

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

STB No. 19 of 2021

In the matter of an application under **section 103** of the Building Maintenance and Strata Management Act in respect of the development known as **The Warren** (MCST No. 3001)

**Between**

1. Cheng Hiap Choon
2. Muthu Jagannath
3. Peter Chen Keng Or

... Applicants

**And**

The MCST 3001

... Respondent

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**GROUNDS OF DECISION**

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5 July 2021

**7 September 2021**

Coram:	Mr Raymond Lye	(Deputy President)
	Mr Richard Tan Ming Kirk	(Member)
	Mr Lim Gnee Kiang	(Member)

**INTRODUCTION**

1. Mr Cheng Hiap Choon, Mr Muthu Jagannath and Mr Peter Chen Keng Or (the “**Applicants**”) are the subsidiary proprietors (“**SPs**”), in the development known as The Warren.
2. The **Respondent** is the Management Corporation Strata Title Plan No. 3001 (the “**MCST**”).

3. The Applicants applied under section 103 of the Building Maintenance and Strata Management Act (the “BMSMA”) for four (4) orders in connection with the annual general meeting of the management corporation that was held on 30 January 2021. The annual general meeting was conducted via video and audio teleconference. Under section 103 of the BMSMA, resolutions passed and elections held at meetings of the management corporation may be invalidated by the Board when the Board considers that provisions of the BMSMA in relation to meetings of the management corporation have not been complied with. The Applicants are seeking the following orders:
- a Invalidate the resolution to re-nominate election candidates for the 16<sup>th</sup> Management Council of MCST 3001;
  - b Invalidate the election of council members of the 16<sup>th</sup> Management Council of MCST 3001 that were elected after being re-nominated;
  - c The Respondent to be liable, for the reimbursement of the application fees, the mediation fees, the hearing fees and any other legal fees related to the order and
  - d Reinstate the six candidates who were nominated in compliance to Section 53 BMSMA, as the legitimate elected council members of the 16<sup>th</sup> Management Council.

## **BACKGROUND**

4. The Warren comprises 699 lots. All the subsidiary proprietors only own one (1) unit each.
5. On 30<sup>th</sup> January 2021, the 16<sup>th</sup> Annual General Meeting (the “16<sup>th</sup> AGM”) was held. It was facilitated by the Managing Agent, Exceltec Property Management Pte Ltd, represented by Mr Eric Tan and chaired by Mr Aloysius Ng Joo Liang, Chairman of the then-incumbent 15<sup>th</sup> Management Council (the “15<sup>th</sup> MC”).
6. On 2<sup>nd</sup> January 2021, a Notice of Agenda for the 16<sup>th</sup> AGM to be held on 30 January 2021, from 1 pm to 5 pm, via virtual video and audio teleconference was circulated to the residents of The Warren. The agenda for the AGM included the following:
- “5.1 To nominate members of the 16<sup>th</sup> Management Council.*
  - 5.2 To determine number of members and thereafter, elect members of the 16<sup>th</sup> Management Council.”*

7. The 16<sup>th</sup> AGM commenced at about 1 pm on 30 January 2021 over the video-conferencing platform, Zoom. 106 SPs attended the AGM in person while another 185 SPs attended by proxy.
8. A 5-member panel consisting of Mr Aloysius Ng, Mr William Lim (Secretary of the 15<sup>th</sup> MC), Mr Calvin Ng (Treasurer of the 15<sup>th</sup> MC), Ms Wu Xiaowen (lawyer in attendance from Lexton Law Corporation) and Mr Eric Tan regulated the meeting. The panel was situated physically at the office of the managing agents at IMM.
9. Prior to the AGM, a nomination form from one (1) SP who owned one (1) lot, listing the names of nine (9) subsidiary proprietors as prospective council members (“**Nine (9) Written Nominees**”), was sent to the MCST.
10. The 1<sup>st</sup> Applicant said that it was wrong to use one (1) form to nominate nine (9) nominees on the grounds that the booklet ‘Strata Living in Singapore’ states that ‘*Ownership of one lot entitles you to nominate one person only*’.
11. At the 16<sup>th</sup> AGM, another six (6) candidates were nominated orally to run for elections, (“**Six (6) Oral Nominees**”) making a total of fifteen (15) nominees. After the nominations were declared closed, a disagreement led to a Motion to re-nominate candidates (the “**Renomination Motion**”), with the written nomination form containing the Nine (9) Written Nominees treated as “nullified”.
12. The general body voted in favour of the Re-nomination Motion. Thereafter, through the oral nomination process, ten (10) candidates stood for elections including the original Nine (9) Written Nominees. Of the Six (6) Oral Nominees, only one of them stood for election, the rest decided not to participate in protest.
13. Every subsidiary proprietor who was eligible to vote was permitted to vote and their vote was counted.
14. The top nine (9) candidates with the highest number of votes were elected into the 16<sup>th</sup> Council.

## ISSUES BEFORE THE BOARD

15. The issues to be determined by the Board are:
  - a Whether the Re-nomination Motion should be invalidated;
  - b Whether the election of the 16<sup>th</sup> Council should be invalidated and
  - c Whether the Six (6) Oral Nominees may be reinstated as council members.

## APPLICANTS' CASE

### *The Improper Nominations*

16. The disputed series of events begin at Agenda item number 5.1, as recorded in the Minutes of the 16th AGM ("the AGM Minutes")
17. As recorded at section 5.1.2 of the AGM minutes, the Managing Agent, represented by Mr Eric Tan, announced that there were nine (9) nominees who submitted their names for election. Mr Danny Cheng had asked if the nine (9) nominations were all proposed by the same person and seconded by the same person. This was confirmed by Mr Eric Tan. A copy of the nomination form was not made available to the subsidiary proprietors during the meeting but it was later obtained by the Applicants ("**the Written Nomination Form**").
18. Mr Danny Cheng then referred to a guide titled "Strata Living in Singapore", produced by the Building and Construction Authority ("**the SLS Guide**"), and stated his understanding that there was a cap on the number of persons that a person could nominate.
19. At this time, Ms Wu Xiaowen advised that she did not have the SLS Guide, but her understanding was that there were no limits on the number of persons that a person could nominate. Mr Danny Cheng disagreed, and a short discussion followed whereby Mr Danny Cheng requested to find out the legitimate way to nominate persons, and to correct it if it was erroneous.
20. Mr Aloysius Ng did not agree and decided to proceed on what had been the practice in previous years and called for oral nominations. A further six (6) persons (the Six (6) Original Nominees) were nominated orally including the Applicants, and nominations were declared to be closed with a total of fifteen (15) nominees and the motion was proposed and seconded.

### ***The Improper Re-Nomination Resolution***

21. However, shortly after the nominations were declared as closed, a side conversation was recorded to take place amongst the Panel, including Mr Aloysius Ng, Mr Eric Tan and Ms Wu Xiaowen. During this side conversation, it appeared that Mr Aloysius Ng was requesting Mr Eric Tan to re-nominate Nine (9) Written Nominees, including himself, due to a fear that the nominations would later be challenged and nullified.
22. Following the side conversation, Mr Eric Tan returned and stated that *"the Council here actually they would also want to consented and verify that they would want on record, since they are challenged on this, they will just go through the procedures that each one nominate each one so that it is in order—proper order, so that the names of the nine persons is not by one person."*
23. Mr Eric Tan's statement was promptly disputed by various subsidiary proprietors including Mr Danny Cheng, as it would effectively be reopening the nomination process. This statement also came as a surprise to the Applicants, as it was a complete about-turn from Mr Aloysius Ng's earlier position that there was no error in the form.
24. It was also confirmed by Ms Wu Xiaowen that she agreed that once nominations were declared closed, there should be no further oral nomination of candidates.
25. Despite the numerous objections, Mr Aloysius Ng and Mr Eric Tan decided to proceed with the re-nomination resolution, recorded at paragraph 5.1.32 of the Minutes of the AGM:  
  
*"It was resolved by way of ordinary resolution that:  
"there be a re-nomination of candidates for election as Council members. "*  
**("the Re-nomination Resolution")**
26. Throughout the subsequent re-nomination process, many SPs continued to raise their hands indicating they wished to comment. However, they were not unmuted and given limited opportunities to speak . It is also evident from the AGM transcript that numerous subsidiary proprietors did not agree with the manner in which the AGM was conducted.

27. The Nine (9) Written Nominees were then orally nominated to stand for elections (“Nine (9) Oral Nominees). One of the Six (6) Oral Nominees decided to take part while the other five (5) refused. At the conclusion of the election, the 16<sup>th</sup> MC consisted of the Nine (9) Oral Nominees.

***Non-compliance with First Schedule of BMSMA as due notice not given***

28. The Applicants’ case is that the resolution to re-nominate candidates for the 16th MC during the 16th AGM was not in compliance with paragraph I(4)(a) of the First Schedule of the BMSMA as advance notice of the motion was not given to the subsidiary proprietors. The relevant paragraph I(4) reads as follows:

*“(4) No motion shall be submitted at a general meeting unless*

- (a) notice of the motion has been given in accordance with this paragraph; or*
- (b) the motion is a motion to amend a motion of which notice has been so given, provided the amendment does not change the subject matter of the motion.”*

29. According to paragraphs 1(1) and 1(2)(b) of the First Schedule of the BMSMA, notice of a resolution must be given pursuant to a notice of general meeting. This notice must be served at least fourteen (14) days prior and include the proposed resolutions. The relevant paragraphs are reproduced below:

*“1.—(1) Except as otherwise expressly provided in this Act, notice of a general meeting of a management corporation or subsidiary management corporation shall be served on each subsidiary proprietor who is a member thereof and on the first mortgagee of a lot, as ascertained from the strata roll, at least 14 days before the meeting.*

*(2) Every notice for a general meeting shall*

- (a) specify the place, day and hour for the meeting;*
- (b) include each proposed resolution to be considered at the meeting;*
- (c) specify any other business to be transacted at the meeting;*

*...”*

30. The Applicants said it cannot be disputed that the Re-nomination Resolution was proposed on the day of the AGM itself, on 30 January 2021, with the first mention of it being after nominations for the 16th MC were announced to be closed. This is recorded in paragraph 5.1.17 of the AGM Minutes.
31. The Re-nomination Resolution was not included in the Agenda, when Notice of the 16th AGM was circulated on or around 2 January 2021. Therefore, due notice could not have been given to the other subsidiary proprietors, especially those who may be voting by way of proxy votes.
32. The Applicants say the Re-nomination Resolution therefore does not comply with the requirements set out in the First Schedule of the BMSMA.

***Non-compliance used to “cure” non-compliance***

33. As a result of the Re-nomination Resolution being passed at the 16th AGM, the Respondent were effectively using this non-compliant resolution to cure the defective Written Nomination Form after the declaration of closure of nominations.
34. There is a further non-compliance in the Written Nomination Form, because the names of the Nine (9) Written Nominees were proposed by the same subsidiary proprietor at 53 #XXX and seconded by 51 #XXX.
35. This is a non-compliance with Section 53 of the BMSMA because Section 53(12) read with 53(8)(b) of the BMSMA provides that for the purposes of determining the eligibility of a subsidiary proprietor's nominee for election, an individual would "not be eligible for election", if he had been nominated by a subsidiary proprietor whose number of nominees exceeded the threshold number for that subsidiary proprietor, such threshold number to be proportionate to that subsidiary proprietor's share value.
36. Sections 53(8) and 53(12) of the BMSMA are as follows:



*"(8) Notwithstanding subsection (6) and without prejudice to subsection (7), the following persons shall also not be eligible for election as a member of the council:*

- (a) an individual who is a joint subsidiary proprietor of a lot with another subsidiary proprietor, if that other subsidiary proprietor is also a candidate at that election or has nominated another person for that election; and*
- (b) an individual who is nominated for election by a subsidiary proprietor who owns 2 or more lots, if that subsidiary proprietor together with any of his nominees:
  - (i) nominated at the same election; or*
  - (ii) elected or appointed to the council at the same or other election,*or such of his nominees, exceed the threshold number for that subsidiary proprietor determined in accordance with subsection (12).*

*(12) For the purposes of determining the eligibility of any subsidiary proprietor's nominee for election as a member of a council under subsection (8)(b), the threshold number for that subsidiary proprietor shall be*

- (a) the number of council members that is proportional to the subsidiary proprietor's share value, ignoring any fraction; or*
- (b) 49% of the number of council members determined under subsection (1), ignoring any fraction, whichever number is lower."*

37. This is explained further in the SLS Guide at page 12:

*"Ownership of one lot entitles you to nominate one person for election. If you own two or more lots, you are entitled to nominate more persons for election, in proportion with you share value, but not more than 49% of the total number of council seats."*

38. The same paragraph in the SLS Guide is also included at the base of the Written Nomination Form itself.

39. In the Warren Condominium, there are 699 total lots, and more than 2,600 shares in the estate. The maximum number of shares that a single subsidiary proprietor holds is 5 shares, which would not entitle any single subsidiary proprietor to nominate more than 1 person.

According to Section 53(8)(b), the 9 SPs nominated by the single subsidiary proprietor would therefore not be eligible for election.

***Inclusion of proxy votes in the vote count for the R-nomination Motion breached paragraph 17(2) of the First Schedule, BMSMA***

- 40. The Applicants further submit that the inclusion of the proxy votes in the vote count for the Re-nomination Motion was not compliant with paragraph 17(2) of the First Schedule of the BMSMA. The proxy holders who cast their proxy votes in respect of the Re-nomination Motion had no authority whether by contract or statute to do so, and accordingly, the proxy votes should have been excluded from the vote count.
- 41. Pursuant to paragraph 17(2) of the First Schedule to the BMSMA, the SPs who attended by proxy had only given their proxy votes to the proxy holders for the purposes of voting for or against the resolutions specifically named in the Notice of AGM and the Prescribed Proxy Form, and nothing more.
- 42. Paragraph 17(2) of the First Schedule is reproduced below:

(2) Where it is desired to afford subsidiary proprietors an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form:

\*I/We, ..... of being \*a member/members of the abovenamed management corporation, appoint ....., of ....., as \*my/our proxy to attend at the [annual or extraordinary, as the case may be] general meeting of the management corporation or subsidiary management corporation, to be held on ..... 20 ....., and at any adjournment of the meeting and to vote for \*me/us on \*my/our behalf in the following manner

Resolution	For	Against	Abstain

*Notes:*

- 1. A subsidiary proprietor may direct his or her proxy to vote on the resolution by ticking the desired box (in favour of/against the resolution or abstain from voting) in the above table. An abstain vote will not be counted in the calculation of votes.

2. If the subsidiary proprietor does not indicate his or her voting preference in the above table, the proxy may vote or abstain from voting at the proxy’s discretion, in relation to any matter which is put before the meeting (including any resolution to adjourn the meeting or to amend any resolution proposed at the meeting).
3. This instrument appointing a proxy is void if \*I am/we are present at the meeting.

Signed on ..... 20 .....

.....

Signature(s) of subsidiary proprietor(s)

.....

Signature(s) of proxy

\*delete whichever is inapplicable

43. In ***Lim Kim Seng v MCST Plan No 2298*** STB 1 of 2020 (Changi Green) (“***Changi Green***”), the proxy form did not provide for votes on the number of persons to be elected as members of the management council. It was undisputed that the proxy form was defective and the proxy holder did not have the authority to vote on the number of members of the management council (at paragraphs [9] and [19] of *Changi Green*).
44. In ***Si-Hoe Kok Chun & Anor v Ramesh Ramchandani*** [2006] SGHC 1576, the High Court held at paragraph [19] that the proxy holder was not properly authorized to vote as proxy on behalf of his wife at the AGM where the proxy form was not timeously lodged in compliance with the BMSMA provisions. The High Court also remarked at [18] as follows:

*"18 At common law there is no right to appoint a proxy, this being a right conferred by contract: Harben v Phillips (1883) 23 Ch D 14. Accordingly, a party seeking to exercise such right has to observe the requirements stipulated by the contract. Likewise, where the right is conferred by statute, the requirements set out therein should be observed."*

45. The Applicants argue given that the Re-nomination Motion was not included in the Notice of Agenda and the Prescribed Proxy Form, the proxy holders had no authority — whether by statute or contract — to cast their proxy votes. Notwithstanding the above, proxy votes were included in the vote count for the Re-nomination Motion in breach of paragraph 17(2)

of the First Schedule of the BMSMA. This is clear given that the total number of votes cast on the Re-nomination Motion was 192 (see paragraph 5.1.31 of the AGM minutes), which was more than the number of SPs who attended the AGM in-person (106).

***Prejudice caused because non-compliance affected election result***

46. The Applicants claim that if the nominations made pursuant to the Written Nomination Form were not valid, then the nine (9) Written Nominees should not be eligible for election.
47. Pursuant to paragraph 8(2) of the First Schedule of the BMSMA, the MCST should have continued to the next item on the Agenda, i.e. to decide on the number of members of the council based on the remaining Six (6) Oral Nominees who had been validly nominated by way of oral nomination.
48. As there were six (6) remaining nominees and nine (9) council seats, the Applicants, who are amongst the Remaining Six (6) Oral Nominees, would have stood a good chance of election to the 16<sup>th</sup> MC. That they were not subsequently elected shows that use of the Re-nomination Resolution to 'cure the defect' had a significant impact on the outcome of the election.
49. It should also be noted that the defect in the Written Nomination Form was pointed out and discussed prior to the nominations being closed. The Chairman and MA already had ample notice and opportunity to be able to rectify the nominations by making oral nominations prior to the closure of nominations, but they chose not to do so. To allow them to be subsequently re-nominated by way of a back door would cause prejudice to the other nominees, given that the defective nominations would have meant a disqualification of their candidanship.
50. Finally, the Applicants say that there was oppression of the minority which caused grave injustice to the Six (6) Oral Nominees as Mr Aloysius Ng misused his power as Chairman of the AGM to favour him and his fellow Nine (9) Oral Nominees and to disadvantage the Six (6) Oral Nominees.

***Application to invalidate the election of the 16th MC***

***(a) There is a non-compliance with the Section 53 of the BMSMA***

51. Further and/or in the alternative, the Applicants are seeking an invalidation of the election of the 16th MC on the basis of the improper nomination process.
52. The non-compliance with Section 53 of the BMSMA is as described above, where pursuant to Section 53(8)(b) the Nine (9) Oral Nominees should not have been eligible for the election due to their improper nomination by way of the Written Nomination.

***(b) There is prejudice caused by the non-compliance because the Nine (9) Written Nominees were eventually elected to the 16th MC even though their nomination was invalid.***

53. The failure to comply with Section 53(8)(b) materially affected the nomination and subsequently the election result, since the Nine (9) Oral Nominees were eventually nominated to the 16th MC, despite the flaws with their nomination.
54. The Applicants say prejudice has been caused to the Applicants as the Remaining Six (6) Oral Nominees would have been elected should the flawed Written Nomination have been declared invalid.

***Application for the re-instatement of the Remaining Six (6) Nominees as the 16<sup>th</sup> MC***

55. In the event that there is no council or executive committee, the Board may, according to Section 102(a)(i) of the BMSMA, make an order to convene a meeting for the purpose of electing or appointing person(s) to fill the vacancy.
56. Following from a nullification of the invalid Re-nomination Resolution and the invalid Written Nomination, the Applicants seek for the continuation of the general meeting, where the meeting proceeds to decide on the number of council members. Given that there are only six (6) candidates, the Applicants request for these Remaining Six (6) Nominees to be appointed to the Council.
57. In the alternative, the Applicants seek an order for the Board to convene a meeting for the election process to be restarted since it was flawed from the nomination stage.
58. On the issue of costs, the Applicants seek \$15,000.00 plus GST & disbursements in the event they succeed and no order as to costs in the event their application is dismissed.

## RESPONDENT’S CASE

59. The Respondent say that throughout the AGM, as seen from the draft minutes of meeting as well as the transcript of the recording of the virtual meeting, the Respondent did not waiver from its position that the Nine (9) Written Nominees were validly nominated notwithstanding rigorous challenge and objections from the Applicants and other subsidiary proprietor.
60. When the 1<sup>st</sup> Applicant raised his objection to the Nine (9) Written Nominees, he was in effect raising a “*point of order*”:

*“A “point of order” is raised when, in the opinion of a member, the rules or regulations governing a meeting are being broken, or when a member has a genuine doubt as to the correctness of the procedure being followed. This might include any non-observance of standing orders, any defect in the procedure of the meeting e.g. the absence of a quorum, the use of offensive language, the fact that the motion under discussion is not within the scope of the notice,. Or any other informality or irregularity. Contradiction of and requests for explanation from the person speaking in the debate are not points of order ...*

*The person raising a point of order should do so by putting a briefly worded question to the chair stating that they wish to speak on a point of order...The chair’s ruling on the point of order is final, but others present should be given an opportunity of speaking upon it if they so desire...”*

(From Shackleton on “*The Law and Practice of Meetings*”)

61. To this point of order, the chair accepted the view of the Respondent’s lawyer and decided that the procedure was not wrong and that the meeting would proceed with the elections.
62. When the managing agent's suggestion that the Nine (9) Written Nominees nominate each other was objected to, the chairman wanted to proceed with the election based on the existing 15 nominations as evident from the transcript of the ACM:

*“MS WU XIAO WEN: . I think the panel 's position now is that the issues can be taken up after the AGM ... and to continue with the voting on the agenda now.*

*ALOYSIUS NG•. Okay gentlemen, we have decided to commence with the next — the voting procedure...”*

63. The meeting could not proceed however, because of objections raised by, inter alia, the 1st Applicant, who insisted that the Nine (9) Written Nominees have to be disqualified. The Respondent, who was advised that the Nine (9) Written Nominees were correctly nominated, did not agree to disqualify them. Several attempts to close the discussion and progress to the election were opposed. There was an impasse: the objectors did not want the election to proceed and did not agree to re-nominate the candidates. The BMSMA and Regulations do not provide for what to do in this situation.

64. Eventually, to move on, a vote was put to the floor to decide whether or not to carry out the nomination again. It was put to the floor in this manner:

*"We need a voting process to let the floor decide whether to proceed or not to proceed. If the answer is wrong, it is 'No ' then we will proceed according to the first one ... "*

In other words, if the floor decides not to proceed with the re-nomination, then the meeting will proceed with the original fifteen (15) nominees. The general body voted overwhelmingly in favour of re-opening the nomination and carrying out the nomination process again.

65. The Respondent contends that under common law, the meeting has the power to make such decisions. It was acknowledged by the Court of Appeal in the case of *Chan Sze Ying v Management Corporation Strata Title Plan No 2948 (Lee Chuen T'ng, intervener)* [2021] 1 SLR 841 at [39] that:

*“Annual general meetings of a management corporation are governed by statute as well: see section 27 of the Act and the First Schedule to the Act. At the same time, however, there is a body of common law that applies where the express rules*

*governing a meeting are silent. The residual power discussed in this case is part of that body of common law, which is of general application and may apply to various types of meetings not just meetings of a management corporation.”*

66. The Applicants had objected to this motion on the grounds that no notice had been provided for it, but in the case of ***Meow Terk Meng Edward v MCST 2572*** [2010] SGSTB 7, where a similar objection was raised, the Board observed that it is "not unusual for motions to arise spontaneously at business meetings. In this case, it arose at the adjourned meeting because of matters uncovered since the meeting was adjourned ...". In that case, the dispute had been over a motion to remove the applicant as a member of council and disqualify him after the election on the grounds that his proxy forms were irregular. The applicant applied to invalidate the resolution as this motion had not been on the agenda contrary to the provisions of the BMSMA. The vote for the applicant's removal had been overwhelmingly in favour of his removal. Therefore, the Board did not invalidate the resolution as it was of the view that compliance with the BMSMA would not have affected the removal and disqualification of the applicant.
67. The Respondent say that alternatively, the "Re-Nomination Motion" may be considered a procedural motion because it does not propose a substantive question or point but the manner in which the meeting is conducted. Procedural motions, by its nature, are usually not set out in an agenda of any meeting. Procedural motions propose a change to how the meeting is being run or what is happening in the meeting. An example of a procedural motion is a motion to amend an existing motion.
68. In the alternative, the Respondent contends that the "Re-Nomination Motion" was a means for the chairman to ascertain the wishes of the majority on a procedural issue so as to proceed accordingly. The majority of those present at a club or corporate meeting have an absolute right to regulate the procedure and/or conduct of that meeting. As observed by Lord Russell of Killowen in the House of Lords case of ***Carruth v Imperial Chemical Industries Ltd*** [1937] 2 AC 707 at 761 (which was cited in the case of ***Petrie Christopher Harrison v Jones Alan*** [2005] 2 SLR(R) 387] by the Honorable Justice VK Rajah at [43]):



*"There are many matters relating to the conduct of a meeting which lie entirely in the hands of those persons who are present and constitute the meeting. Thus, it rests with the meeting to decide whether notices, resolutions, minutes, accounts and such-like shall be read to the meeting or be taken as read; whether representatives of the Press or any other persons not qualified to be summoned to the meeting shall be permitted to remain; whether and when discussions shall be terminated and a vote taken; whether the meeting shall be adjourned. In all these matters, and they are only instances, the meeting decides, and, if necessary, a vote must be taken to ascertain the wishes of the majority."*

69. The concept that the wishes of the majority determine the outcome of a meeting is recognized in section 103 of the BMSMA where it is provided that the Board shall not make an order invalidating any resolution or election if compliance with the provisions of the BMSMA would not have resulted in a failure to pass the resolution or have affected the result of the election.
70. In the case of *Cheang Wai Yew v MCST 975* [2009] STB 1, the application sought an order to invalidate council elections because of non-compliance with the BMSMA and irregularities in the procedure. The facts of the case were that the applicant, who was the chairman of the previous council walked out of the meeting because it was alleged out of control. The Board did not invalidate the election because the evidence showed that even if the applicant and those who walked out of the meeting had stayed on and voted against the current members of the management council, the votes they had would not have been sufficient to prevent the current members of the management council from being elected. Further, there was no prejudice because the applicant said that he was not interested in seeking re-election into the new council.
71. In *Lim Lay Hoon & Ors v Thomas Tan Lay Siong* [2009] STB 3, the applicants had walked out of the meeting before a resolution was passed therefore, even though there was non-compliance with the BMSMA in that the voting of council member was by poll rather than by lot, because the council members were unanimously elected by those who remained and voted, the outcome of the result would have been the same even if the voting had been correctly done by lot.

72. An objection raised by the Applicants is that the proxy form could not have been used again for the re-nomination because no notice of the Re-Nomination Motion was given to subsidiary proprietors. To this, the Respondent contends that:

a First, the nomination of candidates is not a motion and not something voted on. No proxy votes were used. From the minutes of meeting, the attendance list and the transcript, it can be seen that the candidates were nominated by subsidiary proprietors in person who had actually attended the 16th ACM:

	Candidates	Proposer	Subsidiary Proprietor
1	Ng Joo Liang Aloysius	53 #XXX	Srinivas Malathkar: in person
2	Lee Chee Cheng, William	51 # XXX	Ng Joo Liang: in person
3	Leong Kong Kit Richard	53 # XXX	Lim Chee Cheng: in person
4	Lau Chang Siong	53 # XXX	Chan You Meng: in person
5	Umashankar	51 # XXX	Shen Ye: in person
6	Wu Cheng Joo	37# XXX	Richard Leong: in person
7	AnantPoddar	57 # XXX	Chew Guan Sing: in person
8	Muthu Jagannath	39 # XXX	Kiran Arun Kekre: in person
9	Chan You Meng	45 # XXX	Woo Cheng Joo: in person
10	Shen Ye, Simon	51 # XXX	Wang Swee Chuang: in person

b Secondly, as for the issue of an alleged lack of notice of the 'Re-Nomination Motion' to subsidiary proprietors who had given proxies, it should be pointed out that where the nomination of candidates are concerned, the proxy form gives absolute discretion to the proxy holder to make or support nominations. Unlike for other motions, the form does not enable the subsidiary proprietor to specify 'For, 'Against' or 'Abstain'. It merely states 'Votes to be case by the proxy' (See page 17 of the AEIC of Danny Cheng).

- c This must mean that the subsidiary proprietors accept that although they did not know prior to the meeting who would be nominated as a candidate, they were prepared to accept the candidates their proxies supported. That being so, the fact that the Re-Nomination Motion was not on the agenda would not have affected these subsidiary proprietors' decisions in any way.

73. For these reasons, the Respondent submits that the proxy holders could vote on the Re-Nomination Motion.

***Alleged Prejudice to the Applicants***

74. The Respondent emphasized that the Six (6) Oral Nominees were free to participate in the nomination process when it happened the second time. Their rights to stand for election had not been infringed upon. Neither had their rights to vote for the nominees been affected.

75. The 1<sup>st</sup> Applicant's evidence of how the Six (6) Oral Nominees were prejudiced is as follows:

*'it's a prejudice to the six (6) of us who have actually participated the first nomination in a proper way. And if the nine (9) nominees in the invalid form were disqualified, then the six (6) of us were correctly nominated orally during the nomination process would be the only six (6) eligible for the election.'* (emphasis added)

76. When the 2<sup>nd</sup> Applicant was asked why the other Five (5) Oral Nominees did not want to participate in the election anymore, he said:

*"Well, they chose not to because they felt the election was not being conducted properly.... none of them wanted to stand for election after what had transpired."*

77. In reality, nothing had changed with the re-nomination. The Six (6) Oral Nominees originally had to stand for elections with the Nine (9) Written Nominees. After the 'Re-Nomination Resolution' the Nine (9) Written Nominees were still nominated to run for elections. Any prejudice felt by the oral nominees was self-imposed. Their rights had not been impinged.

78. The Applicants expected the Six (6) Oral Nominees to have a walkover but this would not have happened because even if the Re-Nomination Motion had failed to pass, as emphasized above, the election would have proceeded on the fifteen (15) nominees. This was conceded by the 1<sup>st</sup> Applicant:

*“Q: ...I put it to you that notwithstanding your objections, it would not have been a situation where the 9 written nominees would be disqualified and only 6 oral nominees would stand for elections. They would have proceeded on the 15 ...nominees ...Do you agree or do you disagree?”*

*A: Your Honour, I agree because I have no control of the AGM, I am not in control of the AGM.”*

79. By choosing not to participate in the election, the Applicants cannot say that they were prejudiced in that the oral nominees would have won the elections. Instead, it is submitted that because the oral nominees were offered the equal opportunity to stand for elections together with the written nominees, they had suffered no prejudice from the Re-Nomination Resolution or the elections.

80. It is for the Applicants to show how any person had been prejudicially affected by the Re-Nomination Resolution or how the election results would have been affected. This, the Applicants have failed to show. This point is underscored in the case of ***Sinqaram Koqilambal & Ors v MCST 2032*** [2020] SGSTB 12 where the names of nine (9) nominees were inadvertently omitted from the meeting. Instead, another eleven (11) nominees were elected into council. The Board did not invalidate the election. It was held at [24] that:

*“...the submission that nominees who could have been elected but did not have any chance of being elected because the meeting did not consider and vote on their nominations had suffered a prejudice is not out of order. It was, however, not the case that the prejudice was caused by the respondents. Even though the respondent was not responsible for the failure to announce the names of the earlier nominees, the Board considered if the results of the elections have been affected if their names had been announced. The applicant has not put forward any evidence whatsoever that it would have been, and in all likelihood there would not have been any change in the*

*result of the elections had the meeting voted on the eleven on Ms Chan Tian Siang's list and the earlier nominees ".*

81. The Respondent contend that the Applicants have not shown that the Respondent had caused them prejudice.

***Oral Nominations after Re-Nomination Resolution***

82. The Board had raised the question of whether it was possible for the Nine (9) Written Nominees to have been orally nominated at the meeting given that they had already been nominated in writing. The Respondent say that Section 53B of the BMSMA provides that nominations for election of council members may be in writing or oral and be accompanied by the consent of the candidate, which consent may be withdrawn before the election at the general meeting.

83. Section 53B of the BMSMA was introduced by amendments to the BMSMA in 2018. The second Minister for National Development Mr Desmond Lee explained why these amendments were introduced to the BSMSA [RBOA Tab P pg 2/32]:

*"...[section 53B] require[s] SPs to give explicit consent before they can be nominated and elected into an MCST council. While this may seem so obvious as to not necessitate express legislation, we had received feedback that some SPs had been elected into office without their knowledge! So the feedback that we received was very useful in helping us to craft this Bill".*

84. Incidentally, during the second reading of the Building Maintenance and Strata Management (Amendment) Bill, a question was raised by the MP for Fengshan Miss Cheryl Chan Wei Ling:

*"Second, consent of nominees for election of council members. I certainly support this change and feel this should have been the default arrangement when BMSM4 was first introduced. Council members are residents of the development and any service they provide to the estate is considered voluntary. It is unfair to have anyone nominated and elected without their knowledge or not of their own free will. The real challenge*

*for many developments is, however, a lack of willing individuals who want to step forward and serve, given the responsibilities and thankless chores within the estate. I would like to know what plans BCA has moving forward if more condo developments encounter the issue of having few or no council members to form a functional MCST?"*

85. Hence, a concern was raised that there could be situations where there are insufficient subsidiary proprietors who are willing to become council members. Thus, it could not have been the intention of Parliament to impose hurdles on those who willingly consent to serve on the Council (for example, by denying those who were nominated in writing from being orally nominated again). The policy must be that any subsidiary proprietor who wants to serve on a council should be given the opportunity to stand for election.
86. It is also in the interests of the management corporation to have as many nominees as possible. In *Guide for Meetings and Organisations* by NE Renton, at paragraph 11.8, the author states:

*“The making of nominations is the starting point of a process which gives the members at large an opportunity to make a choice on whom they wish to hold office. It is therefore appropriate to give them as wide a choice as possible. Two or more nominations made by the same person are therefore quite in order. There is also nothing technically to prevent members from nominating themselves.”*

87. Because the policy is to give subsidiary proprietors as wide a choice as possible, and because there are no express provisions prohibiting this, the Respondent submits that there is nothing improper in allowing nominees who had been nominated in writing to be also nominated orally at the general meeting.

### ***Use of Proxy Votes***

88. The Applicants allege that the request not to use proxy votes for the Re-Nomination Motion was ignored; however, such a request goes against paragraph 17 of the First Schedule of the BMSMA which permits the appointment and use of proxies to vote at general meetings. The

only condition is that an appointed proxy can only represent a maximum of 2% of the total number of lots in the development.

89. The Respondent say that in the case at hand, none of the proxies appointed represented more than 2% of the total number of lots in the development. There was no basis for the Applicants' request and the Chairman had not acted unfairly or incorrectly in refusing to accept their request. It is submitted that there is no reason to invalidate the Re-Nomination Motion.

### ***Outcome of Election Unaffected***

90. Even if, which is denied, there was non-compliance with any provision of the BMSMA, the Respondent contends that compliance with the provisions of the BMSMA would not have affected the result of the election.
91. The Nine (9) Oral Nominees had sufficient proxy votes to ensure a comfortable win into Council. The candidate with the highest number of votes was 195 and the 9th candidate received 163 votes. In contrast, the 2nd Applicant received 73 votes. When asked how many votes the 1<sup>st</sup> Applicant was confident of getting, he said:

*"...based on my own estimation, I can confidently say that I will get more than my 13 votes".*

92. In other words, the Applicants cannot show that they have sufficient votes to upset the election results. Further, because five (5) of the Six (6) Oral Nominees declined to participate in the election because of incorrectly perceived breaches of the BMSMA, they could not be elected and therefore the outcome would not be any different.
93. The Respondent contend that these nominees who changed their mind about standing for election cannot claim to be prejudiced as they had, of their own volition, declined to be nominated.

### ***Reinstatement of the Six (6) Oral Nominees***

94. The Six (6) Oral Nominees are now asking for an order to be "reinstated" as Council members. In the Applicants' Opening Statement, the Applicants clarified that what they are seeking, should the Re-Nomination Resolution be invalidated, is for the "*continuation of the general meeting where the meeting proceeds to decide on the number of council members, and given that there are only six (6) candidates, the Applicants request for these Remaining 6 Nominees to be appointed to the Board.*"
95. The Respondent say the Strata Titles Board does not have the jurisdiction to appoint council members. Section 53(4) of the BMSMA states that all council members have to be elected at the AGM. Further, as explained earlier, even if the Re-Nomination Resolution is invalidated, there would not be only 6 candidates left, contrary to the imagination of the Applicants.
96. For these reasons, the Respondent contends that the Applicants' prayer for 'reinstatement' must be dismissed.
97. On the issue of costs, the Respondent submit that costs of \$20,000 all in with the transcription costs to be borne by the losing party is a reasonable order.

## **BOARD'S FINDINGS**

98. The Applicants are asking the Board to make the orders under Section 103 of the BMSMA. Section 103 provides as follows:

***“Order to invalidate proceedings”***

*103-(1) Where, pursuant to an application by a subsidiary proprietor or first mortgagee of a lot, a Board considers that the provisions of this Act have not been complied with in relation to a meeting of the management corporation or subsidiary management corporation, or a council or executive committee, the Board may, by order -*

*(a) invalidate any resolution of, or election held by, the persons present at the meeting; or*

*(b) refuse to invalidate any such resolution or election*

*(2) A Board shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers*



*(a) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and*  
*(b) that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.”*

99. This Board agrees with the position taken in ***Singaram Kogilambal and Ors v MCST Plan No. 2032*** STB22 of 2020 (Pine Grove) where it held :

*“19. It is clear that a Board has been given discretion to invalidate or not to invalidate when the provisions of the Act in connection with meeting have not been complied with. It is only when the two (2) conditions in section 103(2) are present that the Board will not have a discretion and must make an order to invalidate viz. failure to comply has prejudicially affected another and compliance would have resulted in a failure to pass the resolution or affect the election*

*20. In ***Si-Hoe Koh Chan v Ramesh Ramchandani*** [2006] 2 SLR(R) 592, Andrew Ang J held at [27] that where “***the failure to comply with the provisions of the Act would not have resulted in a failure to pass the resolution [or affect the elections], the Board is not bound to invalidate the resolution***’.*

*21. Invalidating when no one has been prejudiced or when non-compliance would not have affected the outcome would require the management corporation to go through a second process where time and money (in convening another meeting) will be expended unnecessarily. “*

### ***Re-Nomination***

100. The Board is to consider if the Re-Nomination Motion was valid.

***“Nomination of candidates for election as member”***

*53B.—(1) A nomination of a person for election to be a member of the council of a management corporation or the executive committee of a subsidiary management corporation, is of no effect if subsections (2), (3) and (4) are not complied with for that nomination.*

*(2) Only a subsidiary proprietor, or a person entitled to vote at a general meeting of a management corporation or subsidiary management corporation, may nominate a person for election as a member of the council of the management corporation or the executive committee of the subsidiary management corporation, as the case may be.*

*(3) A nomination for election to be a member of the council of a management corporation or the executive committee of a subsidiary management corporation —*

*(a) may be oral or in writing;*

*(b) must —*

*(i) if oral, be made at the general meeting of the management corporation or subsidiary management corporation for the purposes of the election; or*

*(ii) if in writing, be given at least 48 hours before the start of the meeting at which the election is to be held to the secretary of the management corporation or subsidiary management corporation, or to the convenor of the meeting in the case of the first annual general meeting; and*

*(c) must state —*

*(i) the name of the person nominated (called in this Act the candidate); and*

*(ii) the name of the person making the nomination (who may or may not be the candidate).*

*(4) A nomination, whether oral or made in writing, made for the purposes of an election at a general meeting of a management corporation or subsidiary management corporation, is effective only if it is accompanied by the consent of the candidate —*

*(a) given in writing at least 48 hours before the start of the meeting at which the election is to be held to the secretary of the management corporation or subsidiary management corporation, or to the convenor of the meeting in the case of the first annual general meeting; or*

*(b) given orally at the meeting*

101. Having considered the evidence, the Board accepts that there were strong and divergent views on whether the AGM should proceed with the election based on the written nomination form with the Nine (9) Written Nominees together with the Six (6) Oral

Nominees or to go for re-nomination, which took more than 2 hours of the AGM. The Chair described it as an “impasse”. (Transcript Pg 224, lines 21 to 24). The Board would agree with such characterization of the situation at the time. The Chair in such a situation should always decide in the best interests of the general body . In the present case he decided to let the general body vote on the issue of re-nomination.

102. We note that the Chairman had said that he would like to “nullify” the earlier (written) nomination and proceed with the voting on whether the re-nomination should take place (transcript of AGM pg 94, line 14-17 AW1). The general meeting then voted in favour of doing so and the effect of that was that nomination of all candidates were done orally with each of them nominated by a different SP (transcript of AGM, pg 44 item 5.1.31 and 47 item 5.1.55 AW1). The Board notes that while the Applicants take objection to the process and decision to re-nominate, there are no objections as to the actual oral nomination process that took place after the re-nomination decision.
103. The Applicants take the view that the re-nomination Motion should be invalidated because:
- a It breached paragraph 8(2) of First Schedule of BMSMA which says that after nominations have closed, the management corporation must decide on the number of council members;
  - b No 14 days’ notice was given for the said motion in breach of paragraph 1(4)(a) of the First Schedule BMSMA; and
  - c Inclusion of proxy votes in the vote count for the said motion breached paragraph 17(2) of the First Schedule BMSMA.
104. On paragraph [103(a)], the Board agrees with the Respondent that the provision does not require that the decision on the number of council members shall take place immediately after the closing of nominations. It obliges the general body to decide on the same and they in fact did so after the re-nomination.
105. On paragraph [103(b)], the Board is of the view that if the re-nomination process involved oral candidacy, then the issue is whether Section 53B of the BMSMA required the 14 days’ notice for such candidacy, and the answer would clearly be no. Candidates may be

nominated in writing or orally. The Board notes the Six (6) Oral Nominees were, as their description suggests, orally nominated as candidates at the AGM itself where no advance notice was provided. It is also clear on the facts that the Nine (9) Written Nominees agreed to withdraw their written candidacy before the start of the election when they subsequently consented to be orally nominated after the Re-nomination motion. The Board makes a finding of fact that, regardless of the validity or otherwise of the Written Nomination Form, it was clearly considered withdrawn or superseded in view of the above.

106. Nothing has been shown to the Board that candidates who were previously nominated in writing, and which written nomination has been withdrawn, cannot then be nominated orally at the AGM itself. The Board had expressly sought counsels' views on the issue at the end of trial as part of their submissions. The Board is of the view that this is the correct interpretation of Section 53B. Adopting the Applicants' position would be ascribing too narrow and restrictive a view to an important part of the general meeting; the nomination and election of council members. If so, what is important is whether there has been compliance with the provisions for oral nominations per Section 53B BMSMA, which did not require any advance notice. The Board is therefore of the view that the oral nomination process for the Nine (9) Oral Nominees which was eventually voted on was valid.
107. In any event, even if the Board was wrong on the issue, the Board would be inclined to accept the view of the Respondent in that the re-nomination motion was a means by the Chairman to ascertain the wishes of the general body on a procedural issue so as to be able to proceed accordingly per the views of the Honorable Justice VK Rajah in the case of *Petrie Christopher Harrison v Jones Alan* [2005] 2 SLR(R) 387 (Paragraph 68 in this GD). In the view of the Board, this would be consistent with the Board's duty to consider both limbs of Section 103(2) before deciding on whether to exercise its discretion to invalidate a resolution or election. Further, the Board is minded to agree that the re-nomination motion was akin to that of a procedural motion as the issue of nomination of candidates and their election had been clearly provided for in the agenda of the AGM, with no restriction on the form of the nomination being done orally or in writing. In this regard, the Board finds support from the Applicants submissions that their objections to the re-nomination motion is more procedural than substantive. In Paragraph 38 of Applicants opening statement, they say, "*The Chairman & MA already had ample notice and opportunity to rectify the*

*nominations by making oral nominations prior to the close of nominations, but they chose not to do so.”*

108. On paragraph [106(c)], at first glance, the Applicants’ submission on this point deserves some consideration, which is that the voting in favour of carrying out the re-nomination process included the use of proxy votes, which would not be within the scope or authority given to the proxy holder as the re-nomination motion was not on the agenda of the AGM. Further, the proxy form being a form of contract between the proxy and proxy holder, did not include such a term within its terms. On this issue, and following from the Board’s findings above that the re-nomination was akin to that of a procedural motion, as the issue of nomination of candidates and their election had been clearly provided for in the agenda of the AGM, we find that this falls squarely within the scope of s/no. 5.1 and 5.2 of the proxy form.

**THE WARREN**  
 THE MANAGEMENT CORPORATION STRATA TITLE PLAN NO. 3001  
 59 Choa Chu Kang Loop #B1-52 Management Office Singapore 689686  
 Tel: 6762 9464 Fax: 6762 9471

**THE WARREN**  
 THE MANAGEMENT CORPORATION STRATA TITLE PLAN NO. 3001  
 16<sup>TH</sup> ANNUAL GENERAL MEETING

**PRESCRIBED PROXY FORM**  
 (Building Maintenance and Strata Management (Amendment) Act 2017)

I/We \_\_\_\_\_, of Unit No. # \_\_\_\_\_,  
 being\*a Member / Members of the above-named management corporation hereby\* appoint  
 Mr/Ms/Mdm \_\_\_\_\_ as our proxy to  
 attend the \*annual general meeting of the management corporation or subsidiary management  
 corporation, to be held on 30 January 2021 at 1pm at via Virtual Video and Audio Teleconference  
 , and at any adjournment of the meeting and to vote for me/us on my/our behalf in the following  
 manner:

Motion No.	Motion	For	Against	Abstain
2.0	Minutes of the 15 <sup>th</sup> AGM			
4.0	Audited Accounts of the Management Corporation			
5.1	Nomination of Council Members			
5.2	Number and election of Council Members	Votes to be cast by the proxy		
5.3	Empower the Council to Elect the Office Bearers	Votes to be cast by the proxy		
5.4	Empower the Council to appoint authorised signatories			
5.5	Empower the existing authorised signatories to remain until new authorised signatories approved by bank/s			
5.6	Empower the Council to Perform Duties Without Restrictions			
6.1	Management Fund Budget and Contributions			
6.2	Sinking Fund Schedule and Contributions			
7.0	Legal Costs and Interest for Late Payment			
8.0	Off-set interest against payment received			
9.0	Off-set legal fees and other cost against payment received			
10.0	Empower the Council to review insurance policies			
11.0	Empower the Council to Appoint the Auditors			
12.0	Empower the Council to Appoint the Managing Agent (MA) and delegate duties to MA			
13.1	Private Motion by Mr Cheng Hiap Choon and Ms Hui Soh Yin			
a)	Motion 1: The establishment of a performance appraisal system by the management council to evaluate the MA. The performance appraisal system should be transparent and consist of both the review from the management council as well as the feedback from subsidiary proprietors			
d)	Motion 2: The management council to account for awarding companies with service contract of more than 1 year, when they have not been empowered to do so.			

Please mark a ✓ in the boxes above indicating whether you are voting for, against or abstain for each motion

109. Even if the Board were to accept the Applicants' position, the Board would still have come to the same conclusion in substance. This is because the real issue as the Board has pointed out is whether the Nine (9) Oral Nominees were validly nominated pursuant to Section 53B BMSMA, for which the Board has decided in the affirmative. That being so, even if the re-nomination vote is impugned because of the use of proxy votes, this did not have the effect of negating the subsequent oral nominations as each of the nine (9) nominees were validly nominated by separate SPs who were present at the AGM.

Prejudice/oppression of minority

110. The Applicants sought to distinguish the authority in *Re Pasir Panjang (Strata Titles Plan No. 983 [1991] SGSTB 5 ("Pasir Panjang Road")* where although the notice period of the Extraordinary General Meeting did not comply with the BMSMA provisions, the Board then held it was not prepared to invalidate the resolutions passed at the EGM pursuant to Section 103 of the BMSMA for, *inter alia*, the following reasons:

- a The failure to comply with the BMSMA provisions did not prejudicially affect the applicant as the loss of his office as secretary was a voluntary position (he could not vote as he was in arrears of his maintenance contribution);
- b Compliance with the BMSMA provisions would not have resulted in a failure to pass the resolutions or affected the result of any election since the applicant was in the minority of 1 out of 7 SPs and his vote would not have made a difference; and
- c In the absence of fraud or oppression of the minority the Board was not prepared to upset the decisions of the meetings the MCST.

111. The Applicants submit that the facts of their case are distinguished from *Pasir Panjang Road* in that not only was there prejudice occasioned by the non-compliance with the BMSMA provisions and/or the results of the Re-nomination Motion may have turned out differently had there been compliance with the BMSMA provisions, there is also oppression of the

minority and these reasons, collectively, behooves this Board to remedy the injustice by invalidating the Re-nomination Motion.

112. With respect to the Applicants' allegation of oppression of the minority, this Board agrees with the Respondent that the Applicants have also not discharged their burden in showing that there was such oppression or fraud on a minority. The Board agrees that an SP may vote as he pleases and in his own interest (see *Pender v Lushington* (1877) 6 CHD 75). It cannot be the case that there is fraud on a minority just because candidates who obtained proxies had voted in support of themselves or each other.
113. Under common law, minority shareholders of a company may bring derivative action on behalf of the company when they are able to show that the majority had shareholders who had used their control of the company to stifle an action against wrongdoing (see *Sinwa SS (HK) Co Ltd v Morten Innhaug* [2010] 4 SLR 1). The minority shareholders have to show that the company had reasonable, or legitimate, case against the defendant for which the company might recover damages or obtain other relief; that the majority had used their controlling power to prevent an action being brought against them by the company; and that the majority must have been obtained benefit at the company's expense or some loss or detriment must have been caused to the company.
114. The Board agrees with the Respondents and finds that the above criteria have not been met in the present case. As per the Respondent's submissions, this action is not brought by the Applicants on behalf of the Respondent for a wrong suffered by the Respondent and the candidates who obtained the highest number of votes were the ones elected into the council. The Applicants were not prevented from bringing any action against the Respondent and there was no loss or detriment to the Respondent.
115. The Board finds that above-stated holding in *Pasir Panjang Road* applies equally to the present case.
116. The Board finds as to the Applicants' allegations that the Chairman had tried to control who could speak at the meeting and dominate the meeting, the transcript of the AGM is instructive. The transcript for the AGM captured much of the dissenting comments which



showed that others were given an opportunity to speak. The Board notes the Chairman's observations that the disagreement over the nomination of candidates for election took more than two (2) hours of the AGM's time.

117. At paragraph 95(g) of the Applicants' Closing Submissions, the Applicants stated that "*Many SPs...commented that it was unfair that only members of the nine (9) Written Nominees' bloc had been selectively unmuted to speak and orally re-nominate themselves.*" The Board agrees with the Respondent that these SPs' comments must be viewed in their proper context as after the Re-Nomination Motion was passed, the Respondent called for nominations again. Naturally, the Nine (9) Written Nominees wanted to be re-nominated as they had earlier already indicated their interest to be nominated in the written nomination form. They were thus unmuted to nominate each other which was the intention of the Re-Nomination Motion from the start, but even they had to take turns to nominate each other and thereafter the Six (6) Oral Nominees were also given the opportunity to be nominated.

118. The Board noted that five (5) of the Six (6) Oral Nominees decided not to participate in the elections after the re-nomination was allowed. This they did on their own free will, having decided, rightly or wrongly, that they will protest the decision. They were not prevented from taking part, as the participation of the 2<sup>nd</sup> Applicant, who was one of the Six (6) Oral Nominees, showed. The prejudice alleged, if any, was caused by their own decision not to participate in the election. On the facts, the Board is of the view that the real motivation of the five in not taking part in the election is the realization that they will not win once their hope for victory through the disqualification of the Nine (9) Written Nominees was dashed as a result of the re-nomination process. Their prediction came true as can be seen from the outcome of the 2<sup>nd</sup> Applicant's participation (see paragraph 124 *infra*). The Applicants were hoping to win the council elections by a walkover on a technicality, or in sporting parlance, by way of a technical knock-out of their opponents. On the facts, the Board is of the view that this is not the kind of prejudice envisaged by Section 103(1) and (2) BMSMA.

### ***Invalidation of Council Elections***

119. The Applicants second ground is to invalidate the council members of the 16<sup>th</sup> Management Council of MCST 3001 that were elected after being re-nominated; largely on the same



grounds as the first issue due to breaches of the various BMSMA provisions and therefore caused prejudice to the Six (6) Oral Nominees.

Use of proxy votes for election

120. The elections of the council then went ahead after the close of nominations with ten (10) candidates; the Nine (9) Oral Nominees who were originally nominated in The Written Nomination Form and one from the six (6) original oral candidates. The other five (5) original oral candidates decided not to take part in the election as they felt the election was not conducted properly (NE pg 74, lines 4-5, 17-18). The election that was carried out included using the proxy votes. Whether or not the proxy votes could be properly used would depend of the terms thereof (per *Si-Hoe Kok Chun & Anor v Ramesh Ramchandani* [2006] SGHC 1576). The proxy form used gave the proxy holder wide discretion, including voting for any of the 3 options; for, against or abstain. Further, in the notes of the said form, under 'Notes':

*“A subsidiary proprietor may direct the proxy to vote on the resolution by ticking the desired box (for/against/abstain from voting) in the above table. An abstain vote will not be counted in the calculation of votes.*

*If the subsidiary proprietor does not indicate his or her voting preference in the above table, the proxy may vote or abstain from voting at the proxy’s discretion, in relation to any matter which is put before the meeting (including any resolution to adjourn the meeting or to amend any resolution proposed at the meeting).”* (emphasis the Board’s)

121. This was a form where the second paragraph of the Notes applied as the subsidiary proprietor did not indicate his or her voting preference to the proxy. As such, the proxy “*may vote or abstain from voting at the proxy’s discretion, in relation to any matter which is put before the meeting (including any resolution to adjourn the meeting or to amend any resolution proposed at the meeting)*”. The election of the candidates fell squarely within the scope of item 5.2 of the proxy form read with the second paragraph of the Notes. The Board finds that the proxy forms were used validly for the election as they came within the scope of the authority given to the proxy.

122. As provided for in Section 103(2), the Board in refusing to invalidate a resolution or election can only come to that conclusion if it considers —
- (a) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and
  - (b) that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.
123. The Board notes that Council nominations and elections are an exercise in democracy in strata-titled properties, where the will of the majority prevails with limited exceptions, e.g. fraud or oppression. Section 103(1) and (2) BMSMA read together clearly informs the Board that failure to comply with the provisions of the Act is not sufficient to invalidate a resolution. There must also be prejudice caused and which affected the result of the election. Where there are attempts to impugn election outcomes based on allegations of non-compliance of the provisions of the BMSMA this Board has consistently looked beyond the alleged breaches and at the substance of the election process to determine if any real prejudice was caused and which would have affected the result of the election. (e.g. *Re Pasir Panjang (Strata Titles Plan No. 983* [1991] SGSTB 5 (*“Pasir Panjang Road”*), *Sinqaram Koqilambal & Ors v MCST 2032* [2020] SGSTB 12, *Cheang Wai Yew v MCST 975* [2009] STB 1, *Lim Lay Hoon & Ors v Thomas Tan Lay Siong* [2009] STB 3, *Meow Terk Meng Edward v MCST 2572* [2010] SGSTB 7, and others)
124. Presently, the lowest successful candidate of the Nine (9) Oral Nominees received 163 votes. The 2nd Applicant, who was the only one of the Six (6) Oral Nominees who took part in the election, received 73 votes, which was less than half that of the lowest successful Oral Nominee. The Applicants have not put up any evidence that they would have received more votes than any of the Nine (9) Oral Nominees short of knocking-out the proxy votes and/or disqualifying the Nine (9) Oral Nominees for alleged breaches of the BMSMA.

***Reinstatement of Six (6) Oral Nominees as Elected Council Members***

125. The final claim of the Applicants is to reinstate the six candidates (6 Oral Nominees) as the legitimate elected council members of the 16<sup>th</sup> Management Council of MCST 3001. Strictly speaking, based on the findings of the Board above that the nominations and election will not be impugned, this claim is already disposed of. In any event, the Board agrees with the Respondent that since the Six (6) Oral Nominees were never elected in the first place, the issue of reinstatement does not even arise, aside from whether or not the Board has the power to do so.
126. In their Closing Submissions the Applicants made a claim that in the event there is no council or executive committee, the Board may make an order to convene a meeting for the purpose of electing or appointing persons to fill the vacancy under Section 102(a)(i) BMSMA. The Applicants also seek, given that they say the Re-nomination Motion and Written Nomination Form were invalid, the continuation of the 16<sup>th</sup> AGM, and given that the six (6) Oral Nominees were the only candidates, they request that the six (6) of them be elected into the 16<sup>th</sup> MC. Alternatively, they seek an order from the Board to convene a meeting for the election process to be restarted since it was flawed from the nomination stage.
127. Aside from making these claims, the Applicants do not provide any basis nor authority for any of these orders sought nor even if the Board has the jurisdiction and/or power to make them or if it is appropriate to do so; e.g. the power to “continue” an AGM and/or to grant a “request for the Six (6) Oral Nominees to be elected into the 16<sup>th</sup> MC”. The Board similarly dismisses the last claim and the derivatives arising therefrom.

***Preliminary Issue as to whether the Written Nomination Form Breached Section 53(8)(b) read with Section 53(12) BMSMA such that the 9 Written Nominees’ written nomination was invalid***

128. The Applicants stated the above as a preliminary issue as it was not part of their claims before the Board. It was therefore not necessary on the part of the Board to make any findings on it, as in any event, the Board found on the facts that the said form was withdrawn and/or was not relied on in the eventual nomination and election that took place. For completeness the Board sets out in brief the parties’ positions on the matter.

129. The Applicants' position is that ownership of one lot entitles the subsidiary proprietor to nominate one person for election, while the Respondent's position is that there is no such restriction on subsidiary proprietors who own one lot. Both parties are in agreement that the BMSMA is clear that subsidiary proprietors with 2 or more lots may nominate more nominees in proportion to their share value subject to a cap of 49% of the number of council members, whichever is lower. Their disagreement is how the provisions of the BMSMA should be interpreted in the case of how many nominees a single subsidiary proprietor may put up. In particular, the Applicants quoted from the BCA's Strata Living in Singapore, A General Guide (at pg 26 AW1), which states: "Ownership of one lot entitles you to nominate one person for election".
130. The Applicants' position can be found in paragraphs 36 – 58 Applicants Closing Submissions while the Respondent's position can be found in paragraphs 15 – 37 Respondent's Closing Submissions. The Board notes that the said Strata Living Guide is what it says it is, a guide only; while it may seek to provide assistance to the public as to the dos and don'ts of strata living in Singapore, it does not have legal effect like the provisions of the BMSMA or its subsidiary legislations. The contents of the guide must still be derived from and have statutory basis.
131. The Board agrees with parties that there should be more clarity in the BMSMA as to whether ownership of one lot entitles the subsidiary proprietor to nominate one nominee or more for elections into council. While the Board sees merit in the Respondent's arguments that the plain words of the BMSMA does not disallow a subsidiary proprietor who owns one lot from nominating more than one nominee, the Board also appreciates the position of the Applicants that the true purport of the relevant sections cannot be that such subsidiary proprietors can nominate any number of nominees for election when those who own more lots are subject to a cap. This may well be why BCA's Strata Living Guide is worded in the way it is, rightly or wrongly. The Board does not have to decide on this issue to determine the outcome of this case, but it may well be fruitful for this to be clarified at the appropriate juncture and/or for the relevant provisions of the BMSMA to be made clear.
132. Lastly, the Board wishes to thank counsel for both parties for their submissions and assistance to the Board in coming to this decision, which the Board has found to be very helpful.

**BOARD’S DECISION**

133. The Board finds that the Applicants have not made out their case and accordingly dismisses the claim in its entirety.
134. After hearing parties and considering the matter, the Board makes the following costs order:  
The Applicants are to pay the Respondent costs of \$9,000 plus the Applicant’s share of the costs of transcription.
135. Applicants are to make payment of the above amounts to the Respondent within fourteen (14) days from the date of the order.

Dated this 7<sup>th</sup> day of September 2021

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**MR RAYMOND LYE**  
Deputy President

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**MR RICHARD TAN MING KIRK**  
Member

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**MR LIM GNEE KIANG**  
Member

Mr Lee Ee Yang (M/s Covenant Chambers LLC) for the Applicants.  
Ms Teh Ee-Von (M/s Infinitus Law Corporation) for the Respondent.