

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT**

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

STB No. 41 of 2018

In the matter of an application under **section 103** of the Building Maintenance and Strata Management Act in respect of the development known as **WING YIP BUILDING** (MCST No. 246)

**Between**

Hiap Seng Press (Pte) Ltd

... Applicant(s)

**And**

The MCST Plan No. 246

... Respondent(s)

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**GROUNDS OF DECISION**

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... Respondent(s)

10 August 2018

**3 September 2018**

Coram:	Mr Remedios F. G.	(Deputy President)
	Mr Raymond Lye	(Member)
	Mr Tony Tay	(Member)

1. This is an application by a subsidiary proprietor of the development known as Wing Yip Building against the management corporation for the following order to be made by the Board:

*An order to invalidate resolutions passed at the Respondents Annual General Meetings since 2008 (ie from the Respondent's 37 AGM held on 31 April 2008) which imposed monthly maintenance charges on the Applicant.*

**Background:**

2. The development is a five (5) storied building with five units. Each of the five units occupies one entire floor of the building. The five units are owned by three subsidiary proprietors. The top three floors are owned by one subsidiary proprietor and the ground and second floors are owned by two different subsidiary proprietors.

3. Hiap Seng Press (Pte) Ltd (the applicant) is the owner of the ground floor. Kai Lim Builders Merchants Pte Ltd (Kai Lim) is the owner of the top three floors and Yoon Loong Enterprise Pte Ltd is the owner of the second floor.
4. In Section E of the application form (Form 8) the applicant informed that every 6 years or so, a letter of demand would be issued by the solicitors of the respondent demanding for payment of arrears of maintenance fees (\$550 per month). There would be a very short deadline for payment and a threat of criminal sanctions under section 40(1) of the Building Maintenance and Strata Management Act Cap 30C (the Act) and a threat of legal proceedings. Proceedings have since been commenced in the State Courts by the respondent in DC Suit No 3197 of 2014.
5. The applicant alleges that except for the extraordinary general meeting held on 28 September 2012 the only attendees at all general meetings of the respondent from 2007 to 2013 were Kai Lim and the managing agent. On the basis of moneys owing to the respondent, the applicant contends that at the time of the annual general meeting in 2009 there were subsidiary proprietors who were in arrears of maintenance contributions and by virtue of paragraph 2 of the First Schedule of the Act, they were prohibited from voting at the meeting. Because Kai Lim (other than the managing agent) was the only attendee at the meeting a vote in connection with the passing of resolutions in connection with maintenance contributions would be invalid if Kai Lim was at that point of time owing contributions due to the respondent.
6. The respondent objected to the application and informed that since 1 April 2007 the applicant has refused to pay maintenance contributions. The amount of the monthly maintenance contribution viz \$550 was determined at annual general meetings and extra ordinary general meetings in 2007, 2008, 2009, 2010, 2011, 2012, and 2013. The agendas for the meetings included the determination of maintenance contributions payable by registered proprietors and when there was no objection to the agenda by any of the subsidiary proprietors in attendance a vote was not taken and a resolution affirming the agenda was deemed passed. The minutes of the meetings were sent to the applicant and all subsidiary proprietors. Before April 2007 the applicant was in arrears of maintenance contributions for the period April 2002 to March 2007. A demand was made via lawyers for payment of the arrears and payment was made on or about 17 May 2007 after the respondent commenced legal proceedings (MC 9114/2007) in the State Courts. After the payment, the applicant continued to default in making maintenance contributions and letters of demand for payment were sent by the respondent. On 15 Dec 2008 and 29 Aug 2014 the applicant acknowledged its debts. No payments were however made and legal proceedings for the outstanding amount were commenced in DC Suit 3197 of 2014.

7. It is not in dispute that all subsidiary proprietors including the applicant “...were owing arrears to the respondent for the period 2008 to 2013...” It is the case for the respondent that at the meetings between 2007 and 2013 no votes were taken as there were no objections to the agenda and the resolutions affirming the agenda were deemed passed. Accordingly, the resolutions could not be invalidated under section 103 of the Act on the ground that a subsidiary proprietor owing arrears had voted in favour of the resolution. In connection with arrears owed to the respondent, the respondent at paragraph 6 (page 15) of its Submission by the Respondent - Form 18A informed that between 2009 and 2012 the managing agent refused to act for the respondent due to non-cooperation by all the subsidiary proprietors including the applicant and Kai Lim and the maintenance arrears payable by all the subsidiary proprietors had ballooned.
8. Mediation was not successful and the dispute was fixed for an arbitration hearing and Written Submissions were filed.

**Applicant’s Submission:**

9. The applicant’s written submissions were in line with what was set out in Section E of Form 8. Additionally, the applicant referred to the respondent’s admission that no votes were taken at the meetings and submitted that on this admission alone the resolutions should be invalidated.
10. At paragraph 24 of its Written Submissions the applicant submitted:  
  
*In this case if Kai Lim was not allowed to vote, the maintenance resolutions would not have passed. Hiap Seng is now being sued in the DC Suit because of the maintenance resolutions. Surely Hiap Seng has suffered prejudice*
11. Accordingly, the submission is that if paragraph 2 of the First Schedule of the Act had been complied with the resolution in relation to the amount of the maintenance contribution would not have been passed and because it was passed via non-compliance of paragraph 2 of the First Schedule of the Act the applicant had, because it was sued in DC 3170 of 2014 suffered prejudice.

**Respondent’s Written Submissions:**

12. Under section 103 of the Act the Board has a discretion to invalidate resolutions that are passed in non-compliance of the Act. It will however not have a discretion when prejudice has been caused and compliance would have affected the result of the resolution. It was the submission of the respondent that in this case no prejudice was suffered by the applicant and compliance would not have affected the result.

13. It was also submitted that invalidation would be futile because this would result in the convening of another general meeting where the resolutions would be reinstated by the attending subsidiary proprietors who are now not in arrears. Invalidation would require that moneys collected be refunded with the MCST having no funds for maintenance.
14. There is a statutory requirement for subsidiary proprietors to pay maintenance contributions and any procedural defect in connection with the passing of the resolution in connection with the amount of contribution will not remove the statutory requirement. It was submitted that no prejudice was suffered by applicant and the passing of the resolution with regard to the amount of contribution...*is merely a formality to put the contribution sum payable down in writing*. The contribution (\$550 per month) was not unreasonable or excessive and it has not been raised since 2002.

**Decision:**

15. The applicant is in this case relying on section 103 of the Act for the Board to make the order that it has prayed for. Under section 103 a resolution passed at a meeting of a management corporation can be invalidated by the Board when the Board considers that provisions of the Act in relation to a meeting have not been complied with. It is not provided that the Board must invalidate the resolution when provisions of the Act have not been complied with. It is clear that a Board has been given a discretion to invalidate or not to invalidate when the provisions of the Act in connection with meetings have not been complied with. However, there is no discretion only when failure to comply has prejudicially affected another and compliance would have resulted in a failure to pass the resolution or affect the result of an election.
16. As noted earlier the applicant is applying for orders in connection with events that occurred ten (10) years ago and even though section 103 allows for a subsidiary proprietor to apply to invalidate any resolution in relation to a meeting of the management corporation, without defining how far back it applies, the Board is of the view that it cannot have been envisaged that it applies to a meeting held up to 10 years ago. Such applications can cause uncertainty and chaos in the management of strata properties, especially where the subsidiary proprietor has full knowledge of what he is unhappy with and could have applied under section 103 at the relevant time. Such a subsidiary proprietor can be said to have waived and/or acquiesced to the resolution complained of after such a period of time, and be guilty of laches/inordinate delay in taking the application 10 years too late.
17. There is also, in this case no dispute that the applicant has not paid and is in arrears of maintenance contributions since 2008 and under section 116 (d) of the Act it is within the power of the Board to dismiss the application and whilst it was the view of the Board that it would be in order to, in all of the circumstances of this case so dismiss the application, the Board considered that it would be appropriate that we should deal with the merits of the application.

18. It was the submission of the applicant that the Board did not have a discretion in this case and was obliged to invalidate the resolutions because there was non-compliance with the provisions of the Act when they were passed and the applicant had suffered prejudice when they were passed.
19. By virtue of sections 39(1) and 39(2) of the Act a management corporation is duty bound to determine the amounts that are reasonable and necessary for the purpose of meeting actual and expected liabilities incurred or to be incurred within a twelve months period and raise the amounts by way of contributions from the subsidiary proprietors. The amounts are to be determined *from time to time at a general meeting*. After the amounts have been determined it can be levied on the subsidiary proprietors by way of a notice in writing (section 40(1) of the Act) and the amount will be due and payable to the management corporation.
20. It is provided in section 40(8) of the Act that the contribution levied is deemed to be money payable under a contract for the provision of services and under section 40(10) of the Act it will be an offence that is punishable with a fine of \$10000 if a subsidiary proprietor fails to pay the contribution within 14 days of a written demand made under section 40(9) of the Act.
21. Sections 39(1) and 39(2) are as follows:

*39. — (1) The management corporation shall, from time to time at a general meeting, determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred within the period (not exceeding 12 months) specified in the determination in respect of—*

- (a) the regular maintenance and keeping in good and serviceable repair pursuant to section 29 of parts of the parcel being the common property, fixtures, fittings and other property (including movable property) held by or on behalf of the management corporation;*
- (b) the common expenses of the management corporation (except those in subsection (2)(a) to (d));*
- (c) the payment of insurance premiums; and*
- (d) all other liabilities incurred or to be incurred during that period by or on behalf of the management corporation in carrying out its powers, authorities, duties and functions under this Act other than liabilities referred to in subsection (2).*

*(2) The management corporation shall, also from time to time at a general meeting, determine the amounts which are reasonable and necessary to be raised by contributions for the purpose of meeting its actual or expected liabilities incurred or to be incurred in respect of—*

- (a) *painting or treating of any part of the common property which is a structure or other improvement for the preservation and appearance of the common property;*
- (b) *major repairs and improvements to, and maintenance of, the common property and boundary wall;*
- (c) *the renewal or replacement pursuant to section 29 of parts of the parcel being the common property, fixtures, fittings and other property (including movable property) held by or on behalf of the management corporation;*
- (d) *the acquisition of movable property;*
- (da) *any non-lot acquisition related expenses of the management corporation;*  
*and*
- (e) *such other liabilities expected to be incurred at a future time where the management corporation determines in a general meeting that the whole or part thereof should be met from its sinking fund.*

22. It is not in the two sub-sections prescribed how the management corporation is required to perform its duty to determine the amount of the contributions unlike other provisions in the Act where the manner as to how a power, duty or function is to be exercised or performed is prescribed *e.g.* under section 33 of the Act a management corporation can, make a by-law conferring upon a subsidiary proprietor the exclusive use and enjoyment or grant special privileges in respect of the whole or any part of the common property by way of, depending on the period of exclusive use and enjoyment, an ordinary, special or 90% resolution; and under section 29 (1)(d) of the Act a management corporation must install and provide additional facilities or make improvements to the common property when directed by a special resolution.

23. It is not in dispute that the subsidiary proprietors who attended the meetings were in arrears of maintenance contributions. Accordingly, they were, under paragraph 2 of the First Schedule of the Act, not entitled to vote.

24. In the minutes of the general meetings on 27 Mar 2007, 19 May 2010 and 25 April 2013 when the meeting was considering the contribution to the Management Fund it is recorded:

*It was determined that the contributions to the management fund be remained at \$550 per share value per month payable monthly on the first day of the month.*

25. At the general meetings on 21 April 2008, 28 April 2009, 10 May 2011, and 13 August 2012, the minutes recorded:

*It was determined that the contribution to the management fund be remained at \$550 per share value per month payable quarterly on the first day of the month of January, April, July and October.*

26. There is no record of any discussion, objections or of votes being taken and it will be in order to conclude that there was unanimity among all who were present that the amount of contribution to be levied from all subsidiary proprietors was \$550 per month per share value.
27. In *Si-Hoe Kok Chun and anor v Ramesh Ramchandani* [2006] SGHC 15 Andrew Ang J when dealing with an appeal from a decision made by the Strata Titles Board did not consider that it was improper for annual general meetings of a management corporation to be conducted in an informal manner and applied the following pronouncement of Lai Kew Chai J in *Jimat bin Awang v Lai Wee Ngen*[1995] 3 SLR (R) 496
- Generally, a company exercises any of its powers by means of resolutions in general meetings. It is also a well-entrenched common law principle that the unanimous and informal assent by all the members of a company in some other manner is as effective as a resolution passed at a general meeting even if the assent is given at different times: see Parker and Cooper Limited v Reading* [1926] CH 975, and even if otherwise a special or extraordinary resolution is required: see *Cane v Jones* [1981] 1 All ER 533
28. In this case no resolutions were passed when the respondent made its determinations in connection with the amount to be levied from subsidiary proprietors for the management fund. There was unanimity among all who were present that the amount of contribution to be levied from all subsidiary proprietors was \$550 per month per share value and there was no breach or non-compliance with any of the provisions of the Act when the determinations were made.
29. It is also the finding of the Board that even if there was non-compliance with the provisions of the Act when the determinations were made, there was no prejudice suffered by the applicant. The applicant referred to DC 3179 of 2014 and submitted that it was the passing of the resolutions in breach of the provisions of the Act that was the cause of the suit filed against it. It is the finding of the Board that it was not the passing of resolutions that led to the suit being filed against the applicant. As pointed out above it is a compulsory requirement under the Act for the management corporation at a general meeting to determine the amount that is reasonable and necessary to be raised by way of contributions for the management fund and after the amount has been determined it can be levied on the subsidiary proprietors by way of a notice in writing and the amount will be due and payable to the management corporation. It was, not the determination of the amount of the contribution but the failure on the part of the applicant to pay contributions levied under the Act that led to the suit filed against it.



30. The application is dismissed.

Dated this 3rd day of September 2018

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**MR REMEDIOS F. G.**  
President

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**MR RAYMOND LYE**  
Member

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**MR TONY TAY**  
Member

Mr Nichol Yeo (M/s JLC Advisors LLP) for the Applicant  
Ms Lim Poh Choo (M/s Alan Shankar & Lim LLC) for the Respondent