

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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

STB No. 48 of 2009

In the matter of an application under
Sections 101,103 & 111 of the Building
Maintenance and Strata Management
Act in respect of the development known
as **Sophia Ville** (MCST Plan No. 1434)

Between

Jocelyn Lew Geok Lian

... Applicant(s)

And

1. Cosy Housing Development Pte
Ltd
2. Tomlinson Investment Pte Ltd

... Respondent(s)

Coram: Mr Seng Kwang Boon
Deputy President

Panel Members: Mr Lee Keh Sai
Mr Goh Tiam Lock

Counsel: Mr Chan Hiang Kiat, Vincent (Chan & Goh) for the Applicant.
Mr Chia Ho Choon (Khattar Wong Partnership) for the 1st &
2nd Respondents.

GROUND OF DECISION

1. This is an application by a subsidiary proprietor one Jocelyn Lew Geok Lian for orders against two other subsidiary proprietors namely Cosy Housing Development Pte Ltd and Tomlinson Investment Pte Ltd under sections 101,103 and 113 of the Building Maintenance and Strata Management Act.

2. The seven orders sought by the Applicant are as follows:-
- (i). *An order that the resolution(s) purportedly passed at the extraordinary general meeting of MCST 1434 on 5 June 2009 (the "EOGM") authorising a joint application to the Urban Redevelopment Authority by the Respondents and MCST 1434 to regularise various sub-division works (the "Sub-Division Works") undertaken by the Respondents, including but not limited to the following, be invalidated:*
 - a. *Sub-dividing apartment #01-02 into 2 units.*
 - b. *Sub-dividing apartment #03-01 into 2 units.*
 - c. *Sub-dividing apartment #04-01 into 4 units.*
 - d. *Annexing a part of the ground floor common area for apartments #01-01 and #01-02.*
 - (ii). *An order that the Respondents immediately inform the Urban Redevelopment Authority in writing that the purported joint application made by the Respondents and MCST 1434 after the EOGM in relation to regularising the Sub-Division Works was not authorised by MCST 1434.*
 - (iii). *An order that the Respondents and/or its representatives, namely Mr Tan Tien Chi and/or Mr Jeremy Tan (who are concurrently the Chairman and Secretary of MCST 1434 respectively) supply to the Applicant a copy of the following:*
 - a. *the minutes of the EOGM held on 5 June 2009;*

- b. the purported joint application to the Urban Redevelopment Authority by the Respondents and MCST 1434 to regularise the Subdivision Works; and*
 - c. all other relevant correspondences and documents relating to the Sub-Division Works which were copied to, or involved directly or indirectly, MCST 1434.*
- (iv). *An order that Cosy Housing Development Pte Ltd and/or its representative Mr Jeremy Tan indemnify MCST 1434 and/or all affected subsidiary proprietors for all claims, losses and damages arising from its unauthorised engagement of Starlight Builders Pte Ltd for works to the common areas of Sophia Ville in contravention of the resolution(s) passed at the 14th annual general meeting of MCST 1434 approving the following upgrading works (the "Upgrading Works"):*
- a. Painting and making good of common area.*
 - b. Adjusting and painting of handrail for common staircase.*
 - c. Conversion of the management corporation room into a common area.*
 - d. Installation of mail boxes and notice board.*
 - e. Installation of an auto gate with side gate.*
 - f. Landscaping works for the common area.*
 - g. Leveling and re-tiling of common walkway on the sides and back of Sophia Ville.*
 - h. Replacement of common lightings at staircase.*

- (v). *An order that the Respondents do, jointly and severally, pay the Applicant's costs of the proceedings before the Board.*
- (vi). *An order that the Respondents do, jointly and severally, pay the Applicant all legal fees and expenses.*
- (vii). *Any further or other relief as this Board deems fit."*

Background

- 3. Sometime in May 2008, subdivision and partitioning works were carried out by the 1st & 2nd Respondents to the units.
- 4. Sometime in December Nicholas Bailey the Applicant's husband wrote to URA to inquire the legality of the works being done at the 1st & 2nd Respondents' units.
- 5. Sometime in May 2009, the URA suggested that 1st & 2nd Respondents and the MCST submit a joint application to regularize the work which had already been carried out in the 1st & 2nd Respondents units.
- 6. At an EOGM held on 5th June 2009, MCST passed a resolution agreeing to submit a joint application with the 1st and 2nd Respondents.

The Preliminary Issue

- 7. A preliminary issue raised before the Board was whether the Board has the power or jurisdiction to make an order against a non-party to the proceeding as prayed for by the Applicant.

The Applicant's Submission

- 8. The Applicant submitted that from the plain reading of sections 101,103 and 113 of the Building Maintenance and Strata Management Act (the Act) it was clear that an order could be made against the Management Corporation (MCST) even if the same was not a party to an application. The Act did not expressly mandate the requirement for the MCST to be a party to any application under those sections.

9. Alternatively the Applicant submitted that save for prayer 3, all the other prayers did not require any positive action from the MCST and therefore no necessity for MCST to be a party to the application.

10. In the further alternative, the Applicant submitted the Respondents had usurped the role of the MCST by purporting to act on behalf of the MCST in the matter herein and this application was against them as purported agent of the MCST. Hence MCST need not be a party.

The Respondents' Submission

11. The Respondents submitted that under section 24 of the Act, MCST is a "body corporate capable of suing and being sued and having perpetual successor and a common seal". It is a separate and distinct legal entity from the individual subsidiary proprietors.

12. The resolution which the Applicant sought to invalidate was a resolution passed by the MCST and not the resolution of the 1st and 2nd Respondents. Therefore the Board has no power or jurisdiction to make an order against the 1st and 2nd Respondents invalidating the resolution. Such order they submit can only be made against the MCST.

13. Similarly they submitted that all the other orders sought by the Applicant in the application did not fall within the purview of the Board and/or are sought against the wrong party.

Board's Findings

14. The Board finds that if it were to grant the orders sought by the Applicant in the first and second prayers, those orders would affect the MCST i.e invalidating its resolution and declaring its joint application with the 1st and 2nd Respondents to URA as unauthorised.

15. Similarly, orders sought by the Applicant in the third and fourth prayers would affect one Jeremy Tan and one Tan Tien Chi.

16. The MCST, Jeremy Tan and Tan Tien Chi are not parties named in the proceedings.

17. In effect, the Applicant is applying to the Board to issue orders against the MCST, Jeremy Tan and Tan Tien Chi without giving them an equal opportunity to be heard.

18. The Board is unable to find any section in the Act that confers on it such powers. Indeed it would be contrary to the principle of natural justice, i.e the audi alteram partem principle.

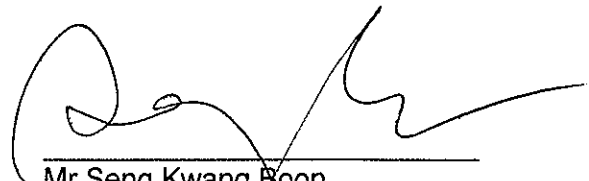
19. The Board is mindful of its duty to hear an application even if the application is defective and rule on its merits.

20. In this application, not only was it defective, the Board finds that it has no power to grant the orders sought against non-parties to the application. It would be a fruitless exercise to proceed to hear this application on its merits.

21. The application is therefore dismissed with cost.

22. The cost is to be agreed if not it will be assessed at a later date.

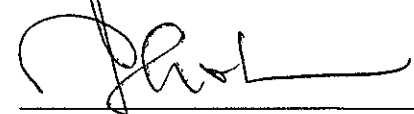
Dated this 18th day of February 2010.



Mr Seng Kwang Boon
Deputy President



Mr Lee Keh Sai
Member



Mr Goh Nam Lock
Member