire application of STB 24 of 2015. This was after directions were given by the Board for the hearing of the amended application and the filing of supplementary affidavits and submissions. Given the Applicants’ decision to withdraw the application after the AEIC stage, it was clear to the Board that the Respondents are entitled to the costs of the whole application. The only issue before the Board is the amount of costs to be awarded.

Issue on quantum

22. The Board will address the following issues that were raised by all parties namely:

- (a) The Applicants' submission that no costs should be made, or in the alternative, a cost of not more than \$1,500.00 as an award of costs other than minimal would lead to further friction straining the relationship amongst parties.
- (b) The 1st Respondent's submission that costs be awarded on an indemnity basis. They contended that solicitor and client costs was in the region of \$45,000.00 with disbursements of \$1,434.50 and it would be unfair for all the subsidiary proprietors of this small development to bear the costs as a result of this case which was unduly prosecuted by the Applicants.
- (c) The Applicants' contention that no costs ought to be awarded to the 2nd and 3rd Respondents notwithstanding that they are advocates and solicitors as they had acted in person. The 2nd and 3rd Respondents asked for a sum in the total of \$5,134.36; this amount represents the loss that they will incur in having to contribute towards the maintenance fund in connection with the proceedings for this application.

DECISION

23. The Board's power to award costs arises from Section 117(1) of the Act, where the Board has wide discretion to award costs as the Board thinks fit.

Applicants' submission of no costs or minimal costs

24. The Board endeavours at all the mediations to facilitate a settlement amongst disputing parties. This role is crucial as the Board hopes that compromised

settlements through the efforts of the parties would foster good relationships amongst people staying in close proximity. Settlement leads to the prospect of maximum continuity of friendship and minimises rancour.

25. In this case, as in all other cases held before any of the boards, members of this Board played an active facilitative role in bridging the parties' differences. This case was prolonged unnecessarily primarily as a result of the Applicants. To some extent, the 2nd and 3rd Respondents had been aware or ought to be aware that the Applicants intended to disqualify M/s Tan Rajah & Cheah and should have raised this issue earlier. Therefore, they are also partly responsible for the delay of this case.
26. The Applicants had many opportunities to reach some form of compromise but did not do so. They had not settled the matter despite the mediations and adjourned the hearing of the matter on the first day that it was fixed for hearing when the Respondents were ready to proceed. The Applicants' amendments to their application resulted in the Respondents having to file supplementary affidavits and submissions, thereby prolonging the matter unnecessarily. It is ironic that the Applicants should submit that they should not pay any costs, or in the alternative, pay only nominal costs so that parties can carry on with their lives and that an award of costs against them would cause strain to their future relationship.

1st Respondent's costs

27. The Board considered the argument that the 1st Respondent should be awarded full costs on indemnity basis as the costs paid by the MSCT to their solicitors amounted to \$45,000.00 with disbursements of \$1,434.50 and it would penalise the other subsidiary proprietors who would have to contribute to the costs of the Applicants' pursuit of the matter.
28. We do not have sufficient facts before us to justify that the Applicants be penalised with costs on an indemnity basis. It behooved on the MSCT to on their part manage legal costs more so when it has a small number of proprietors who would contribute

to such costs. The issues before the Board were not complex. Accordingly, costs would be awarded on the standard basis that is usually awarded in cases before the boards.

Costs to the 2nd and 3rd Respondents

29. The 2nd and 3rd Respondents as litigants in persons are clearly entitled to reasonable compensation for their time and disbursements incurred. Where a litigant is a solicitor, he is entitled upon taxation of his costs to the same costs as if he had employed a solicitor except to such charges as are rendered unnecessary by his acting in person (*Malkinson v Trim* [2002] EWCA Civ 1273). The Board in awarding the quantum bore in mind that the 2nd Respondent is an in-house legal counsel and that the 3rd Respondent had not defended the case through her law firm in which she practiced. In short, both acted in persons and it could not be said that any law firm which they may be associated with was involved.
30. The Board will award costs to the 2nd and 3rd Respondents based on what it determines to be reasonable, disregarding the fact that the 3rd Respondent is an advocate and solicitor.
31. The Board accordingly orders that the Applicants pay costs as follows:-
- i) \$12,000.00, plus disbursements of \$1,434.50, to the 1st Respondent;
 - ii) \$4,000.00 to the 2nd and 3rd Respondents; and
 - iii) Applicants to pay Strata Titles Boards fees amounting to \$1,350.00 consisting of the following fees:
 - (a) direction hearing on 29 September 2015 : \$150;
 - (b) hearing on 3 November 2015 (adjourned) : \$300;

- (c) interlocutory hearing on 15 January 2016 : \$150;
- (d) direction hearing on 15 February 2016 : \$150;
- (e) hearing (on costs) on 11 April 2016 : \$300; and
- (f) delivery of judgment on 10 May 2016 : \$300.

Dated this 10th day of May 2016.

MR ALFONSO ANG
President

MS LEE LAY SEE
Member

MR TAN KIAN HOON
Member