Fu Loong Lithographer Pte Ltd and others *v* Mok Wai Hoe and another [2013] SGHC 226

Case Number	: Originating Summons No 569 of 2013
Decision Date	: 28 October 2013
Tribunal/Court	: High Court
Coram	: Chan Seng Onn J
Counsel Name(s)	: Leo Cheng Suan & Teh Ee-von (Infinitus Law Corporation) for the Plaintiffs; Lee Peng Khoon Edwin & Poonam Bai d/o Ramakrishnan Gnanasekaran (Eldan Law LLP) for the 1st Defendant; Tan Tian Luh & Lin Zixian (Chancery Law Corporation) for the 2nd Defendant.
Parties	: Fu Loong Lithographer Pte Ltd and others — Mok Wai Hoe and another

Land – Strata Titles – Meetings

28 October 2013

Chan Seng Onn J:

Introduction

1 This was an application by the Plaintiffs to invalidate certain rulings made by the 1st Defendant in his capacity as chairperson of the 2nd Defendant, the Management Corporation Strata Title Plan No 1024, and to restrain the 1st Defendant or any subsequent chairperson from making such rulings in the future.

2 Specifically, the Plaintiffs sought to invalidate the 1st Defendant's ruling that the following motions, which were submitted by the Plaintiffs at an Extraordinary General Meeting ("EGM") on 5 June 2013 ("the 5 June 2013 EGM"), were "out of order":

1. That the following matters be determined only by the management corporation in a general meeting:

   (b) appointment of legal representatives;

   (e) appointment of any contractors or consultants or professional which costs or fees exceed $500 in total.

3. That the following past resolutions, passed at the 26th and/or 27th Annual General Meetings be revoked:

   (a) the ratification of the Upgrading Work Expenses of about $530,000 or any other sum;

   (b) the adoption of all Financial Reports ended 30 June in years 2009, 2010, 2011 and 2012 and the interim Financial Report from 1 July 2012 to 31 July 2012;

   (d) that the Management and Sinking Fund Contribution be increased to $24.00 and $19.50 per share value per month respectively;

(e) that there be no restriction placed on the 28th Council.

8. That the following late payment interest charges levied from October 2011 to March 2013 on the following Subsidiary Proprietors be revoked and credited to the Accounts of the following Subsidiary Proprietors:

(a) Block 53 #02-01/02, Fu Loong Lithographer Pte Ltd - $3,913.91

(b) Block 53 #03-01, In-Lite Enterprise (S) Pte Ltd - $1,681.35

(c) Block 53 #03-02/04, Caldecott Direct Marketing (Pte) Ltd - $2,018.19

(d) Block 53 #03-03, Poh Kim Video Pte Ltd - $1,681.35

(e) Block 53 #04-01, CKT Thomas Pte Ltd - $1,681.35

(f) Block 53 #04-02/04, Hock Guan Cheong Builder Pte Ltd - $2,232.33

(g) Block 53 #04-03, LCE Electrical Engineering Pte Ltd - $1,681.35

(h) Block 53 #05-02/04, KDT Holdings Pte Ltd - $2,751.32

9. That the applications by the subsidiary proprietors for the subdivision of the following lots at Block 53 be approved:

(a) Block 53 5th floor: #05-02/04

Job No. 1303 – Drawing No URA-101 of 7 Mar 2013

(b) Block 53 3rd and 4th floor: #03-02/04, #04-02/04

Job No. 1033 – Drawing No URA-101 of 7 Mar 2013

(c) Block 53 3rd and 4th floor: #03-01, #03-03, #04-01, #04-03

Job No. 1302 – Drawing No URA-101 of 7 Mar 2013

(d) Block 53 2nd floor: #02-01/02

Job No. 1301 – Drawing No URA- 101 of 7 Mar 2013

and that the Managing Agent be duly authorised to sign all relevant documents, forms, approvals required by the authority or statutory bodies.

10. That the MCST be authorised to commence legal action against Mok Wing Chong for unauthorized use of the management and sinking funds for Upgrading Expenses for Works done at Blocks 51 and 53 since June 2008 and for failing to declare his interest in Mun Hean Asia Pte Ltd.

3 The Plaintiffs also applied for the following orders:

(a) that the 1st Defendant, or any other chairperson subsequently elected, be restrained from

making such rulings should the same or similar motions be put forth for consideration by the general body at an EGM or Annual General Meeting ("AGM");

(b) that the rejection of certain votes by the 1st Defendant at the 5 June 2013 EGM on Motion 2 – which called for the termination of Chancery Law Corporation as legal representatives of the 2nd Defendant with immediate effect – on the basis that the voters were in conflict of interest be invalidated; and

(c) that the 1st Defendant, or any other chairperson subsequently elected, be restrained from rejecting votes by subsidiary proprietors who are entitled to vote under the provisions of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA").

4 After hearing the parties, I invalidated the 1st Defendant's rulings with respect to Motions 1(b) and 1(e). However, I added the caveat that any future and/or intended amendments to Motions 1(b) and 1(e) ought not to touch on the legal representatives already appointed by the 2nd Defendant to defend itself as a third party in a separate action brought by the Plaintiffs against certain other parties ("S 311/2012"). Except for the 1st Defendant's ruling on Motion 10, which application for invalidation was not proceeded with by the Plaintiffs, I validated the 1st Defendant's ruling on the rest of the motions (as listed in [2] above), and refused the other orders sought by the Plaintiffs (as listed in [3] above).

5 I now give my reasons as the Plaintiffs have appealed against the following parts of my decision:

(a) that the 1st Defendant's rulings with respect to Motions 3(a), 3(b), 8 and 9 are validated;

(b) that the Plaintiffs are not to table any amendments to Motions 1(b) and 1(e) that touch on the legal representatives already appointed by the 2nd Defendant in S 311/2012; and

(c) that the 1st Defendant's rejection of the Plaintiffs' votes on Motion 2 at the 5 June 2013 EGM on the basis that the voters were in conflict of interest is validated.

The statutory context

6 A broad overview of how the BMSMA framework operates is helpful to understanding the context giving rise to this dispute (I will examine the relevant provisions in greater detail later).

7 The BMSMA is a piece of legislation governing the maintenance and management of buildings, in particular strata developments. Under the BMSMA, certain powers, duties and functions are vested in the management corporation ("MC") for a strata development, which comprises the subsidiary proprietors of all lots in the development. Usually, the MC exercises its powers through an elected council. The chairperson of the council is the chairperson of the MC. The election of council members is based on the *number of lots* – each person entitled to vote has one vote in respect of each lot which he is entitled to vote: para 8 of the First Schedule of the BMSMA ("First Schedule").

8 In addition, the MC can also exercise its powers in a general meeting. The value of the votes cast for motions at a general meeting are calculated based on the *number* of lots, unless a person entitled to vote demands a poll or unless the motion is for a resolution which is required by the BMSMA to be a special resolution or 90% resolution. In the latter two cases, the value of the votes cast are calculated based on the *share value* of the lots in respect of which they were cast: para 9(3) of the First Schedule.

9 The chairperson of the MC presides over the general meetings of the MC. He has the power to rule that a motion submitted at the meeting is out of order if he considers that the motion, if carried, would conflict with the BMSMA or the by-laws or would otherwise be unlawful or unenforceable: para 4, First Schedule. Such motions would not be put to a vote.

The facts

10 The preceding features of the BMSMA set the stage for the dispute in this case, which involves a tussle between two factions. One faction owns a majority of the lots in the development and controls the council ("the Council"), while the other faction possesses a majority in terms of share value and can therefore decide whether motions that are put to a vote in a general meeting are passed (assuming only a simple majority is required). For ease of reference, I shall refer to the former faction as "the Mok Camp" and the latter faction as the "Plaintiffs' Camp". It should be noted that not all members of the Mok Camp or the Plaintiffs' Camp are parties to these proceedings.

11 The disagreement between the Plaintiffs' Camp and the Mok Camp concerns the acts of Mr Mok Wing Chong ("MWC"), the former chairperson of the 2nd Defendant. The Plaintiffs allege that MWC had wrongfully used the funds of the 2nd Defendant for upgrading works that were not approved by the general body of the 2nd Defendant. They further allege that MWC had breached his duties as chairperson by (a) favouring the units owned by the Mok Camp in carrying out the upgrading works, and (b) unilaterally appointing a company which he had an interest in as managing agent of the 2nd Defendant without declaring his interest and without obtaining approval of the appointment at a general meeting.

12 On 22 July 2011, the Plaintiffs requisitioned an EGM to call for a vote of no confidence in MWC as chairperson and to elect a new chairperson with immediate effect. Upon receiving notice of the requisition, the Council convened a council meeting on 5 August 2011 ("the 5 August 2011 council meeting"). In that meeting, MWC resigned as chairperson and the council members proceeded to re-elect key appointment holders to the Council. The 1st Defendant was elected as the new chairperson.

13 The Council then wrote to the subsidiary proprietors informing them that as a result of the 5 August 2011 council meeting, the 1st Defendant had replaced MWC as chairperson, thereby obviating the need for the EGM requisitioned by the Plaintiffs. The Plaintiffs replied that the council meeting had no force and effect because inadequate notice had been given of it and because any discussion of the requisition for the EGM should be in a general meeting and not pre-empted by a council meeting.

14 On 5 September 2011, the Plaintiffs went ahead to convene an EGM ("the 5 September 2011 EGM") (para 14(3) of the First Schedule allows the requisitionists of a meeting to convene the meeting themselves if the council fails to do so within 14 days after the date of the requisition). The Mok Camp attended this meeting. At the meeting, the 1st Defendant, in his capacity as the new chairperson of the 2nd Defendant, explained that the motions requested by the requisitionists were out of order as they had been overtaken by events since MWC had already resigned. He then called the meeting to a close. However, despite the 1st Defendant's closure of the EGM, the Plaintiffs' Camp purported to continue the meeting and purported to vote for one Lim Chee Yong ("Mr Lim") as chairperson.

15 The next day, on 6 September 2011, the Council (with the 1st Defendant as chairperson) convened an AGM ("the 27th AGM"). At this AGM, various resolutions were passed by the subsidiary proprietors present and voting. The Plaintiffs' Camp did not attend this meeting as it did not recognise the 1st Defendant as chairperson. Instead, it purported to convene its own AGM in the same room wherein it purported to elect new council members.

16 The Mok Camp then commenced proceedings before a Strata Titles Board ("STB") in STB 78/2011 for a decision on the validity of the acts done during the 5 September 2011 EGM and the competing AGMs held on 6 September 2011. The STB decided that:

(a) MWC's resignation and the election of the 1st Defendant as the new chairperson by the Council during the 5 August 2011 council meeting were valid;

(b) the election of Mr Lim as chairperson by the Plaintiffs' Camp during the 5 September 2011 EGM was invalid; and

(c) the election of new council members by the Plaintiffs' Camp at their purported AGM was invalid.

The Plaintiffs' Camp did not appeal against the STB's decision.

17 On 8 May 2012, the Plaintiffs filed S 311/2012 against MWC in respect of their claims at [11] above. On 2 November 2012, upon MWC's application, the 2nd Defendant and other individuals who were council members of the 2nd Defendant at the material time were added as third parties to the suit.

18 On 23 April 2013, the Plaintiffs' Camp requisitioned an EGM to consider and pass various motions by ordinary resolution. The EGM was held on 5 June 2013 ("the 5 June 2013 EGM"). At the EGM, the 1st Defendant, exercising his discretion under para 4 of the First Schedule, ruled that Motions 1(b), 1(e), 3(a), 3(b), 3(d), 3(e), 8, 9 and 10 (*ie*, the motions listed at [2] above) were out of order for various reasons. He also ruled that the subsidiary proprietors from the Plaintiffs' Camp were conflicted from voting on Motion 2. Dissatisfied with his rulings, the Plaintiffs filed this application on 26 June 2013.

The parties' submissions

The Plaintiffs

19 The Plaintiffs submitted that the 1st Defendant's rulings on the motions put forth by the Plaintiffs' Camp were without basis and oppressive. They argued that the 1st Defendant could only rule a motion as being "out of order" on the limited grounds provided for in para 4 of the First Schedule, and none of those grounds applied to the motions that were ruled out of order. As for the 1st Defendant's ruling that the Plaintiffs' Camp was conflicted from voting on Motion 2, the Plaintiffs submitted that there is no provision in the BMSMA for such a ruling. They suggested that these rulings were simply a bad faith attempt by the 1st Defendant to prevent the Plaintiffs' Camp from taking MWC to task for his alleged breaches of duties (see [11] above) during his stint as chairperson.

The 1st Defendant

20 As a matter of procedure, the 1st Defendant argued that the High Court was not an appropriate forum for this dispute and that the Plaintiffs should instead have brought it before an STB first (STB 78/2011, mentioned at [16] above, dealt with a separate issue). On the merits, he maintained that he had at all times acted honestly and used reasonable diligence in the discharge of his duties as chairperson. He pointed out that he had sought legal advice and prepared a PowerPoint presentation explaining in detail why he ruled certain motions out of order and why he excluded the Plaintiffs from voting on Motion 2. Relying on the reasons he gave in the PowerPoint presentation, he argued that the motions fell within the grounds provided in para 4 of the First Schedule.

21 The 1st Defendant also took issue with the injunctions sought by the Plaintiffs (see above at [3(a)] and [3(c)]). He pointed out that the Plaintiffs were seeking *quia timet* injunctions. This type of injunction aims to restrain wrongful acts that are threatened or imminent. The 1st Defendant argued that the Plaintiffs have failed to show that there was any threatened wrong that would be committed by him or a future chairperson that would cause imminent and substantial damage to the Plaintiffs.

The 2nd Defendant

22 The 2nd Defendant argued against the injunctions sought by the Plaintiffs for substantially the same reasons as those submitted by the 1st Defendant. It also submitted that the Plaintiffs were not the proper plaintiffs to make this application because s 61 of the BMSMA, on which (*inter alia*) the Plaintiffs base their application, only allows for a civil suit to be brought by the MC itself.

Issues

23 The issues that arose for my decision were as follows:

(a) Were there any procedural obstacles barring the Plaintiffs from bringing this case before the High Court? Specifically:

(i) was it necessary for the Plaintiffs to first have their dispute heard and adjudicated by a STB; and

(ii) were the Plaintiffs the proper plaintiffs to bring this application?

(b) Was there any basis to disturb the 1st Defendant's ruling on each of the motions in issue in this case?

(c) Did the 1st Defendant err in excluding the Plaintiffs' Camp from voting on Motion 2?

(d) Should the injunctions requested by the Plaintiffs be granted?

Analysis and decision

Issue 1: Whether there were any procedural obstacles barring the Plaintiffs from bringing this case before the High Court

The proper forum argument

24 The 1st Defendant did not provide any authority for his argument that the Plaintiffs were obliged to first refer this dispute to a STB for determination before resorting to the courts. In my view, his position is contradicted by authority. In Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012), the learned author notes (at pp 774–775):

> As noted earlier, unless otherwise provided by the BMSMA or LTSA, a Board shall determine by mediation-arbitration every dispute of which it has cognizance and every matter with respect to which it has jurisdiction thereunder*. It may be pertinent to note that the Board is merely an alternative tribunal available to subsidiary proprietors who choose not to litigate their disputes. The provisions for proceeding before a Board do not oust the jurisdiction of the subordinate courts.* [emphasis added]

25 The learned author cites *Teo Kim Hui and Another v Kwok Wai Hon* [2008] SGHC 232 in support of this proposition. In that case, the plaintiff sued the defendants in the district court for various non-monetary reliefs and damages in respect of a leak which allegedly emanated from the defendants' premises. The defendant applied to strike out the plaintiff's action on the basis that the dispute was within the exclusive jurisdiction of the BMSMA, and could only be adjudicated by the STB. The district judge rejected this argument in *Kwok Wai Hon v Teo Kim Hui and Another* [2008] SGMC 4. He reasoned as follows (at [14]–[16]):

> 14. The simple point in response to the arguments put forward by the Defendants is this. The basis of their application is grounded upon the exclusive jurisdiction of the Strata Titles Board over disputes such as the present between strata unit proprietors. This is an argument based on the ouster of the court's jurisdiction. *It is trite that for such an ouster of the court's jurisdiction in favour of the exclusive jurisdiction of a tribunal other than the courts, there must be express legislative provision to that effect.* An example would be section 6(2) of the International Arbitration Act (Cap 143) which obliges the courts to stay any action commenced in court in favour of an arbitration to which the disputants have by agreement, agreed to. There is no such express provision here. In the case of section 6 of the International Arbitration Act, the case precedents have consistently shown that in cases falling within that provision, the courts are obliged – it is mandatory – to stay the court action in favour of arbitration – see for example, *Dalian Hualian Enterprise Group Co. Ltd & Anor v Louis Dreyfuss Asia Pte Ltd* [2005] 4 SLR 646 at [75].
>
> 15. With respect, Defendant Counsel's reliance on the various provisions cited under both the Act and the Strata Act do not, in my view, provide for the exclusive jurisdiction of the Strata Titles Board. Indeed it is the reverse. Section 101(1) of the Strata Act clearly provides that the Strata Titles Board "…may, pursuant to an application by a … a (*sic*) subsidiary proprietor" (which the Plaintiff would be) make orders to resolve the dispute between the various parties mentioned in that provision. That is a far cry from expressly providing for the exclusive jurisdiction of the Strata Titles Board.
>
> 16 As to Defendant Counsel's reliance on section 89(2), it is entirely without merit. The provision merely provides for the mode of settlement of disputes i.e. by mediation-arbitration, in connection with 'disputes which [the Strata Titles Board] has cognizance'. Again that is not an express provision which invests exclusive jurisdiction in the Strata Titles Board.
>
> [emphasis added]

The district judge's decision and reasoning was adopted by the High Court (at [7]). Leave to appeal against the High Court's decision was refused by the Court of Appeal in Civil Appeal No 145 of 2008 (no grounds were issued).

26 I agree with the district judge's reasoning. The mere fact that the BMSMA provides for the establishment of STBs to determine disputes under the BMSMA does not mean that the jurisdiction of the courts is thereby ousted. In the absence of a provision expressly ousting the court's jurisdiction or granting the STBs exclusive jurisdiction over strata management disputes, the position will simply be that a plaintiff has two possible forums to choose from. However, if he chooses to proceed before a STB in the first instance, then any appeal against the STB's decision to the High Court can only be on a point of law: s 98(1) of the BMSMA.

27 Thus, I held that Plaintiffs were entitled to bring this dispute before me without having to first bring it before a STB.

The proper plaintiff argument

28 The Plaintiffs' application is stated to be in the matter of s 61 of the BMSMA and paras 4 and 5 of the First Schedule. However, the 2nd Defendant argued that the Plaintiffs are not the proper plaintiffs to sue under s 61 of the BMSMA, which states:

> **Duty and liability of council members and officers**
>
> **61.**—(1) A member of a council shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.
>
> (2) A member of a council, or an officer or an agent or a managing agent of a management corporation, shall not use his position as a member of the council or as an officer, an agent or a managing agent of the management corporation to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the management corporation.
>
> (3) Any person who commits a breach of any provision of this section shall —
>
> (*a*) *be liable to the management corporation for any profit made by him or for any damage suffered by the management corporation as a result of the breach of any such provision*; and
>
> (*b*) be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months or to both.
>
> …
>
> [emphasis added]

29 The 2nd Defendant points out that according to s 61(3)(a), a council member who breaches his duties is only made liable to the MC. There is no provision in s 61 that gives individual subsidiary proprietors a cause of action. Consequently, the 2nd Defendant submits that the MC is the proper plaintiff to commence this application, and not the Plaintiffs.

30 The 2nd Defendant appeared to be invoking the proper plaintiff rule, which is also known as the rule in *Foss v Harbottle* (1843) 2 Hare 461; 67 ER 189. In *Ting Sing Ning (alias Malcolm Ding) v Ting Chek Swee (alias Ting Chik Sui) and others* [2008] 1 SLR(R) 197, the Court of Appeal adopted the following statement of the rule (at [12]):

> The principle in *Foss v Harbottle* and the exceptions thereto are captured succinctly in the English Court of Appeal decision of *Prudential Assurance Co Ltd v Newman Industries Ltd (No 2)* [1982] Ch 204 at 210-211 ("*Prudential Assurance*") in the following classic statement:
>
> (1) The proper plaintiff in an action in respect of a wrong alleged to be done to a corporation is, prima facie, the corporation. (2) Where the alleged wrong is a transaction which might be made binding on the corporation and on all its members by a simple majority of the members, no individual member of the corporation is allowed to maintain an action in respect of that matter because, if the majority confirms the transaction, cadit quaestio [(the question is at an end)]; or, if the majority challenges the transaction, there is no valid reason why the company should not sue. (3) There is no room for the operation of the rule if the alleged wrong is ultra vires the corporation, because the majority of members cannot

> confirm the transaction. (4) There is also no room for the operation of the rule if the transaction complained of could be validly done or sanctioned only by a special resolution or the like, because a simple majority cannot confirm a transaction which requires the concurrence of a greater majority. (5) There is an exception to the rule where what has been done amounts to fraud and the wrongdoers are themselves in control of the company. In this case the rule is relaxed in favour of the aggrieved minority, who are allowed to bring a minority shareholders' action on behalf of themselves and all others. The reason for this is that, if they were denied that right, their grievance could never reach the court because the wrongdoers themselves, being in control, would not allow the company to sue.
>
> …

31 In my view, however, neither s 61(3)(a) nor the proper plaintiff rule was relevant as the Plaintiffs were not suing the 1st Defendant for damages or an account of profits resulting from a breach of duty. Nor were they suing the 1st Defendant for wrongs allegedly done to the MC. Rather, they were seeking to invalidate his rulings to the effect that certain motions submitted by them were "out of order" and that they were not allowed to vote on Motion 2 because of a conflict of interest. These were rulings that affected them personally. Further, it is clear that individual subsidiary proprietors are entitled to apply to a STB for a determination of such issues. As stated in ss 101(1)(c) and 104(1)(a) of the BMSMA:

> **General power to make orders to settle disputes or rectify complaints, etc.**
>
> **101.**—(1) Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, *a subsidiary proprietor*, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to —
>
> …
>
> (*c*) the exercise or performance of, or the failure to exercise or perform, a power, duty or function conferred or imposed by this Act or the by-laws relating to the subdivided building or limited common property, as the case may be.
>
> …
>
> **Order where voting rights denied or due notice of item of business not given**
>
> **104.**—(1) Where, pursuant to an application by *a person* under this section, a Board is satisfied that a particular resolution would not have been passed at a general meeting of a management corporation or subsidiary management corporation but for the fact that the applicant —
>
> (*a*) was improperly denied a vote on the motion for the resolution; or
>
> …
>
> the Board may order that the resolution be treated as a nullity on and from the date of the order.
>
> …
>
> [emphasis added]

I saw no reason why the position should be different where the subsidiary proprietors were applying to court. Consequently, I held that the Plaintiffs were proper parties to bring this action.

Issue 2: Whether the 1st Defendant's rulings on the motions should be invalidated

32 Before examining the 1st Defendant's rulings, some preliminary observations are in order.

33 This issue relates to para 4 of the First Schedule, which states:

> **Motions out of order**
>
> 4. At a general meeting of a management corporation or subsidiary management corporation, its chairperson may rule that a motion submitted at the meeting is out of order *if he considers* that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be *unlawful or unenforceable*. [emphasis added]

34 In my judgment, the phrase "if he considers" in this provision confers on the chairperson the discretion to decide whether a motion would conflict with the BMSMA or the by-laws or would otherwise be unlawful or unenforceable. The burden is therefore on the Plaintiffs to show that the chairperson's decision was made without rational basis or was in bad faith. I would add that the chairperson of an MC is entitled to seek legal advice and ask questions to inform himself of the background facts and the reasons for any proposed motion, so that he can decide whether a motion is "out of order" for any of the grounds stated in para 4 of the First Schedule.

35 The other key phrase in para 4 is "unlawful or unenforceable". The Plaintiffs contended that a motion is "unlawful" if it is contrary to law or is illegal, and "unenforceable" if it would be impossible to force a party to comply with the motion, if carried. But no authority was cited for this proposition, and I took the view that the Plaintiffs' definition was too narrow.

36 There is no settled definition of the word "unlawful". At a minimum, the word would clearly encompass criminal offences and tortious acts; however, depending on the context, it might also extend to other types of wrongful conduct. In *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174, one the issues of whether a criminal act could constitute "unlawful means" for the purposes of unlawful means conspiracy. Lord Walker of Gestingthorpe made the following observations (at [90]–[91]):

> 90 … The man in the street, if asked what an unlawful act was, would probably answer "a crime". He might give as an example theft, obtaining money by false pretences, or assault occasioning actual bodily harm. He might or might not know that each of these was also a civil wrong (or tort) but it is unlikely that civil liability would be in the forefront of his mind.
>
> 91 The reaction of a lawyer would be more informed but it would not, I suggest, be essentially different. ***In its ordinary legal meaning "unlawful" certainly covers crimes and torts (especially intentional torts). Beyond that its scope may sometimes extend to breach of contract, breach of fiduciary duty, and perhaps even matters which merely make a contract unenforceable, but the word's appropriateness becomes increasingly debatable and dependent on the legal context.*** In the very important criminal case of *R v Clarence* (1888) 22 QBD 23 (in which a question of law on sections 20 and 47 of the Offences against the Person Act 1861 (24 & 25 Vict c 100) was argued before a court of 13 judges, several of whom later gave their opinions to the House in *Allen v Flood* [1898] AC 1) Stephen J expressed the view, at p 40, that:

> "the word 'unlawfully' must here be construed to mean 'unlawfully' in the wide general sense in which the word is used with reference to acts which if done by conspirators are indictable, though not if they are done by individuals. This general sense may, I think, be said to be 'immoral and mischievous to the public'. I do not agree with the doctrine that the word 'unlawfully' is used here in this wide sense. The use of the word in relation to conspiracy appears to me to be exceptional."
>
> What was exceptional about it was its extension *downwards* in the scale of blameworthy conduct. The unlawfulness of criminal conduct was at the top end of the scale, and too obvious to call for mention.
>
> [emphasis in original in italics; emphasis added in bold italics]

37 As for the word "unenforceable", its literal meaning refers to the fact that something (usually a legal obligation of some sort) is impossible to enforce. But why would it be impossible to enforce? In the legal context, it is usually because the body with the authority to enforce it – such as a court – would consider it improper or undesirable to enforce it for various reasons. For example, a contract might be found to be "unenforceable" because it is illegal, violates public policy, is procured by duress or undue influence, *etc*. Consequently, the concept of unenforceability does not only mean impossibility in the strict sense, but also necessarily engages the court's determination of whether it is improper or undesirable to give effect to something. Accordingly, for the purposes of the First Schedule, a motion, while not necessarily *impossible* to implement if carried, might nevertheless still be "unenforceable" in the sense that a court would consider it improper or undesirable to enforce it.

38 With these considerations in mind, I now turn to explain my decision on the 1st Defendant's rulings.

Motions 1(b) and 1(e)

39 Motions 1(b) and 1(e) state:

> 1. That the following matters be determined only by the management corporation in a general meeting:
>
> (b) appointment of legal representatives;
>
> (e) appointment of any contractors or consultants or processional [*sic*] which costs or fees exceed $500 in total.

40 The 1st Defendant ruled that Motion 1(b) was unenforceable because if any legal proceedings were commenced against the 2nd Defendant, the 2nd Defendant would have to appoint legal representatives to respond in a timely manner. This would not be possible if the appointment of legal representatives had to be decided in a general meeting. As for Motion 1(e), he ruled that it was unenforceable because it was not practical: the 2nd Defendant often had to appoint contractors or professionals whose fees exceed $500 to perform work in and around the building.

41 However, the 1st Defendant's ruling on Motions 1(b) and 1(e) was inconsistent with s 59 of the BMSMA, which states:

> **Restrictions imposed on council by management corporation**

59. A management corporation may in a general meeting decide what matters or class of matters, if any, shall be determined only by the management corporation in a general meeting.

Consequently, by ruling that it was "out of order" for the Plaintiffs to table Motions 1(b) and 1(e), the 1st Defendant was depriving the subsidiary proprietors of the 2nd Defendant of their right to reserve certain matters to be determined only by them in a general meeting. Such a ruling was clearly unreasonable and I accordingly invalidated it. Having such appointments being made by the MC only at a general meeting may well be very inconvenient or on certain occasions impractical, but that does not entitle the 1st Defendant to rule the motions "out of order" for being unenforceable. Inconvenience and impracticality should not be equated with unenforceability.

42 Motions 1(b) and 1(e) as framed would only operate prospectively with respect to future legal representation and to future appointments of any contractors, consultants or professionals by the MC. However, out of an abundance of caution and in part to address the concerns expressed by counsel for the 2nd Defendant, I further specified that the Plaintiffs should not propose any future motions or amendments that touched on the lawyers *already* appointed by the 2nd Defendant to defend itself in S 311/2012. This is because there was another motion by the Plaintiffs (Motion 2) calling for the termination of Chancery Law Corporation as the legal representatives of the 2nd Defendant with *immediate effect* without a corresponding or joint motion to immediately appoint a replacement, thereby leaving the 2nd Defendant without any legal representation whatsoever. This clearly indicated to me that the Plaintiffs were determined to stop Chancery Law Corporation from acting for the 2nd Defendant as soon as possible with the ulterior motive of interfering with and disrupting the legal preparation by 2nd Defendant in S 311/2012, and for no apparent good reason as far as I could see. As the Plaintiffs in the present case are also the plaintiffs in S 311/2012, I took the view that the rules of natural justice (specifically, the 2nd Defendant's right to be heard) would be violated if the Plaintiffs were allowed to terminate the 2nd Defendant's counsel in that suit. Such a motion would be unlawful and unenforceable. I will touch on this point again when I deal with the 1st Defendant's decision to exclude the Plaintiffs' Camp from voting on Motion 2.

Motion 3(a)

43 Motion 3(a) purports to revoke a past resolution, passed at the 26th and/or 27th AGM, for "the ratification of the Upgrading Work Expenses of about $530,000 or any other sum".

44 The 1st Defendant ruled this motion out of order for two reasons:

(a) the proceedings at the 27th AGM had been found to be valid in STB 78/2011 and the matters of the 27th AGM should be considered to be final; and

(b) there is no provision in the BMSMA for the revocation of such a resolution that has been passed.

45 I disagreed with the 1st Defendant's reasons. The STB's decision in STB 78/2011 was simply a decision that the 27th AGM conducted by the Mok Camp was valid and that the resolutions passed thereunder were validly passed. It did not render the resolutions passed during the 27th AGM *irrevocable*. As for whether there was any provision in the BMSMA for an MC to revoke past resolutions, para 13 of the First Schedule is pertinent:

Amendment or revocation of unanimous or special resolutions

13. A unanimous resolution, resolution by consensus, comprehensive resolution, 90% resolution or

special resolution of a management corporation shall not be amended or revoked except by a subsequent unanimous resolution, resolution by consensus, comprehensive resolution, 90% resolution or special resolution, as the case may be.

Although para 13 does not expressly state that past ordinary resolutions may be revoked in a general meeting by a subsequent ordinary resolution, that was obviously regarded as the default position. That is why it was necessary to specify for the avoidance of doubt that other types of resolutions can only be revoked by a subsequent resolution of the same type (and not merely by an ordinary resolution). Thus, para 13 necessarily *implies* that it is possible to revoke an ordinary resolution by a subsequent ordinary resolution.

46 Nonetheless, I validated the 1st Defendant's ruling on Motion 3(a) for the simple reason that there was *no* resolution to ratify any previous upgrading work expenses passed during the 27th AGM. The minutes of the 27th AGM indicate that of all the resolutions that were passed, they were concerned with *future* upgrading work or the approval of financial accounts as follows:

(a) to approve the accounts and adopt the three audited financial reports for the years ended 30 June 2009, 30 June 2010 and 30 June 2011;

(b) to carry out the repainting and washing of the buildings at a cost not exceeding the sum of $80,000; and

(c) to carry out upgrading works to the common toilets at levels three and four of 53 Kim Keat Road at a cost not exceeding the sum of $100,000.

The last two resolutions passed were clearly related to *future* upgrading work and had nothing to do with *past* upgrading work expenses of about $530,000 or some other sum. As for the first resolution, I was of the view that the approval and adoption of audited financial reports did not amount to a ratification of *past* upgrading work expenses. I will elaborate on this point further when I discuss Motion 3(b).

47 I should note that although Motion 3 refers to "the 26th and/or 27th AGM" (see [2] above), the Plaintiffs have stated that this was an error and that they meant to refer to "the 27th and/or 28th AGM" instead. It was the Plaintiffs' case that this error affected Motions 3(d) and 3(e) (which purportedly dealt with resolutions passed during the 28th AGM) and that the 1st Defendant had wrongfully refused to let them amend Motion 3 to correct this error. But Motions 3(d) and 3(e) are not the subject of the Plaintiffs' appeal, and with respect to Motion 3(a) specifically, it was *not* the Plaintiffs' case that the resolution to ratify upgrading works expenses was passed at the 28th AGM. Consequently, I saw no reason to disturb the 1st Defendant's ruling that Motion 3(a) was out of order.

Motion 3(b)

48 Motion 3(b) was a motion to revoke a past resolution for "the adoption of all Financial Reports ended 30 June in years 2009, 2010, 2011 and 2012 and the interim Financial Report from 1 July 2012 to 31 July 2012". This resolution was passed during the 27th AGM.

49 The 1st Defendant ruled the motion out of order for the following reasons:

(a) the proceedings at the 27th AGM had been found to be valid in STB 78/2011 and the matters of the 27th AGM should be considered to be final;

(b) the accounts had been audited pursuant to s 45(1) of the BMSMA, and there would be no replacement set of audited accounts if the adoption of these accounts were revoked; and

(c) there is no provision for the revocation of such a resolution that has been passed.

50 As mentioned above at [45], I disagreed with reasons (a) and (c). However, I agreed that reason (b) was a legitimate concern. It appeared that the Plaintiffs' Camp had been blocking the adoption of the audited accounts since 2009, and the Mok Camp had finally managed to pass a resolution to adopt them during the 27th AGM because of the Plaintiffs' Camp's absence from that meeting.

51 The question was whether there was any valid basis for the Plaintiffs' Camp to undo that via Motion 3(b). The Plaintiffs' affidavit was silent on why it was necessary to revoke the approval and adoption of the audited accounts. There was no allegation that the accounts contained any material misstatements or that the auditors had been remiss in any way. The Plaintiffs' indiscriminate and blanket opposition to adopting the audited accounts for all four years suggested to me that their issue was not with any specific inaccuracy in the accounts *per se*; rather, they were concerned that the adoption of the audited accounts would prejudice their case in S 311/2012 wherein they are alleging that MWC had used management and sinking funds without authorisation.

52 But the approval and adoption of audited accounts has nothing to do with whether individual expenditure items in the accounts were authorised. If these items were unauthorised, that is a separate matter involving a failure of internal controls and does not mean that there was a material misstatement in the audited accounts or that the audited accounts were erroneous in some material way or that the audited accounts should have been qualified. The Singapore Standards on Auditing ("SSA") are instructive in this regard. SSA 200 describes the overall objectives of an auditor as follows (at para 11):

11. In conducting an audit of financial statements, the overall objectives of the auditor are:

(a) To obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework; and

(b) To report on the financial statements, and communicate as required by the SSAs, in accordance with the auditor's findings.

SSA 700 describes the scope of management responsibility as follows (at paras 26 and A22):

26. The auditor's report shall describe management's responsibility for the preparation of the financial statements. The description shall include an explanation that ***management is responsible*** *for the preparation of the financial statements in accordance with the applicable financial reporting framework, and for such* ***internal control*** *as it determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.* (Ref: Para. A20-A23) [For management's responsibilities prescribed by Singapore law, refer to A22]

…

A22. … Singapore law prescribes that ***management is responsible*** for the preparation of

financial statements that give a true and fair view in accordance with the provisions of the Singapore Companies Act, Chapter 50 and Singapore Financial Reporting Standards. *This responsibility includes: Devising and maintaining a system of internal accounting controls sufficient to provide a reasonable assurance that* ***assets are safeguarded against loss from unauthorised use or disposition; and transactions are properly authorised*** and that they are recorded as necessary to permit the preparation of true and fair profit and loss accounts and balance sheets and to maintain accountability of assets. …

[emphasis added in italics and bold italics]

53 Therefore, if the Plaintiffs' reason for wanting to revoke the adoption of the audited accounts was to bolster their case against MWC, this was not a valid reason. Whether or not any specific item of expenditure was authorised is an entirely separate issue that cannot be determined simply by the fact that the MC had approved and adopted certain audited accounts. In the absence of any other explanation from the Plaintiffs for wanting to revoke the adoption of the accounts, I found that the 1st Defendant was justified in ruling Motion 3(b) out of order for being improper and unenforceable.

Motion 8

54 Motion 8 was a motion to revoke and credit to the accounts of certain subsidiary proprietors the late payment interest charges levied on them from October 2011 to March 2013.

55 The 1st Defendant ruled this motion out of order for being in conflict with the BMSMA. He pointed out that the interest payments had already become part of the management fund pursuant to s 40(7) of the BMSMA, and could not be withdrawn pursuant to s 38(3) of the BMSMA. On the other hand, the Plaintiffs argued that s 40(6)(b) of the BMSMA allows an MC to determine in a general meeting that any unpaid contribution shall bear no interest.

56 Sections 40(6)(b) and 40(7) provide as follows:

Contributions by subsidiary proprietors

40.—

…

(6) Any contribution levied under this section or section 41 —

…

(*b*) if not paid within 30 days when it becomes due and payable, shall bear interest at the rate determined by the management corporation and such interest shall accrue from the expiry of 30 days after the date when the contribution becomes due and payable *unless the management corporation determines in a general meeting (either generally or in a particular case) that any unpaid contribution shall bear no interest*; and

…

(7) Any interest paid under subsection (6) shall form part of the fund to which the contribution belongs.

[emphasis added]

57 Section 38(3) states:

> **Management funds and sinking funds**
>
> **38.**—
>
> …
>
> (3) A management corporation shall not disburse any moneys from its management fund otherwise than for the purpose of —
>
> (*a*) meeting its liabilities referred to in section 39(1);
>
> (*b*) carrying out its powers, authorities, duties or functions under this Act; or
>
> (*c*) transferring moneys therein not required to meet the liabilities of the management fund to the sinking fund.

58 Having regard to the provisions above, I agreed with the 1st Defendant's view that the interest payments cannot be refunded. If the interest charges have *not yet* been paid into the management fund, s 40(6)(b) allows the MC to determine in a general meeting that the unpaid contribution shall bear no interest. However, once the interest charges *have* been paid, it becomes part of the management fund and cannot be disbursed otherwise than for the purposes stated in s 38(3)(a)–(c). A refund of late payment interest is not one of the stated purposes. Therefore, I validated the 1st Defendant's ruling on Motion 8.

Motion 9

59 Motion 9 was a motion to approve an application by some of the subsidiary proprietors to subdivide their lots and to authorise the managing agent to sign all relevant documents, forms, approvals required by the authority or statutory bodies.

60 The 1st Defendant ruled this motion out of order on the grounds that it conflicted with the BMSMA and would be unenforceable. He did so after seeking and obtaining an architect's report dated 25 May 2013 stating that such a subdivision would require significant upgrading and modification work to be carried out in the common areas. Significantly, the architect opined that the Urban Redevelopment Authority would likely request for a 90% resolution before granting permission for the subdivision. The Plaintiffs did not tender any evidence to contradict the architect's views.

61 As noted in [18] above, the Plaintiffs' Camp had requisitioned the 5 June 2013 EGM to pass its motions by *ordinary resolution*. I was therefore satisfied that the 1st Defendant had a reasonable basis to rule that Motion 9 was out of order for being unenforceable, given that the proposed subdivision would likely require a 90% resolution. For this reason, I validated the 1st Defendant's ruling on Motion 9.

Issue 3: Whether the 1st Defendant erred in excluding the Plaintiffs' Camp from voting on Motion 2

62 Motion 2 called for the termination of Chancery Law Corporation as the legal representatives of the 2nd Defendant with immediate effect. The 1st Defendant allowed this motion to be voted on but

rejected the votes of eight subsidiary proprietors including the Plaintiffs. His reasoning was that those subsidiary proprietors were involved in pending litigation against the 2nd Defendant, *viz*, STB 50/2012 and S 311/2012, and were therefore conflicted from deciding on the 2nd Defendant's legal representation.

63 The Plaintiffs argued that the 1st Defendant did not have the power to exclude them from voting. They cited paras 2 and 5 of the First Schedule, which provide that a person is entitled to vote in respect of any lot on any proposal submitted at a general meeting if (*inter alia*) he is the subsidiary proprietor of that lot and has paid up all contributions recoverable by the MC:

> **Persons entitled to vote at general meetings**
>
> 2.—(1) A person shall be entitled to vote in respect of any lot on any proposal submitted at a general meeting of a management corporation or on any election of members of the council, or at a general meeting of a subsidiary management corporation or on any election of its executive committee, only if —
>
> (*a*) *in the case of a management corporation, he is the subsidiary proprietor or a mortgagee in possession or a receiver of that lot as shown on the strata roll and has paid to the management corporation all contributions and any other moneys levied or recoverable by the management corporation under this Act*; or
>
> (*b*) in the case of a subsidiary management corporation, he is the subsidiary proprietor (or a mortgagee in possession or a receiver) of a lot who is a member of that subsidiary management corporation and has paid to the subsidiary management corporation all contributions and any other moneys levied or recoverable by the subsidiary management corporation under this Act.
>
> …
>
> **Method of casting vote**
>
> 5. Except as provided in paragraph 2(3), a vote on a motion submitted at a general meeting of a management corporation or on any election of members of the council, or at a general meeting of a subsidiary management corporation or on any election of its executive committee, *may be cast by the person entitled to vote*, either personally or by his duly appointed proxy.
>
> [emphasis added]

64 There appears to be no express provision granting a chairperson the power to reject votes for any reason from a subsidiary proprietor who is *prima facie* entitled to vote. Nonetheless, I was of the view that in certain exceptional circumstances, it may be proper for a chairperson to do so. Guidance may be had from s 104(1)(a) of the BMSMA:

> **Order where voting rights denied or due notice of item of business not given**
>
> 104.—(1) Where, pursuant to an application by a person under this section, a Board is satisfied that a particular resolution would not have been passed at a general meeting of a management corporation or subsidiary management corporation but for the fact that the applicant —
>
> (*a*) was *improperly* denied a vote on the motion for the resolution; or

…

the Board may order that the resolution be treated as a nullity on and from the date of the order.

[emphasis added]

The use of the word "improperly" in s 104(1)(a) suggests that a person may be *properly* denied a vote. I disagreed with the proposition that the only ground on which a person may be properly denied a vote is that he does not satisfy the requirements in para 2(1) of the First Schedule. In my judgment, allowing the Plaintiffs to terminate immediately the 2nd Defendant's counsel in proceedings wherein the Plaintiffs' interests are opposed to that of the 2nd Defendant would occasion a serious breach of the rules of natural justice. It is trite that a party to proceedings in a court of law is entitled to be legally represented: *Halsbury's Laws of Singapore* vol 1 (LexisNexis, 2012 Reissue) at para 10.062. The 2nd Defendant's right to be heard would clearly be violated if its legal representation were terminated by an adverse party. It must be noted that an MC is a body corporate (s 24(1)(b) of the BMSMA), and in general, a body corporate can only carry on court proceedings through a solicitor: O 5 r 6(2) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed). The motion for the immediate termination of Chancery Law Corporation as the legal representatives of the 2nd Defendant without a replacement would therefore effectively deny the 2nd Defendant its right to be heard in S 311/2012. In my judgment, such a motion could not be voted on by parties whose interests are adverse to the 2nd Defendant in that suit.

65 In this regard, the Plaintiffs pointed out that they did not sue the 2nd Defendant in S 311/2012; instead it was MWC who issued a third party notice against it. But this was immaterial in my view because the 2nd Defendant is entitled in that suit to dispute not only MWC's claim against itself, but also the Plaintiffs' claims against MWC. Indeed, a perusal of the 2nd Defendant's defence in S 311/2012 indicates that it is not only disputing the Plaintiffs' claims but also arguing that the Plaintiffs were not authorised to bring that suit against MWC. [note: 1] The interests of the Plaintiffs and the 2nd Defendant in S 311/2012 are clearly inconsistent.

66 Thus, I validated the 1st Defendant's decision to reject the Plaintiffs' votes with respect to Motion 2.

Issue 4: Whether the injunctions sought by the Plaintiffs should be granted

67 Given my decision to invalidate the 1st Defendant's ruling on Motions 1(b) and 1(e) (see [41]–[42] above), the issue arises as to whether I should issue an injunction (see [3(a)] and [3(c)] above) to restrain the 1st Defendant or any other chairperson subsequently elected from making a similar ruling should the same or similar motions be submitted in the future.

68 On this issue, I agreed with the 1st and 2nd Defendants that the Plaintiffs were essentially seeking a *quia timet* injunction. A *quia timet* injunction is described as follows in Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 5th Edition, 2004) at para 2.029:

> A *quia timet* (since he fears) injunction is an injunction granted where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong. … [T]he jurisdiction involves proof that unless the court intervenes by injunction there is a real risk that an actionable wrong will be committed; that an injunction would do no harm is not a justification for granting it. Usually this will be by evidence that the defendant has threatened to do the particular wrongful act: "no-one can obtain a *quia timet* order by merely saying 'Timeo'" [literally, "I fear"].

...

> There is no fixed or "absolute" standard for measuring the degree of apprehension of a wrong which must be shown in order to justify *quia timet* relief. The more grave [*sic*] the likely consequences, the more the court will be reluctant to consider the application as "premature". But there must be at least some real risk of an actionable wrong. If the court decides to grant a final injunction the width of that injunction is a matter for the court's discretion and can be tailored according to the circumstances.

69 In their affidavit, the Plaintiffs simply stated their belief that "unless restrained by the Court, the [1st] Defendant will continue to make such rulings as a means to deny the Plaintiffs the motions they seek". [note: 2] No evidence was adduced to support this belief. In my view, there was insufficient basis to issue a *quia timet* injunction. The evidence shows that the 1st Defendant was a careful chairperson who sought legal and professional advice before making the rulings he did, and I found no evidence of bad faith on his part. Consequently, there was no reason to believe that he would continue to make rulings similar to those that I had invalidated, and I did not grant the injunction sought by the Plaintiffs.

Conclusion

70 For the foregoing reasons, I granted the Plaintiffs' application to invalidate the 1st Defendant's ruling on Motions 1(b) and 1(e), subject to the proviso that any future amendments should not touch on the legal representatives already appointed by the 2nd Defendant to defend itself in S 311/2012. All the other prayers that the Plaintiffs proceeded with were dismissed.

71 I ordered the Plaintiffs to pay costs and disbursements to the 1st Defendant fixed at $11,000 and to the 2nd Defendant fixed at $3,000. I also ordered the Plaintiffs to pay costs to the 1st and 2nd Defendants at $400 each in relation to a reply affidavit that was filed without leave and subsequently withdrawn by the Plaintiffs.

[note: 1] See para 3 of the 5th Third Party's Defence filed on 5 April 2013 in S 311/2012.

[note: 2] Para 28 of Sarah Tham's affidavit dated 26 June 2013.