

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 32 of 2016

In the matter of an application under **Sections 101(1)(c), 105 and 106** of the Building Maintenance and Strata Management Act in respect of the development known as **Alpha Industrial Building** (MCST Plan No. 3293)

Between

1. Technocrete Pte Ltd
2. Tan Soon Hoe
3. Teo Kian Soon, Peter
4. Srihari Fire N Safety Engineering Pte. Ltd.
5. Egner Robert Karl
6. Ocean Cool M & E Pte. Ltd.
7. Triton Marine Industry Pte Ltd
8. Golden Hung Ho Holdings Pte Ltd

... Applicants

And

The MCST Plan No. 3293

... Respondent

Coram: Mr. Seng Kwang Boon (Deputy President)
Mr. Leo Cheng Suan (Member)
Mr. Richard Tan Ming Kirk (Member)

Counsel: i) Mr Toh Kok Seng/ Mr Daniel Chen
(M/s Lee & Lee for the Applicants)

ii) Mr Alfred Lim/ Mr Keith Lim/ Ms Jaime Lye
(M/s Quahe Woo & Palmer LLC for the Respondent)

GROUNDS OF DECISION

BACKGROUND FACTS

1. The eight Applicants are subsidiary proprietors of a total of 22 units in the development known as Alpha Industrial Building. The Temporary Occupation Permit was issued on 30 November 2004.
2. The Respondent, MCST Plan No. 3293, is the Management Corporation of the said development, and formed on 18 November 2010.
3. At the 1st Annual General Meeting (the “1st AGM”) of the Management Corporation held on 29 July 2011, resolutions were passed for the Additional by-law 10 (“Use of Common Property By-Law”) and the Additional By-Law 8 (“Use of Common Area for purpose of running a canteen By-Law”).
4. Additional By-Law 10 provides as follows:
“Any usage of common areas for placing or dumping of items/rubbish along the frontage that exceeds its length of 1.2m or 4ft will be charged the entire usage area at a minimum charge of \$200.00 per month.
Waste Material shall be removed at cost and cleared at weekends by the Management Corporation.
Explanation: Use of Common area for placing items \$200.00 per month”
5. Additional By-Law 8 provides as follows:
“Usage of common areas for purpose of running a canteen will be pegged at the current rental agreement pro-rated based on floor area at \$3.50 cents per sq ft and after the current rental agreement expires, the canteen operator

shall pay the Management Corporation the rental of the common area outside of their actual canteen ownership floor area at a rate of \$3.50 cents of common area per sq ft for the use of this common area.

Explanation: Use of Common Area for running a canteen is \$3.50 cents per sq ft"

6. Inexplicably, the two Additional By-Laws were passed, both under:
- (a) Paragraph 6.0 of agenda to the Notice of AGM (titled 'TO PASS A SPECIAL RESOLUTION ON THE BY-LAWS OF THE MANAGEMENT CORPORATION'); and
 - (b) Paragraph 7.0 of the agenda (titled 'EXCLUSIVE USE OF THE COMMON AREAS BY-LAWS').

In addition, both Additional By-Laws were also duly lodged with the Building and Construction Authority.

THE APPLICANTS' CASE

7. The Applicants' case is that the Additional By-Laws were not properly made for the following reasons:
- (a) They were passed only as ordinary resolutions, when they can only be passed as special resolutions, as those by-laws were made under Section 33 of the Building Maintenance and Strata Management Act, Chapter 30C ("BMSMA") which is for exclusive use by-laws.

To support this, the Applicants cited paragraph 7.0 of the Notice and Agenda for the 1st AGM which reads as follows:

“ 7.0 Exclusive Use of the Common Areas By-Laws

The Management Corporation hereby by ordinary resolution pass a resolution on the exclusive use of common property for a subsidiary proprietor, tenant or occupier of a lot to use for a period of 1 year part of the common property in receipt of payment of money for the following purposes:

.....

7.3 (additional by-law 10)

7.4 (additional by-law 8)”

(b) These two Additional By-Laws effectively impose charges/penalties/fines on the subsidiary proprietors which the Management Corporation has no power to do so.

(c) Under Section 33 of the BMSMA, the written consent of the subsidiary proprietor of the lot concerned needs to be obtained. There were no written consents given by any of the Applicants. To support this contention, they referred to paragraphs 7.0, 7.3 and 7.4 of the Notice and Agenda of the 1st AGM:

7.0 *“Exclusive Use of the Common Areas By-Laws”*

7.3 *“Use of Common Property for placing items on Frontage of lots”*

7.4 *“Use of Common Property for the purpose of running a canteen”*

The Applicants further submitted that the phrasings of the two by-laws are consistent with *“exclusive use by-laws”*.

- (d) The two Additional By-Laws are unclear and vague and hence they are not made in the interest of subsidiary proprietors, as they cause confusion and are difficult to adhere to.

THE RESPONDENT'S CASE

- 8. The Respondent's case is that the two Additional By-Laws were passed validly at a duly convened AGM for the following reasons:
 - (a) They were passed by a special resolution and under Section 32 of the BMSMA for the purpose of controlling and managing the use or enjoyment of the parcel comprised in the strata title plan:
 - (i) 21 days notice was given as required.
 - (ii) Paragraph 6.0 of the Notice and Agenda of the 1st AGM stated as follows: "To pass a Special Resolution on the By-laws of the Management Corporation"
 - (iii) In the Appendix II of the Notice, the two by-laws were enclosed.
 - (iv) The ballot on a poll was 49,623 share values for the resolution and none against it.
 - (b) They were made under Section 32 and not under Section 33 of the BMSMA and therefore no consent of the subsidiary proprietor concerned was needed.

AGREED FACTS

- 9. The parties have prepared an Agreed Statement of Facts (AF1).

10. A summary of the invoices issued by the Respondent was also agreed and admitted as AF2.

AGREED DOCUMENTS

11. The parties have also agreed (as to the authenticity but not the interpretation of the content) on the following documents:
 - (a) Notice of 1st AGM
 - (b) Minute of 1st AGM
 - (c) Invoices rendered by Respondent

THE BOARD'S FINDING

12. The Board noted that the Applicants and the Respondent had agreed that only the Agreed Facts and the Agreed Documents were needed to determine the issue of the validity of the 2 By-Laws, and there was no need to adduce further evidence from their witnesses, unless the Board required them subsequently. After reviewing the Agreed Facts and the Agreed Documents, the Board finds that they were sufficient for the Board to come to a decision on the application and on the validity of the 2 Additional By-Laws..
13. The Board also noted that the Applicants did not wish to pursue the issue concerning the lack of 21 days' notice, and agreed that the said resolutions were passed with 100% for, and none against, the resolutions.
14. Except for the use of the words "*ordinary resolution*" used in paragraph 7.0 of the Notice and Agenda of the 1st AGM, there was nothing else to suggest that

the resolutions were passed by an ordinary resolution. In fact, there were other paragraphs in the Notice and Agenda of the 1st AGM to suggest otherwise. On the first page of the Notice, it was stated "... to pass a "*Special Resolution*" giving 21 days' notice for the By-laws of the Management Corporation No. 3293..."

15. The Board finds that sufficient notice had been given to the subsidiary proprietors that the two Additional By-Laws were to be passed by a special resolution at the 1st AGM and they were indeed passed by a special resolution under paragraph 6.0 of the meeting agenda, and the procedural requirements were met.
16. It is not disputed that under Section 33 of the BMSMA for exclusive use by-laws, written consents of the subsidiary proprietors of the lot concerned are necessary, and there were none given by the Applicants. This will invalidate the two Additional By-Laws if they were only made under the said section 33.
17. However, the Board finds that on the Agreed Facts and Documents, the two Additional By-Laws were passed both under paragraphs 6.0 and 7.0 of the meeting agenda. Therefore, while they may fail under section 33 of the BMSMA as exclusive use by-laws (contemplated by paragraph 7.0 of the meeting agenda), they were equally capable of being passed without any written consent under Section 32 of the BMSMA, for the purpose of controlling and monitoring the use or enjoyment of the parcel comprised in the strata plan, including such other matters as appropriate to the type of strata scheme concerned (under paragraph 6.0 of the meeting agenda).

18. The next point to consider is that as the two Additional By-Laws were properly made by way of a special resolution and under Section 32 of the BMSMA where no consents are required, can they still be invalidated because they are unclear, vague and are effectively imposing a penalty on the subsidiary proprietors?

ADDITIONAL BY-LAW 8

19. With respect to Additional By-Law 8, the Board is of the view that it is clear and unambiguous, and there is no reason why it should be invalid or repealed.
20. The Board finds that the Additional By-Law 8 is valid and enforceable.

ADDITIONAL BY-LAW 10

21. With regards to Additional By-Law 10, the Board finds that it is unclear, badly drafted, as well as punitive.
22. The invoices rendered by the Respondent pursuant to Additional By-Law 10 state that the fees charged were for "*violation*". The Respondent submitted that even if the "*violation*" was for half an hour, the full charge of \$200 would be imposed.
23. Further, it is unclear for Additional By-Law 10 whether the charges is for a one-time use of the common property, or on a monthly basis. The Respondent has submitted that it is on a "*per use*" basis.

24. The Additional By-Law 10 is also unclear because, as pointed out by the Applicants – is the usable space a rectangle of 1.2m/4ft wide and the entire length of the unit frontage or some other area, or in fact as submitted by the Respondent, there is no free usable space at all. Any spaces used in front of the Applicants' units are chargeable. Further, if more than 1.2 m were used, would the fees be \$400? This is not clear under the Additional By-Law 10, and prejudicial to the subsidiary proprietors who "*violated*" this Additional By-Law 10.
25. In addition, and more importantly so, Additional By-Law 10 provides for a **minimum** charge but no maximum charge. It is therefore discretionary and the Management Corporation can in theory charge whatever amount they wanted. The Additional By-Law 10 can therefore be capable of being interpreted as a penalty provision.
26. The Board is therefore of the view that, as the Additional By-Law 10 is unclear in its wordings and capable of being misinterpreted and abused, it is not made in the interest of all subsidiary proprietors in the use and enjoyment of their lots or the common property.
27. The Board therefore finds Additional By-Law 10 to be invalid and orders that Additional By-Law 10 be repealed. All sums paid by the Applicants under Additional By-law 10 are to be refunded.
28. The Board will hear parties on costs.

Dated this 3rd day of November 2016

MR SENG KWANG BOON
Deputy President

MR LEO CHENG SUAN
Member

MR RICHARD TAN MING KIRK
Member