IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 123

Civil Appeal No 82 of 2020 and Summons No 112 of 2020

Between

Chan Sze Ying

… Applicant / Appellant

And

The Management Corporation
Strata Title Plan No 2948

… Respondent

Lee Chuen T'ng

… Intervener

In the matter of Originating Summons No 1203 of 2019

In the matter of sections 88(1), 88(2) and 88(3) read with sections 27(3), 29(1)(h) and 53(4) of the Building Maintenance and Strata Management Act (Cap 30C)

Between

Chan Sze Ying

… Plaintiff

And

The Management Corporation
Strata Title Plan No 2948

… Defendant

Lee Chuen T'ng

… Intervener

GROUNDS OF DECISION

[Land] — [Strata titles] — [Meetings]

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v
Management Corporation Strata Title Plan No 2948
(Lee Chuen T'ng, intervener)

[2020] SGCA 123

Court of Appeal — Civil Appeal No 82 of 2020 and Summons No 112 of 2020
Judith Prakash JA, Tay Yong Kwang JA and Belinda Ang Saw Ean J
18 November 2020

24 December 2020

Tay Yong Kwang JA (delivering the grounds of decision of the court):

Introduction

1 This appeal concerns the existence and the exercise of the power of the chairperson of an annual general meeting ("AGM") of a condominium's management corporation to adjourn the AGM. The condominium in question here is The Caribbean at Keppel Bay ("the condominium") located at Keppel Bay Drive.

2 On 3 August 2019, the condominium's Management Corporation Strata Title Plan No 2948 ("the Respondent") held its 13th AGM. The intervener, Ms Lee Chuen T'ng ("the Intervener"), was the chairperson of the incumbent 12th Management Council ("12th MC"). By virtue of that position, she chaired the 13th AGM during which elections for the 13th Management Council ("13th

MC") took place. The AGM was held in the Keppel Hall of the Keppel Club which was located near the condominium. The AGM was scheduled to start at 2pm and end at 7pm and the premises were therefore booked for those hours. However, the AGM overran its scheduled timing and it was not until 8.45pm that the counting of the votes cast in the elections for the 13th MC was completed.

3 The 13th MC was to have 11 council members. The voting result was that ten candidates were elected (Mdm Chan Sze Ying ("the Appellant") being one of them) but there was a tie in the votes for the 11th and final position between the Intervener and another candidate, Dr New Eak Chan @ Neo Eak Chan ("Dr Neo"), both of whom were standing for re-election. After the results were announced, the Intervener adjourned the AGM without having a run-off election to break the tie and without calling for a motion to adjourn, which would have been the proper procedure. The adjourned AGM was reconvened on 19 October 2019, at which time Dr Neo withdrew as a candidate and the Intervener was declared to be elected to the 13th MC accordingly.

4 In HC/OS 1203/2019 ("the OS"), the Appellant applied for the following declarations:

> (a) the AGM was adjourned illegally and/or improperly by reason of the Respondent's failure to pass an adjournment motion and the AGM was concluded on 3 August 2019 accordingly; and
>
> (b) the ten individuals named in the schedule annexed to the OS were the members of the 13th MC upon the conclusion of the AGM and the members of the 12th MC had vacated their offices pursuant to s 54(1)

of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the Act").

5 The High Court ("the Judge") dismissed the OS in a reserved judgment in *Chan Sze Ying v Management Corporation Strata Title Plan No 2948 (Lee Chuen T'ng, intervener)* [2020] SGHC 88 ("the Judgment"). The Appellant appealed and also applied for leave to adduce fresh evidence in CA/SUM 112/2020 ("SUM 112/2020").

6 In the course of the appeal hearing before us, after hearing our views, the Appellant decided to withdraw SUM 112/2020. We granted the Appellant leave to do so. In respect of the substantive appeal, we were of the view that the Intervener, as the chairperson, could exercise a residual common law power to adjourn the AGM and that she did so lawfully in the circumstances. We therefore dismissed the appeal. We now give the detailed reasons for our decision.

Background facts

The parties

7 The Appellant and her husband are subsidiary proprietors in the condominium. The Respondent is the management corporation of the condominium. At the material time, its managing agent was Savills Property Management Pte Ltd ("Savills"). Mr Chan Kok Hong ("Mr Chan") was Savills' representative in the condominium. In these proceedings, the Respondent maintained a neutral position both in the High Court and on appeal, leaving the issues in the OS to be argued between the Appellant and the Intervener.

8 The Intervener is also a subsidiary proprietor in the condominium. As the chairperson of the incumbent 12th MC, she chaired the AGM on 3 August 2019.

Before the AGM

9 On 30 June 2019, Savills, on behalf of the Respondent, informed the subsidiary proprietors of the condominium by way of letter that the 13th AGM would be held on Saturday, 3 August 2019 at 2pm, at the Keppel Hall in the Keppel Club. The notice and the agenda of the AGM were enclosed in that letter. The Keppel Hall was booked until 7pm that day. This was later than the usual ending time of 6pm for AGMs because of the number of items on the agenda for this AGM.[1] The booking was until 7pm only as it was the managing agent's and the Intervener's experience that none of the previous AGMs had gone beyond 7.35pm and that an extension for one or two hours could be requested from the Keppel Club if necessary.[2]

10 The year leading up to the AGM on 3 August 2019 was a difficult one for the 12th MC and the Respondent. Issues that arose at the 12th AGM in 2018 continued to cause problems throughout the ensuing year. In addition, various subsidiary proprietors had made complaints of "verbal abuse, legal harassment and … even … of physical abuse".[3] This atmosphere of conflict set the tone for the 13th AGM.

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1 Record of Appeal ("ROA") Vol III Part A at p 233, para 24.

2 ROA Vol III Part A at p 233, para 23.

3 ROA Vol IV Part A at p 36, ln 18–20.

The AGM

11 On 3 August 2019, the AGM was convened at the Keppel Hall. The Intervener chaired the proceedings and was assisted by Mr Chan. The AGM was scheduled to begin at 2pm but was called to order only at 2.30pm when the requisite quorum was obtained.[4] Mr Chan announced that the AGM was scheduled to conclude by 7pm as the premises had to be vacated by that time.[5] As the AGM continued, however, the proceedings slowed down despite efforts to keep the AGM on track, as various issues were raised and argued, ranging from personal grievances to criticisms of the 12th MC.

12 The AGM eventually reached the items on the agenda concerning the 13th MC, the incoming management council ("MC"). Motion 10.1 was for the AGM to "determine the number of council members for the 13th Management Council",[6] as s 53(1) of the Act provided. Two options, 11 and 13 members, were put to a poll.[7] Voting on motion 10.1 was concluded at around 6pm.[8] Subsequently, the names of the candidates standing for election to the 13th MC were shown. Following a number of discussions relating to term limits[9] and voter secrecy,[10] the candidates were invited to introduce themselves.[11] These

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4 Transcript of AGM ("Transcript") at p 1, ln 20: ROA Vol IV Part A at p 33.

5 Transcript at p 22, ln 9: ROA Vol IV Part A at p 54. See also ROA Vol III Part A at p 233, para 24.

6 Transcript at p 126, lns 12–13: ROA Vol IV Part A at p 158.

7 Transcript at p 135: ROA Vol IV Part A at p 167.

8 ROA Vol III Part A at p 239, para 57.

9 Transcript at pp 140–142: ROA Vol IV Part A at pp 172–174.

10 Transcript at pp 143–146: ROA Vol IV Part A at pp 175–178.

11 Transcript at p 149: ROA Vol IV Part A at p 181.

discussions were prompted by the attendees of the AGM and were unexpected and unplanned for by the Intervener and by Savills.

13 In the course of the introductions, an unidentified speaker raised a point of order to clarify what would happen if the AGM could not be concluded by 7pm that day:[12]

UNIDENTIFIED SPEAKER:	Chairlady, small question if I may? A point of order. Like, we are not going to make 7 o'clock. So will there be another meeting if we don't finish it?
CHAIRMAN:	I think we should just hear everybody out and at least get this done.
UNIDENTIFIED SPEAKER:	I agree.
CHAIRMAN:	Okay.
UNIDENTIFIED SPEAKER:	But I need to leave and I am here for the next item. Are we going to –
CHAIRMAN:	Yes. Well, I think give everybody chance to –
UNIDENTIFIED SPEAKER:	That is not the question.
…	
UNIDENTIFIED SPEAKER:	The question, we are not going to finish before 7, are we?
CHAIRMAN:	We are not. We will just finish this resolution and then we will make a decision after that, okay?
UNIDENTIFIED SPEAKER:	Okay.
MR CHAN KOK HONG:	Excuse me, sir, if we don't make it by 7 pm, we are going to have to adjourn this meeting and it will

[12] Transcript at pp 168–169: ROA Vol IV Part A at pp 200–201.

	be held next month, and we will send out a notice to you.
CHAIRMAN:	Okay, but I think we all are here for a purpose, so let's try and finish this resolution, okay?

14 After a few more introductions from the candidates, Mr Chan announced that the AGM had obtained an extension of one hour from the Keppel Club (*ie*, to 8pm) and stated his hope that they would be able to complete the elections and the counting of the votes.[13] After the introductions were completed, voting commenced. As the result of motion 10.1 had not yet been determined, it was not known whether the 13th MC would consist of 11 or 13 members and the attendees of the AGM were told to vote for 13 candidates.[14]

15 Once again, an unidentified speaker raised a concern about what would happen if the motion could not be resolved in time. The Intervener stated that "if we can't finish then we will adjourn the meeting".[15] Mr Chan clarified that they would "finish counting [the votes], declare the results and adjourn the meeting".[16] They would then announce the date and time of the next meeting as well as send out a fresh circular with that information. Mr Chan then said, "So if you have to go, please cast your votes now, and then if you don't want to wait for the results, it's okay."[17] This was the second time that Mr Chan mentioned the intention to adjourn the meeting and the first time that he stated expressly

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13 Transcript at p 171, ln 12–16: ROA Vol IV Part A at p 203.

14 Transcript at p 180, ln 9–22: ROA Vol IV Part A at p 212.

15 Transcript at p 181, ln 3–4: ROA Vol IV Part A at p 213.

16 Transcript at p 183, ln 16-17: ROA Vol IV Part A at p 215.

17 Transcript at p 183, ln 22–24: ROA Vol IV Part A at p 215.

that the meeting would be adjourned after the announcement of the results of the elections.

16 While the AGM attendees waited for the votes to be counted, Mr Chan announced the results of the various motions that were voted on earlier. For motion 10.1, he declared that the AGM had decided to have 11 members in the 13th MC.[18] To save time, the AGM also proceeded to pass resolutions for motions 10.3 and 10.4 which concerned the powers of the 13th MC.[19]

17 At this point, a subsidiary proprietor asked whether they would vote on other resolutions after the results were announced. Mr Chan clarified, "No. We're waiting for the results for the election of council members, and then I'll announce that the meeting will be adjourned."[20] This was the third time that it was mentioned that the AGM would be adjourned and the second time that it was stated expressly that the adjournment would be after the results of the elections were announced.

18 The votes were counted by around 8.45pm.[21] Before announcing the results of the elections, Mr Chan stated again that they had decided that they would adjourn the AGM after the announcement. He clarified that motion 10.4 would be the last motion voted on that day. Further, having checked with Keppel Club, the earliest convenient date for the adjourned AGM would be 19 October 2019 at the same venue.[22] One of the subsidiary proprietors asked if the

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18 Transcript at p 185, ln 12-15 and p 187, ln 13-19: ROA Vol IV Part A at pp 217, 219.

19 Transcript at p 189: ROA Vol IV Part A at p 221.

20 Transcript at p 190, ln 6–8: ROA Vol IV Part A p 222.

21 ROA Vol III Part A at p 241, para 70.

22 Transcript at p 190, ln 12–p 191, ln 17: ROA Vol IV Part A pp 222–223.

adjourned AGM could be held earlier. A suggestion was made to continue it at the condominium's clubhouse. Mr Chan replied that the date in October was reasonable and that the condominium's clubhouse would not be able to accommodate all the attendees.[23] He also announced that if the AGM was adjourned, the 12th MC would remain in office until the completion of the AGM, regardless of the results of the elections.[24]

19 Following that announcement, there were further discussions concerning the method of voting for motion 10.1 and whether this would affect the results of the elections. In the course of the discussions, Mr Chan informed the AGM that there was a tie for the 11th position in the 13th MC[25] and that there would therefore have to be a run-off election between the two candidates involved. At this point, however, he had not revealed who the two candidates in the tie were. There was also no indication that the Intervener knew that she was one of the two candidates involved. Mr Chan suggested holding the run-off election at the adjourned meeting. This was met with suggestions for a re-count and for the run-off election to be held that night. Mr Chan replied that he had no objections to a re-count but that it should not be done at that meeting as the AGM had exceeded 8pm already. He stated that "we have to leave this place by 9pm" and "Everybody has to go. Otherwise they switch off the lights".[26]

20 The election results were then announced by showing the names of the candidates with the most votes on the screen together with the number of votes

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23 Transcript at p 192 ln 13–24: ROA Vol IV Part A at p 224.

24 Transcript at p 193, ln 9–18: ROA Vol IV Part A at p 225.

25 Transcript at p 204, ln 15–16: ROA Vol IV Part A at p 236.

26 Transcript at pp 211–212: ROA Vol IV Part A at pp 243–244.

that each candidate obtained. Based on the evidence, this was the first time that the Intervener and Dr Neo were identified as the candidates who were tied for the 11th position in the 13th MC. After announcing the results, Mr Chan invited the Intervener to adjourn the meeting and she did so promptly.[27] By that time, it was around 9pm, almost two hours after the scheduled time of 7pm: Judgment at [11].

21 After the Intervener had declared the adjournment, a subsidiary proprietor objected that the Intervener was in a position of conflict of interest. He asked for his objection to be recorded.[28] The attendees of the AGM then left the premises.

After the AGM

22 Between 3 August 2019 and 19 October 2019, the incumbent 12th MC met five times to conduct its business.[29] Among the decisions made at these meetings was a decision made on 12 October 2019 to approve a staff bonus for Savills,[30] a point which the Appellant emphasised in her Appellant's Reply.[31]

23 On 27 September 2019, before the adjourned AGM was held on 19 October 2019, the Appellant commenced the OS. We refer to the subsequent meeting as the "19 October Meeting".

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27 Transcript at p 213: ROA Vol IV Part A at p 245.

28 ROA Vol IV Part A at p 274.

29 ROA Vol III Part A at p 247, para 93.

30 ROA Vol III Part B at p 74.

31 Appellant's Reply at para 23.

24 Dr Neo withdrew his candidacy at the 19 October Meeting and as a result, the Intervener was declared to be a member of the 13th MC. Besides the elections for the 13th MC, some 19 items on the agenda were still outstanding.[32] Resolutions in respect of these remaining items were passed at the 19 October Meeting.[33] The 13th MC took office after the conclusion of the 19 October Meeting.

The decision of the High Court

25 The Judge identified three issues for resolution in the Judgment. The first was the existence and the exercise of a chairperson's power at common law to adjourn a meeting, which he termed the "Residual Power Issue". The second was whether the statutory provisions for adjournment in para 3A(1) of the First Schedule to the Act excluded the residual common law power ("the Mandatory Motion Issue"). The third was when members of an outgoing MC vacate office and, correspondingly, when members of the incoming MC assume office ("the Election Issue").

26 On the Residual Power Issue, the Judge found that the chairperson had the residual power at common law to adjourn meetings of his/her own volition under certain circumstances, relying on *Byng v London Life Association Ltd and another* [1990] 1 Ch 170 at 188D (*"Byng"*): Judgment at [37]. In this case, the meeting had gone on for two hours beyond the booking time and there was a risk that the lights would be turned off. Some attendees were already leaving or preparing to leave. Even if the meeting could have extended past 9pm, this could not "have accommodated those who had entirely ordinary expectations of when

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32 ROA Vol III Part A at pp 242–243.

33 ROA Vol III Part A at p 248, para 98.

the meeting was supposed to conclude" and would have prejudiced their opportunities to speak and to vote: Judgment at [38]. A resolution for adjournment would have taken time to be voted on and in the event that the vote was against an adjournment, the meeting would still have to stop anyway: Judgment at [39]. The Judge noted that there was no allegation of ulterior motive against the Intervener (Judgment at [40]) and, in any case, that there was no evidence of bad faith as the evidence showed that the exigency was not manufactured by the Intervener to justify an adjournment.

27 As for the Appellant's contention that the Intervener was negligent in allowing the meeting to go way beyond schedule, that might show that she was an inept chairperson but that was far from bad faith. On the other hand, it might be argued that if the Intervener had held an iron grip of the meeting in view of the large number of items on the agenda, there could have been complaints that she did not conduct the meeting fairly. As there was no evidence of bad faith, the Judge held that the Intervener had exercised her power at common law validly to adjourn the meeting in the circumstances (Judgment at [41]–[43]).

28 On the Mandatory Motion Issue, the Judge held that nothing in para 3A(1) of the First Schedule to the Act excluded the residual common law power: Judgment at [48].

29 On the Election Issue, the Judge identified s 54(1)(*e*) of the Act as the governing provision. The Judge noted that the provision had two limbs and provided that MC members had to vacate their offices either: (a) at the end of the AGM following the one at which they were elected; or (b) immediately upon the election of a replacement member at a general meeting. As he found that the AGM was adjourned validly on 3 August 2019, the arguments mounted by the Appellant on the first limb fell away: Judgment at [50]. As for the second limb,

the Judge held that "general meeting" refers exclusively to extraordinary general meetings and not annual general meetings. An alternative interpretation that "general meeting" includes an annual general meeting would render the first limb otiose: Judgment at [53]–[54]. It followed that the members of the 12th MC vacated office only at the end of the adjourned AGM at the 19 October Meeting: Judgment at [16].

30 Having found against the Appellant on all three issues, the Judge dismissed the OS. He did not think it necessary to consider the submissions relating to the precise effect of an invalid adjournment (Judgment at [51]) and the other arguments relating to standing, to the appropriate provision for the OS or to the discretion to grant the declarations.

The parties' cases

31 The Respondent took a neutral position in these proceedings. Therefore, we consider only the Appellant's and Intervener's cases on appeal.

The Appellant's case

32 The Appellant did not appeal against the Judge's interpretation of s 54(1)(*e*) of the Act. She accepted that para 3A(1) of the First Schedule to the Act did not exclude the residual common law power of the chairperson to adjourn a meeting without the consent of the meeting. The Appellant's arguments centred on the issues of whether the residual common law power could be exercised in these circumstances (she termed this the "When Issue") and whether it was exercised lawfully (she termed this the "How Issue").

33 In relation to the "When Issue", the Appellant argued that *Byng* stood for the proposition that the residual power to adjourn could be exercised only

where it was impossible to determine the views of the meeting, *ie*, where it was not possible to consider and vote on a motion to adjourn.[34] The Judge was wrong to have accepted the explanation for why no motion to adjourn was put forward.

34 In relation to the "How Issue", it was common ground that the exercise of the residual power could be impeached for lack of good faith or on the ground of *Wednesbury* unreasonableness:[35] *Byng* at 190G–H and *Fu Loong Lithographer Pte Ltd and others v Mok Wai Hoe and another and another matter* [2014] 3 SLR 456 ("*Fu Loong*") at [37]. The Appellant emphasised that the facts justified the inference that the Intervener was delaying the resolution of the elections because she was afraid to lose in the run-off election.[36] This indicated bad faith and *Wednesbury* unreasonableness on her part since she made the decision to adjourn in her own interests and therefore, on the basis of an irrelevant consideration.[37]

The Intervener's case

35 On appeal, the Intervener made two preliminary arguments. First, the Appellant's case on appeal was irreconcilable with the prayers sought in the OS. The OS was predicated on the claim, as the Appellant argued in the High Court, that the entire AGM was concluded on 3 August 2019. On appeal, the Appellant accepted that the adjournment of the remaining items on the agenda, other than the elections, to 19 October 2019 was valid and proper.[38] Second, the Appellant

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34 AC at para 38.

35 Appellant's Case ("AC") at paras 40 to 43.

36 AC at para 67.

37 AC at para 90.

38 AC at para 22; Intervener's Case ("IC") at para 20.

conceded in the High Court that she was not alleging bad faith but sought to raise bad faith on appeal without having sought leave to do so.[39] Even if she had sought leave, leave ought not to be granted.[40]

36 On the substantive issues, the Intervener argued that the circumstances of the AGM justified the adjournment and she defended the Judge's reasoning on this issue. There was also no evidence of bad faith. In any event, the Appellant had no *locus standi*, there was no real controversy and the declarations sought should not be granted. Finally, the court had the power to overlook any procedural irregularity in the AGM.[41] In any event, if the adjournment was invalid, the meeting continued rather than concluded.[42] Therefore, the meeting in this case was held in abeyance and was resumed subsequently on 19 October 2019.[43]

Issues to be determined

37 It was common ground between the parties that the chairperson of a meeting has a residual power under common law to adjourn a meeting, that this power only arises in the event of certain exigencies and it must be exercised in good faith and reasonably. Although the Intervener raised some preliminary issues, we focus on the substantive dispute between the parties. As will be seen, given our findings, there is no need to consider the preliminary issues nor any

39 IC at paras 34, 38, 41.

40 IC at paras 42–43.

41 IC at para 101.

42 IC at paras 107–108.

43 IC at para 110.

of the other arguments raised by the Intervener about *locus standi* or the requirements for a declaratory judgment to be granted.

38 The following issues arose for determination in this case:

(a) Was the Judge correct to find that the Intervener was entitled to exercise the residual power to adjourn the meeting in this case (the "When" issue)?

(b) Was the Judge correct to find that the Intervener exercised the residual power lawfully in this case (the "How" issue)?

(c) In the event that either (b) or (c) was answered in the negative, what was the effect of the invalid adjournment and should the declarations be granted?

The "When" issue

The applicable law

39 A management corporation is a creature of statute: *Fu Loong Lithographer Pte Ltd and others v Mok Wing Chong (Tan Keng Lin and others, third parties)* [2018] 4 SLR 645 at [81]. Annual general meetings of a management corporation are governed by statute as well: see s 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.

40 As a general rule, in the absence of an authorising rule or statute, the chairperson has no power to adjourn a meeting without the consent of the majority of the attendees: AD Lang, *Horsley's Meetings: Procedure, Law and Practice* (LexisNexis, 6th Ed, 2010) ("*Horsley's*") at para 13.6; *Shackleton on the Law and Practice of Meetings* (Madeleine Cordes and John Pugh-Smith eds) (Sweet & Maxwell, 13th Ed, 2014) at para 6-17. However, the chairperson of a meeting has a common law power to adjourn a meeting under certain circumstances.

41 One instance of this power was discussed in *Byng*, which concerned an extraordinary general meeting of a company convened to pass a resolution to amend the company's memorandum of association. The company expected a large turnout for the meeting and booked not just a cinema but also other rooms and the cinema foyer, where they installed audio-visual links to the cinema. Another venue, the Café Royal, was booked from 1.30pm to 5pm that same day as a back-up. On the day of the meeting, there were difficulties with the registration of members, so that when the chairman purported to open the meeting, there were still members held up at the registration. Further, the audio-visual links between the cinema and the other locations were not working. The chairman decided to adjourn the meeting to 2.30pm that afternoon at the Café Royal, where the substantive resolution was passed. An action was brought for declarations that the resolution was not passed validly at the meeting that afternoon. The articles of association of the company included an Art 18 that provided that the chairman may adjourn a meeting with the consent of the meeting.

42 In discussing the chairperson's common law power to adjourn, Sir Nicholas Browne-Wilkinson V-C identified the general principles as follows (*Byng* at 186B–187A):

> … A chairman has no general right to adjourn a meeting at his own will and pleasure, there being no circumstance preventing the effective continuation of the proceedings: *National Dwellings Society v. Sykes* [1894] 3 Ch. 159, 162. However, it is clearly established that a chairman has such power where unruly conduct prevents the continuation of business: *John v. Rees* [1970] Ch. 345, 379 et seq. In my judgment it is also established that when in an orderly meeting a poll is demanded on a motion to adjourn and such poll cannot be taken forthwith, the chairman has power to suspend the meeting with a view to its continuance at a later date after the result of the poll is known: *Jackson v. Hamlyn* [1953] Ch. 577. …
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> In my judgment the position at common law is correctly set out in *John v. Rees* [1970] Ch. 345 and in the two following passages. The first quoted, at p. 380, is from *Reg. v. D'Oyly* (1840) 12 Ad. & El. 139, 159:
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> > 'Setting aside the inconvenience that might arise if a majority of the parishioners could determine the point of adjournment, we think that the person who presides at the meeting is the proper individual to decide this. It is on him that it devolves, both to preserve order in the meeting, and to regulate the proceedings *so as to give all persons entitled a reasonable opportunity of voting*. He is to do the acts *necessary for these purposes* on his own responsibility, and subject to being called upon to answer for his conduct if he has done anything improperly.' (My emphasis.)
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> The second passage quoted, at p. 381, is from *A Practical Arrangement of Ecclesiastical Law* by F. N. Rogers Q.C. published in 1840. The passage says that [the decision in *Stoughton v. Reynolds,* 2 Str 1045; Fort. 168, which stood for the proposition that a chairperson cannot disrupt a meeting while it is in orderly progress]:
>
> > 'by no means interferes with the right which every chairman has to make a bona fide adjournment, whilst a poll or other business is proceeding, if circumstances of violent interruption make it unsafe, or seriously difficult for the voters to tender their votes; nor of adjourning the place of polling, if the ordinary place used for that purpose be insufficient or greatly inconvenient. In most of such cases, the question will turn upon the intention and effect of the adjournment, if the intention and effect were to interrupt and procrastinate the business, such an adjournment would be illegal; if on the contrary, the intention and effect were to forward or facilitate it, *and no injurious effect*

> *were produced*, such an adjournment would, it is conceived, be generally supported.' (My emphasis.)
>
> [emphasis in original]

43 In *Byng*, a motion to adjourn could not have been put to the meeting since there were members who were excluded from voting by the circumstances. Article 18 of the articles of association did not preclude the exercise of a residual common law power to adjourn the meeting, given that the views of the members on an adjournment could not be ascertained by way of a vote (at 188C). Therefore, the English Court of Appeal held that the common law power could be exercised (at 188D). However, it went on to hold that the exercise of power in that case was unreasonable because the chairman had failed to take into account the facts that it would be difficult for the members to attend a meeting that afternoon and that proxies could not be arranged in time (at 191E).

44 The Appellant also referred to the case of *Jackson and others v Hamlyn and others* [1953] 2 WLR 709 ("*Jackson*"), a decision of Upjohn J in the English High Court. The plaintiffs in that case, as shareholders of a company, had requisitioned an extraordinary general meeting. The meeting was held on 20 January 1953 and began at around 12 noon. At around 3pm, a shareholder moved an adjournment for one month, which was carried on a show of hands. However, one of the plaintiffs demanded a poll on the motion to adjourn. The chairman of the meeting was informed that the poll would take at least two hours but the venue for the meeting would not be available for much longer. It was also not reasonable or practical to move the meeting to an alternative venue. The poll was taken but it was decided that the results of the poll would be announced later. If the poll was in favour of the adjournment, then the meeting would be adjourned for 30 days, and if not, then another meeting would be called as soon as practicable. It transpired that the motion to adjourn was

defeated and the meeting was resumed on 29 January 1953. The issue was whether the meeting on 29 January 1953 was a continuation of the 20 January meeting (as the plaintiffs argued it was) or was an entirely new meeting. This had an impact on the validity of proxies that had been submitted.

45 Upjohn J held that the meeting on 29 January was a continuation of the meeting held on 20 January (*Jackson* at 716):

> … The sole reason that the meeting did not in fact proceed on January 20 was due to the physical impossibility of continuing it further. Had that been possible, it would have continued. If the poll had taken perhaps half an hour, the meeting would have continued, and the main business before the meeting would have been debated. If I am to treat the meeting as having been dissolved, because it was physically impossible to count the votes then and there and continue the meeting, the result would indeed be extraordinary; because in law, as I have already pointed out, the reconvened meeting would be a new meeting at which new business could be considered, and therefore the result of the opposition to the adjournment on which the plaintiffs succeeded would be to place them in a far worse position than if they had supported the adjournment.
>
> Common sense has been appealed to in this case, but, in my judgment, common sense is entirely on the side of the plaintiffs. If for physical reasons such as I have mentioned it was impossible to continue the meeting then and there, I personally feel no difficulty in assuming that the new meeting which is to be convened when the result of the poll is known is a continuation of the existing meeting. …
>
> It seems to me that I must give business efficacy to article 67 of the articles of association. The words 'A poll on any question of adjournment shall be taken immediately' mean that it must be taken as soon as practicable in all the circumstances, and if, owing to the size of the company or to some other reason, it is impossible then and there to go on with the meeting, it seems plain that any meeting that is convened to hear the result of the poll and to continue with the business of the meeting must be a continuation of the existing meeting.

It should be noted that Upjohn J did not consider the decision to hold over the meeting from 20 January 1953 to be an "adjournment". However, for present purposes, this distinction is not important.

46 In addition, the Appellant cited a decision of the Malaysian Court of Appeal, *CepatWawasan Group Bhd v Datuk Lo Fui Ming & Ors* [2005] 2 MLJ 57 ("*CepatWawasan*"). That case concerned an extraordinary general meeting ("EGM") of a company held at the request of the first, second and third respondents. The resolutions to be considered were for the removal of three directors and the appointment of the first and fourth respondents (and another person) as directors. On the morning of the EGM, the company was served with an injunction restraining the first, fourth and sixth respondents from exercising the voting rights arising from certain shares that they held. The chairman adjourned the EGM without a motion to adjourn. The central issue was whether this EGM was adjourned validly.

47 The Malaysian Court of Appeal held that the EGM was not adjourned validly. The company's articles of association included an Art 61 which provided that the chairperson may adjourn the meeting with the consent of the meeting. It was common ground that the chairperson had not complied with Art 61 and was seeking to rely on the residual common law power to adjourn, citing *Byng*. The Court held that *Byng* stood for the proposition that the residual common law power to adjourn could be exercised only if (at [15]):

> … it is not possible to discover the wishes of the meeting. If it is possible to ascertain the wishes of the meeting, the chairman must act according to them, so that if the meeting does not consent to an adjournment, the meeting must proceed, even though there may be risks of whatever nature in proceeding. The wisdom in proceeding or not proceeding is a matter to be left entirely to the meeting if its wishes can be ascertained.

48 The chairperson's justification for adjourning the EGM in that case was that he was concerned about the validity of whatever the meeting decided because of the injunction enjoining the first, fourth and sixth respondents from exercising their voting rights. However, the Court held that this was not a circumstance that conferred on the chairperson a power to adjourn without the consent of the meeting: *CepatWawasan* at [18]. Further, the Court found that the concern was not substantial as the first, fourth and sixth respondents could still vote with their remaining shares and wanted the EGM to consider the resolutions that they had put forward: *CepatWawasan* at [18].

49 On the basis of *Byng, Jackson* and *CepatWawasan,* the Appellant here argued that the residual power could "only be invoked *where the circumstances are such that it is* ***impossible*** *to ascertain whether the express machinery provided for an adjournment … can be complied with*. Thus, if it is *possible* for the views of the meeting to be ascertained, there is *no* scope for the exercise of the residual power"[44] [emphasis in original]. If voting was impossible, the exercise of the residual power would be warranted. However, the attendees at the AGM made it clear that they were not seeking an adjournment.[45]

50 In our judgment, the residual common law power to adjourn may be exercised even if it is possible to vote on a motion to adjourn if the reality is that the proceedings cannot reasonably be expected to continue. In this area of the law, as in many other areas, it is common sense that should prevail.

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44 AC at para 38.

45 AC at para 58.

51 We do not think that the authorities cited by the Appellant restricted the residual common law power to only a situation when a motion to adjourn could not be put forward or considered properly by the meeting. The principles cited by the English Court of Appeal in *Byng* at 186E–H were based on the chairperson's duty to "preserve order in the meeting, and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting". We should not elevate one instance where the residual common law power was exercised validly into a general rule that the particular instance is the only situation in which the power can arise.

52 *Byng, Jackson* and *CepatWawasan* were decided on their own facts and the specific circumstances which led to the decisions to adjourn the meetings. In *Byng*, the circumstances meant that the motion to adjourn could not be considered properly. In *Jackson*, there was already a poll taken on a motion to adjourn. In *CepatWawasan*, the only concern that the chairperson had was the legal risk of continuing when there was an injunction preventing certain shareholders from exercising the votes associated with some shares. Since there was no actual bar to continuing with the meeting, the only question was of "[t]he wisdom in proceeding or not proceeding" and this was to be left to the meeting if its wishes could be ascertained (*CepatWawasan* at [15]). These cases involved specific factual situations where the chairpersons had to decide in response to the circumstances that arose there and the conclusions reached in those cases were therefore tailored to the facts. In our opinion, the particular factual situations are examples of when the residual power to adjourn could or could not be exercised validly and do not purport to represent the only situations for its lawful exercise.

53 We acknowledge that the common law power is residual in the sense that it cannot be exercised where a specific procedure to adjourn is provided by

law or in the governing rules of association and the specific procedure is workable and practicable in the circumstances of the case. In the present case, a procedure on adjournment was provided in para 3A(1) of the First Schedule to the Act and that should be complied with as far as possible.

54 However, the Appellant's restrictive view of the residual common law power would mean that the procedure in the said para 3A(1) becomes unworkable only if a motion to adjourn was put forward but could not be considered properly. In our opinion, if it is obviously impractical and or even meaningless to vote on a motion to adjourn because the meeting would have to be adjourned or held over whatever the outcome of that motion, that would clearly be a situation where complying with the specific procedure would be a complete waste of time and an exercise in futility. In such situations, the residual power to adjourn would also arise. This is a matter of common sense and pragmatism. On the facts of this case, there would obviously be insufficient time for the many remaining items on the agenda to be considered even if a motion to adjourn had been considered and defeated. The meeting was conducted on rented premises, had already overrun its booked time slot by nearly two hours and it was already almost 9pm.

55 The parties proceeded on the basis that the test for when the residual power to adjourn could arise should be one of "impossibility". This means that the residual power can be invoked only if it is impossible for the specific procedure for adjournment to be followed. We prefer the view that the test or standard to apply is that of reasonableness. On the facts here, while it might not have been impossible to carry on with the AGM for another ten to 15 minutes until about 9pm for the purpose of dealing with a motion to adjourn, it would be meaningless and futile to do so because there were still many items on the agenda which had not been dealt with and the AGM would have to be adjourned

whatever the outcome of the motion to adjourn. The residual power to adjourn a meeting without compliance with the specific procedure should therefore be exercisable when the meeting cannot reasonably be expected to continue. This is an objective inquiry, bearing in mind the prevailing circumstances. We think this gives sufficient discretion to chairpersons of meetings to regulate proceedings properly, using their good sense to meet the situation as it unfolds. This is obviously not a licence for chairpersons of meetings to ignore the views of the attendees. Their actions must stand up to objective scrutiny so that attendees of the meetings and interested parties are not prejudiced.

Analysis of the facts

56 As mentioned earlier, Mr Chan had informed the attendees of the AGM that they had to leave the venue by 9pm and that "Everybody has to go. Otherwise they switch off the lights". The Appellant's primary factual argument on appeal was that, in fact, Savills did not request an extension of the use of the Keppel Hall beyond 9pm and that a request for such extension could have been granted by the Keppel Club if it was made.

57 However, the Intervener exhibited an exchange of emails between Ricky Sun, the Food & Beverage ("F&B") coordinator of the Keppel Club, and Avril Lee of Savills, the residential manager in the condominium. In Avril Lee's email dated 30 September 2019 to Ricky Sun, she stated:[46]

> Dear Ricky,
>
> Thank you for your help in the arrangement of our AGM.
>
> On 3 August 2019, when we held our AGM at Keppel Hall, there was a request for extension of the hall. My colleagues checked

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46 ROA Vol III Part B at p 172.

> with you and was told that the latest we need to leave hall will be 9pm.
>
> Can we confirm with you:
>
> 1. Was it because our extension was a last minutes request, that was why the extension can only be up till 9pm?
>
> 2. Does the length of extension depends on the type of package booked?
>
> Appreciate it if you can reply to my queries.
>
> …

58 After a reminder by Avril Lee, Ricky Sun replied on 7 October 2019 that as the event (the AGM) was booked until 7pm, any extension was subject to availability. As a caterer was going to the premises at 9.30pm that night to do its pre-event set up, the Keppel Hall was available until 9pm.[47]

59 To refute the above, the Appellant relied on an email dated 11 November 2019 from Jason Tan, the F&B manager of Keppel Club, to Tony Chang, a subsidiary proprietor in the condominium and also a member of the Keppel Club. In that email, Jason Tan stated that the organisers of the AGM did not request an extension but only informed Keppel Club that the meeting would end at 9pm and be adjourned. Further, the staff did not attempt to kick any of the attendees out of the premises nor did they switch off the lights. Instead, they would "accord some flexibility if required".[48] The fresh evidence that was sought initially to be admitted in SUM 112/2020 also dealt with this issue and we shall say more about this later.

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47 ROA Vol III Part B at p 171.

48 ROA Vol III Part C at p 22.

60 In our view, Jason Tan did not appear to be involved directly in the events on the night of 3 August 2019 and his knowledge appeared to have been gleaned from others sometime after the event. Whatever the case, the facts showed that on 3 August 2019, someone from Keppel Club had given the impression to Savills' staff on-site that the booked venue could be used until 9pm only and that was duly conveyed to the AGM. When Avril Lee asked Ricky Sun about the extension of time in her email of 30 September 2019, Ricky Sun did not correct her statement that her colleagues were told that the extension could be up to 9pm only. Instead, he explained why the venue could be used for the AGM until 9pm only, thereby confirming that Savills' staff were told about the latest time that the meeting venue could be used for the AGM. Therefore, the impression or belief on the part of Savills' staff that the extension of use that night could be up to 9pm only must have arisen from what someone in Keppel Club said on the night of the AGM. In our opinion, when Mr Chan told the attendees at the AGM that "Everybody has to go. Otherwise they switch off the lights", that was mere hyperbole to emphasise that the AGM had already overrun its booking by almost two hours and that Keppel Club needed to use the premises after 9pm. Similarly, any statements made about the attendees being kicked out of the premises after 9pm that night were surely not meant to be taken literally.

61 Apart from this, in order to show that there was still time to consider a motion to adjourn, the Appellant pointed out that the video recording of the AGM showed that some 15 minutes were left on the recording after the adjournment was announced. The Appellant submitted therefore that the AGM

could have continued for 15 more minutes and that the time could have been used to vote on an adjournment.[49]

62 In our opinion, however, given the tone of the AGM that day, expecting that 15 minutes would have been sufficient to complete the debate and the voting on the motion to adjourn might be rather optimistic. In any case, the video recording showed that time was needed for the attendees to vacate the premises, supporting the Intervener's case that an adjournment at about 9pm that night was justified so that the premises could be returned to Keppel Club in good time. Further, even if the said motion could have been completed within 15 minutes, as we have stated earlier, the fact remained that the AGM could not reasonably have continued whatever the outcome of the voting.

63 Even if we consider the Appellant's case at its highest and proceed on the basis that no extension of time beyond 9pm was sought by Savills' staff and that the Keppel Club would have acceded to a request for the use of the venue beyond that time, we would still hold the view that the Intervener could exercise the residual common law power to adjourn the AGM. This is because the AGM plainly could not reasonably have continued to its conclusion in the circumstances and at that time of the night. This also mirrored the Judge's approach which did not place much weight on what was said in either Ricky Sun's or Jason Tan's emails but instead considered the circumstances in their totality: Judgment at [38]–[43].

64 First, the AGM had gone on since 2.30pm (apparently without any break) and had exceeded the expected time of conclusion of 7pm by almost two

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[49] AC at para 57.

hours already. When the first extension for the use of the venue to 8pm was obtained, the AGM continued but as time went on, it became clear to Mr Chan and the Intervener that the meeting would have to be adjourned after the election results were announced. The meeting breached the first extension of time and continued to 8.45pm when the counting of the votes was concluded. The adjournment was declared soon thereafter. We believe 8.45pm would be way past normal dinner time for most people in Singapore. The AGM had gone on for more than six hours on a Saturday and almost two hours after its scheduled conclusion time. We do not think any chairperson would have been reasonably expected, much less required, to seek a further extension past 9pm in these circumstances.

65 Second, even if it was decided that the AGM should continue past 9pm, there were some 19 items left on the agenda for discussion, not forgetting the run-off election to break the tie for the final position in the 13th MC. It was plainly not realistic for the remaining items to be dealt with on 3 August 2019. The Appellant accepted this on appeal. This was especially so because some of the remaining items involved substantive matters relating to capital expenditure and improvement works in the condominium (item 11.1), the replacement of lights throughout the development with LED lights (item 11.2) and the introduction of a new by-law concerning the installation of roof covers which might affect the common property (item 12.1). There were also various matters submitted by the subsidiary proprietors for consideration. Bearing in mind the generally contentious and vocal atmosphere that pervaded the AGM that day, it was most likely that all the remaining matters would have taken at least several more hours to go through, quite possibly until close to or even past midnight. It would surely be unreasonable to expect the staff of Savills and of Keppel Club

to continue to soldier on with the attendees (assuming the majority of those remaining wanted to) until they completed all their business.

66 Third, as the Judge found, because of the overrun in time, there were some attendees who had left the AGM already or were in the process of leaving: Judgment at [38]. One subsidiary proprietor raised his concern before 7pm that he had to leave by that time. Mr Chan had also assured some attendees that if they had to leave, they could cast their votes in the elections and then leave without waiting for the counting of the votes. Therefore, if the AGM had continued past 9pm, those attendees who had to leave would have lost the opportunity to be heard or to vote and that would be unfair to them. Indeed, carrying on with the AGM that night might incur the risk of a legal challenge by those who had left or had to leave, especially in the light of the tentative announcement made before 7pm that the AGM would be adjourned after the elections. In any case, we doubt that any attendee that day, perhaps save for any unusually combative and tenacious few, would have relished continuing with the AGM after more than six hours, skipping dinner and persevering to midnight or thereabouts. It would also be unfair to expect the chairperson to carry on for another few hours when the AGM had already gone on for more than six hours since 2.30pm that day.

67 Fourth, even if Savills' staff had miscommunicated to the AGM on the continued use of the venue beyond 9pm, as the Appellant contended, we do not see how that would affect the Intervener's exercise of her power to adjourn the AGM. The Intervener appeared to be acting in good faith on what Mr Chan had told the AGM and there was no evidence to suggest that they had colluded to mislead the attendees in any way so as to engineer the need to adjourn before 9pm. We shall say more about this when we discuss the contentions relating to the Intervener's alleged motives in adjourning the AGM on 3 August 2019.

68 Therefore, even taking the Appellant's case at its highest, the Judge was not wrong in holding that the Intervener could exercise the residual common law power to adjourn the AGM. In the circumstances here, she was entitled to make the decision to adjourn without calling for a motion to adjourn.

The "How" issue

69 Having held that the Intervener could exercise the residual common law power to adjourn the AGM, we consider the "How" issue or the manner of and the motives in her decision. It was common ground between the parties that the residual power must be exercised in good faith and reasonably. These are standards similar to those applied in judicial review (*Fu Loong* at [37]). As there was no dispute on this issue, we discuss the legal principles briefly.

70 In relation to bad faith, we held in *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 at [70] that the "touchstone of 'bad faith' in the administrative law context is the idea of dishonesty". Bad faith is not shown by proving simply that the authority (in this case the chairperson) took into account legally irrelevant considerations or failed to take into account legally relevant considerations.

71 In relation to unreasonableness, the applicable standard was set out in *Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223 ("*Wednesbury*"). Adapting this to the context of meetings, the English Court of Appeal summarised the applicable test in *Byng* at 189C as follows (which was applied in *Fu Loong*):

> … The chairman's decision will not be declared invalid unless on the facts which he knew or ought to have known he failed to take into account all the relevant factors, took into account irrelevant factors or reached a conclusion which no reasonable

> chairman, properly directing himself as to his duties, could have reached …

The Appellant argued that even if the Intervener was entitled to exercise the residual power to adjourn the meeting, she did so in bad faith and in an unreasonable manner as described in *Wednesbury*.

Bad faith

72 As a preliminary issue, the Intervener submitted that the Appellant had not contended that the Intervener acted in bad faith in the proceedings in the High Court and should not be allowed to raise this issue on appeal. The Judge stated in his Judgment at [40] that the Appellant did not allege that the Intervener adjourned the AGM with an ulterior motive and there was no evidence to suggest this was the case. However, we will discuss the issue of bad faith or ulterior motive anyway since the Judge made some observations on bad faith on the facts before him.

73 While the Appellant stated before us that bad faith was not her main ground of appeal, it was clear that her distrust of the Intervener and suspicions about her motives for adjourning the AGM were central to her submissions. In the Appellant's Case, the Appellant stated that she did not oppose the adjournment of the AGM in so far as it related to the remaining items on the agenda. Instead, her main complaint appeared to be that the Intervener was trying to hold onto power by adjourning the AGM after she realised that she might lose to Dr Neo if the run-off election to break the tie for the final position in the 13th MC was held that night. The Appellant also submitted that the adjournment was to enable the 12th MC to remain in power to grant a staff bonus to Savills and to allow the Intervener to gain a seat on the 13th MC when Dr Neo withdrew his candidacy.

74 To substantiate her complaint, the Appellant highlighted the following:

(a) The Intervener changed her stance during the course of the AGM. Before 7pm, she wanted to resolve the elections that night. Later in the meeting, she supported the adjournment of the AGM without conducting the run-off election.

(b) She did not reverse her decision to adjourn the AGM when a subsidiary proprietor highlighted that she could be in a position of conflict of interest (because she was involved in the run-off election).

(c) She would have known that there were attendees who did not want her to be re-elected and there was a distinct possibility of her losing her seat.

(d) Dr Neo's withdrawal could have been a result of an arrangement between him and the Intervener, made possible because the run-off election was not carried out at the AGM.

(e) In declaring the adjournment, she stated that the 12th MC would continue to be in charge until the conclusion of the meeting on 19 October 2019.

75 We do not agree with the Appellant's characterisation of the facts. First, taking the Appellant's case at its highest, even if Savills had not asked for an extension of time beyond 9pm, there was no indication that the Intervener knew about this or that she had been dishonest during the AGM. There was therefore no basis for suggesting that she knew that the AGM could have continued that night but worked with Mr Chan to adjourn it. There was also no evidence that Savills' or Mr Chan's interests were aligned with the Intervener's, thereby giving them a reason to contrive to adjourn the AGM to secure a benefit for one

or the other or both. Even if Mr Chan had somehow miscommunicated to the AGM the situation concerning the continued use of the premises, we do not see how that could be imputed to the Intervener. Surely the chairperson of the AGM was entitled to rely on the statements made by the condominium's managing agent and was not expected to verify the position with the Keppel Club personally before adjourning. We emphasise here that we do not hold that Savills or Mr Chan made any misrepresentation of fact to the Intervener or to the AGM.

76 Second, to the extent that the Appellant submitted that the Intervener had contrived to adjourn the AGM for her ulterior motives, this implied that the Intervener had some hand in the events that led to the time constraints necessitating an adjournment. However, this was clearly not the case. On the face of the AGM transcripts, the AGM was prolonged mainly because of unexpectedly lengthy discussions during the proceedings. It may be argued that the Intervener could have managed the time better, perhaps by cutting short the more verbose and long-winded speakers or limiting the number of speakers for each item on the agenda. However, that would obviously be a very delicate task for the chairperson, bearing in mind the generally combative and critical atmosphere against the 12th MC which was chaired also by the Intervener.

77 Third, on the face of the transcripts, an adjournment was in contemplation even before the need for the run-off election arose. The first query was raised by a subsidiary proprietor before 7pm on what would happen if the AGM could not be concluded in time. Before the election results were announced, there were four separate occasions on which Mr Chan and/or the Intervener stated that the AGM would be adjourned. Three of those announcements mentioned specifically that the AGM would be adjourned after the announcement of the election results. When Mr Chan revealed that there

was a tie for the final position in the 13th MC (without stating who were the candidates involved), he maintained the same position that the AGM would be adjourned after the announcement of the results. Therefore, the adjournment was not motivated by the tie but was a reasonable and purely sensible response necessitated by the overrun of the AGM. Above all, the tie for the final position in the 13th MC was not something that anyone could have forecasted and certainly was not something that the Intervener could have orchestrated. The fact that the Intervener disagreed with the assertion made by one attendee that she should not adjourn the meeting because of an alleged conflict of interests could not show bad faith in the light of the circumstances already discussed, in particular, the fact that Savills' staff were informed that Keppel Club needed to use the premises after 9pm.

78 Fourth, the fact that the Intervener changed her position on the adjournment is explained adequately by the change in the circumstances as the meeting continued to drag on and the impossibility of completing the agenda became more and more apparent. Contrary to the Appellant's contention that the Intervener adjourned the AGM because of the tie, the Intervener was clear before the election results were announced that an adjournment would be called if motion 10.2 could not be resolved in time. Further, when the results were announced, there was only a brief interval before Mr Chan asked the Intervener to adjourn the meeting which she then did. It must be remembered that it was about 9pm by then and the genuine belief was that Keppel Club needed to use the premises after 9pm and time was needed for everyone to vacate the premises. All this showed that the adjournment was already in contemplation at a much earlier point in the AGM, even before the elections began and certainly before the votes were counted and the results announced.

79 Fifth, the Appellant's suggestion that the Intervener was afraid of losing to Dr Neo in the run-off election that night was sheer speculation. There was no evidence that Dr Neo would be preferred over the Intervener. Dr Neo, like the Intervener, was a member of the outgoing 12th MC. Dr Neo was the Treasurer in the 12th MC and several of the complaints raised by the attendees related to the expenditure items incurred by the condominium. Even if the Appellant was right that the attendees at the AGM wanted a change of leadership in the MC, there was no evidence to show that Dr Neo was not tainted equally with the Intervener by whatever misgivings against the 12th MC (justified or otherwise) that existed among the attendees. Further, there was nothing to suggest that the adjournment of the AGM would have provided the Intervener with any advantage over Dr Neo in the subsequent run-off election. If Dr Neo had not chosen to withdraw his candidacy, both tied candidates would have been in the same position on 19 October 2019 as they were on 3 August 2019.

80 Sixth, even if the Appellant were correct that the Intervener was afraid of losing to Dr Neo and that she used the adjournment period to cut a deal with him, there was nothing to suggest that the AGM was adjourned for this purpose. There was only a short span of time between the announcement of the election results and the adjournment. In any event, even if the AGM was not adjourned and the decision was made to hold the run-off election immediately in order to break the tie, who is able to say that Dr Neo would not have withdrawn as a candidate after learning about the tie with the Intervener so as to obviate the run-off election because of the shortness of time before 9pm and in order to spare the attendees the tedium of prolonging a meeting which had gone on for more than six hours already? After all, we do not know why Dr Neo eventually withdrew. If it was due to goodwill between him and the Intervener (perhaps because they served on the 12th MC together or were friends), that only fortifies

the possibility that Dr Neo could have decided to withdraw on the night of the AGM if the run-off election was to be held immediately.

81 The Appellant's final objection to the adjournment was concerned with the ability of the 12th MC to continue its business after 3 August 2019. This argument concerned the staff bonus that the 12th MC approved for Savills as the condominium's managing agent at its MC meeting on 12 October 2019 following a proposal in an email from Savills on 11 October 2019.[50] The minutes of that meeting (at item 3.1) under "Any other business" showed that the 12th MC asked when the managing agent would normally present its bonus proposal to the MC for review and approval. The managing agent informed the MC that "it would be around this period". The MC then discussed the matter and "decided that the MA team has performed well in the last year and the bonus proposal was reasonable and in fact was less than what the Caribbean has previously paid under Keppel engagement". The MC then "unanimously agreed with the bonus proposal from Savills as per email dated 11 October 2019". As that was the last item on the agenda, the meeting ended thereafter.

82 The MC meeting on 12 October 2019 was attended by the Intervener, Dr Neo and five other council members, with Avril Lee from Savills in attendance. There was nothing to suggest that the meeting was anything other than an ordinary council meeting to discuss the matters relating to the condominium. It was the third council meeting that month as the minutes indicated there were two earlier meetings on 5 October and 8 October 2019. There was certainly no evidence that would point to the Intervener wanting to confer an undeserved special benefit on Savills or wanting to deplete the

50 ROA Vol III Part B at p 74.

condominium's funds before the 13th MC took office. In any case, any such alleged sinister motive on the Intervener's part would require the support of the other council members who attended that council meeting and any such conspiracy theory would therefore necessitate an inference that those council members were colluding with the Intervener. We think such an inference would be completely unjustified on the state of the evidence before the court.

83 It is useful to consider the possible scenarios if the AGM of 3 August 2019 had not been adjourned and the decision was made to hold the run-off election that night. First, as discussed earlier, Dr Neo might have withdrawn his candidacy that night to avert the run-off election and the Intervener would have been deemed elected into the 13th MC. Second, if the run-off election was held and the Intervener lost to Dr Neo, it has been accepted that the AGM could not possibly have concluded that night because there were many outstanding items on the agenda. The AGM would definitely have had to be adjourned sometime later that night. We agree with the Judge's interpretation of s 54(1)(*e*) of the Act that the incumbent 12th MC vacates office only at the end of the AGM and correspondingly, the incoming 13th MC takes office only at the end of the AGM (Judgment at [50]–[57]). The Appellant did not challenge this interpretation on appeal. It follows that even if the run-off election was held on 3 August 2019 and the Intervener lost to Dr Neo, the 12th MC would have remained in office anyway until the conclusion of the adjourned AGM on 19 October 2019. If so, then the 12th MC would have been able to approve the staff bonus to Savills anyway.

84 In response, the Appellant suggested that what the Intervener ought to have done was to let the run-off election take place and then make a decision to end the AGM, so that the 13th MC could take office and the remaining items on the agenda could be dealt with in a new meeting. We saw no merit to that

suggestion for the following reasons. First, there was no basis in law for imposing such a duty on the chairperson of a meeting to usher in a new MC before the conclusion of the AGM. Second, this would not accord with the statutory framework which stipulates that the incoming MC takes office only at the end of the AGM, not at the conclusion of the elections. Third, this would not make practical sense as the outgoing 12th MC would still have to deal with and be accountable for the outstanding matters in the agenda.

85 The Appellant also suggested that the AGM should not have been adjourned at all and should have been declared to be concluded on 3 August 2019 although the run-off election had not taken place yet. It follows therefore that the only members of the 13th MC were the ten candidates elected on 3 August 2019. We think this would have led to an unsatisfactory if not absurd situation. Finalising the 13th MC with only ten elected members on 3 August 2019 would have contradicted what the AGM had decided in motion 10.1, that there would be 11 members on the 13th MC. There was no justification to close the elections and conclude the AGM before the final position in the 13th MC was filled, especially when that could be done at the adjourned AGM. This was not a case where there were insufficient candidates to fill the number of positions in the MC. Further, there could be no concern that any of the ten elected candidates would be prejudiced by the run-off election.

86 For all the above reasons, we see no ground at all for saying that the Intervener acted in bad faith in adjourning the AGM at around 9pm on 3 August 2019.

Wednesbury *unreasonableness*

87 The Appellant argued that even if the Intervener did not act in bad faith, she had acted unreasonably in adjourning the AGM because she was motivated by personal considerations. In our opinion, the factors that showed that the Intervener did not act in bad faith would also lead to the conclusion that she was not motivated by irrelevant considerations or ulterior motives. An adjournment was already in contemplation before the votes were counted. There was only a short period of time between the announcement of the election results and the decision to adjourn. As we have pointed out, any suggestion that the Intervener was afraid she would lose to Dr Neo should the run-off election be held that night would be completely speculative. There was no conceivable benefit for the Intervener to cling on to office for another couple of months if her ouster from the MC was a practical certainty.

88 The Appellant relied on the case of *Datuk Johari Abdul Ghani & Ors v QSR Brands Bhd & Ors* [2007] 4 MLJ 19 ("*Johari*"), a decision of the Court of Appeal, Malaysia, for the proposition that a chairperson who exercises a common law power to adjourn when he is in a position of conflict of interest acts in an unreasonable manner under *Wednesbury* principles. In *Johari,* the chairperson, a director of the company, was facing a resolution tabled to remove him from his directorship. The chairperson alleged that one of the scrutineers had raised a concern on two polling forms signed by the chairperson. The chairperson then claimed to exercise the power to adjourn to seek legal advice on the validity of the polling forms: *Johari* at [6]. However, the Court rejected the explanation for the adjournment, finding that the uncertainty over the polling forms was *de minimis* and that the votes would not have affected the result: *Johari* at [12]. It was in that context that the Court found that the chairperson

had acted unreasonably since there was no real need for the adjournment and he had an interest in the resolution seeking his removal: *Johari* at [14].

89 In our view, *Johari* can be distinguished on the facts. In the present case, the Intervener had objectively good grounds for adjourning the AGM. Further, although the Intervener had an interest in the outcome of the run-off election, she would not have gained any advantage over Dr Neo from the adjournment. It followed that there was no real conflict of interest in her decision to adjourn.

90 In the light of our views on the "When" issue and the "How" issue, it is not necessary for us to go on to address the Intervener's other arguments on *locus standi* and the requirements for declaratory relief. It is similarly not necessary for us to consider what effect an invalid adjournment would have since our view is that the adjournment in this case was reasonable and justified and, indeed, was necessary in the circumstances that night. The reality, based on the state of knowledge then, was that the AGM simply could not continue physically at the premises past 9pm on 3 August 2019 and that it resumed and was concluded on 19 October 2019. Moreover, upon the announcement of the decision to adjourn the AGM, apart from the sole objection, the remaining attendees rose and dispersed. Accordingly, by no stretch of logic could it be said that the AGM concluded on 3 August 2019 and that the (incomplete) 13th MC took office that night, especially when there was still a long list of unfinished business left on the agenda. Again, the reality was that the resumed AGM continued with the unfinished business on 19 October 2019, including the announcement of the candidate deemed elected for the final position in the 13th MC upon Dr Neo's withdrawal, and then concluded, whereupon the (now complete) 13th MC took office.

The application for leave to adduce fresh evidence

91 We indicated earlier that we will say more about the Appellant's application in SUM 112/2020 for leave to adduce fresh evidence on appeal although this application was withdrawn in the course of submissions. We make some observations here in order to complete the discussions.

92 Pursuant to s 37(4) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) and O 57 r 13(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), fresh evidence can only be admitted on appeal on "special grounds" and with the leave of this court. For leave to be granted, the applicant must satisfy the cumulative conditions in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall* conditions") as follows:

> (a) it must be shown that the evidence could not have been obtained with reasonable diligence for use in the trial or hearing;
>
> (b) the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and
>
> (c) the evidence must be such as is presumably to be believed, or in other words, is apparently credible, though it need not be incontrovertible.

93 As the OS was heard on the basis of affidavit evidence only, with no cross-examination of witnesses, the High Court hearing did not have the full characteristics of a trial. At the same time, it was a hearing on the merits of the entire case, as opposed to an interlocutory application. In these circumstances, we have the discretion to apply the *Ladd v Marshall* conditions in an attenuated

manner (see *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 at [57]).

94 The fresh evidence that the Appellant sought to adduce in this case comprised the following:

(a) A typewritten statement dated 31 October 2020 signed by Ricky Sun ("Ricky Sun Statement") which purported to clarify the emails between himself and Avril Lee of Savills dated 30 September and 7 October 2019 (which we have discussed earlier). In the Ricky Sun Statement, Ricky Sun stated the following: (i) he received two requests from Abdul Rahim bin Habib Mohamed ("Rahim") of Savills on 3 August 2019, firstly to extend the use of the premises from 7pm to 8pm and subsequently from 8pm to 9pm and he acceded to both requests; (ii) no one asked if it was possible to extend the booking of the premises past 9pm; (iii) he "did not mention that there were any events taking place the following day, i.e., 4th August 2019"; (iv) he "did not threaten to switch off the lights and chase the participants out of the room after 9pm"; and (v) when asked by Avril Lee for the available dates for Keppel Hall for September and October 2019, he replied by WhatsApp on the available dates; and (vi) the last paragraph of the Ricky Sun Statement, which was handwritten and contained several corrections, stated, "My email to Avril Lee on the 7th Oct 2019 was not accurate. I did not mention about the caterers coming in on that night, 3 Aug 2020 to anyone. My only communication with the organizer on that night regarding extension was with Rahim via WhatsApp". (We accept that the year 2020 mentioned above is obviously a mistake and it should have been 2019.)

(b) WhatsApp messages on 3 August 2019 between Ricky Sun and Rahim, purportedly showing that Savills only asked for an extension of time for the use of the Keppel Club premises to 9pm and not beyond that time ("the Ricky-Rahim Messages").

(c) WhatsApp messages on 3 August 2019 between Ricky Sun and Avril Lee ("the Ricky-Avril Messages"), in which Avril Lee asked Ricky Sun about the availability of the same venue for weekends in the last week of September and for October 2019 and Ricky Sun replied with a range of dates, including 19 October 2019 (the date of the resumed AGM).

(d) Emails between Jason Tan and Tony Chang sent in 2020 ("the Jason-Tony Emails"). To set the context for the 2020 emails, Tony Chang had sent an email of 10 November 2019 to Jason Tan to ask, "Can I confirm that even if the AGM had overrun by 1 or 2 hours beyond 9pm, Keppel Club would not have threatened to kick us out and switch off the lights and instead have afforded us some flexibility so long as we had paid the chargeable extension rate?". Jason Tan replied on 11 November 2019, stating (we quote only the relevant portions here):

> 2. On the day in question, Sat 3 Aug 2019, the organizers did not request for an extension of time but informed us that the meeting would end at 9.00pm to be adjourned for the next AGM which was convened on 19 Oct 2019.
>
> 3. We have also verified that our staff did not attempt to kick anyone of the attendees out of the meeting room nor did they switch off the lights. It is our protocol to take the organizer's instructions during the event and of course, we also would accord some flexibility if required. We believe that there is a miscommunication and definitely it is not likely to be any of our staff who carried out the threat.

> We hope that you could ascertain the facts from the organizer (the MCST staff) to find out more. …

(e) We alluded to these emails earlier. They were sent before the hearing of the OS by the High Court which took place on 7 February 2020 and before the decision was delivered on 29 April 2020. They were exhibited to the Appellant's second affidavit in the OS. In 2020, after the High Court had heard and delivered its decision in the OS, Tony Chang, in his email dated 31 October 2020, asked Jason Tan to confirm that there was no event booked for 4 August 2019 in Keppel Club's event calendar. Jason Tan's email of 1 November 2020 confirmed that there was no event in the event calendar for the Keppel Hall for 4 August 2019.

(f) Two emails dated 2 November 2020 between Rahim and Serena Lee, a subsidiary proprietor of the condominium. Serena Lee attached the WhatsApp messages of 3 August 2019 between Ricky Sun and Rahim and asked Rahim to confirm: (i) that he was the only one from Savills tasked to seek an extension of the venue with Ricky Sun that night; and (ii) that his communication with Ricky Sun that night was only via WhatsApp messages and that the said messages were accurate. Rahim replied, "Positive for both questions" ("the Rahim-Serena Emails").

95 The first obstacle that the Appellant faced, even before considering the *Ladd v Marshall* conditions, was that the fresh evidence was inadmissible evidence. The Ricky Sun Statement, Ricky-Rahim Messages, Ricky-Avril Messages, Jason-Tony Emails and Rahim-Serena Emails and were all hearsay, being "assertions of persons made out of court whether orally or in documentary form or in the form of conduct tendered to prove the facts which they refer to":

Soon Peck Wah v Woon Che Chye [1997] 3 SLR(R) 430 at [26]. The fresh evidence was not verified by affidavits from their makers and the Appellant did not show that any of the exceptions to hearsay under s 32 of the Evidence Act (Cap 97, 1997 Rev Ed) applied.

96 In any case, we hold that the first of the *Ladd v Marshall* conditions, non-availability, was not satisfied in this case. Ricky Sun featured prominently in the fresh evidence but there was nothing to show that he would not have provided the Ricky Sun Statement, Ricky-Rahim Messages and Ricky-Avril Messages for the hearing in the High Court. The most that the Appellant could say was that Rahim was not willing to provide relevant evidence at first instance because he was worried about his employment with Savills. Even if so, why should that stop Ricky Sun from giving evidence in the High Court hearing concerning the events of 3 August 2019? The Appellant knew about Ricky Sun's evidence from the Intervener's affidavit filed on behalf of the Respondent on 30 October 2019. This was a case where the Appellant had ample opportunity to gather the necessary evidence.

97 As for the Jason-Tony Emails, they could also have been obtained earlier given that Jason Tan had already provided emails in support of the Appellant's case on 11 November 2019. There was no reason given on why Tony Chang had to wait until 1 November 2020 to email Jason Tan regarding the absence of any event in the event calendar for the Keppel Hall for 4 August 2019.

98 We also hold that the second condition of relevance was not satisfied. The Appellant sought to adduce the fresh evidence primarily to disprove the Intervener's claim that the premises at the Keppel Club had to be vacated by 9pm for caterers to set up for an event on 4 August 2019 and to show that no request for extension beyond 9pm was made. However, we have analysed this

case even on the basis that the Appellant was correct on these factual matters. Despite this, we hold that the residual common law power to adjourn could be exercised and was not exercised in bad faith or unreasonably in the circumstances. It follows that the fresh evidence would not have any impact on our decision.

99 In so far as the third of the *Ladd v Marshall* conditions was concerned, it is apparent that the handwritten portion of the Ricky Sun Statement ("My email to Avril Lee on the 7th Oct 2019 was not accurate. I did not mention about the caterers coming in on that night, 3 Aug 2020 to anyone.") contradicted his earlier email. However, Ricky Sun did not even offer any explanation on why he wrote the email of 7 October 2019 in those terms. As shown earlier, Avril Lee did not even suggest in her email to Ricky Sun that the reason for the 9pm deadline was due to another event having been scheduled for 4 August 2019 in the Keppel Hall. In the absence of any explanation from Ricky Sun, his belated statement certainly cannot be said to be evidence that is "apparently credible". Further, admitting the statement at this very late stage would have necessitated cross-examination, thereby prolonging these proceedings unjustifiably. We were informed that the next AGM for the condominium must be held before the end of 2020 and the term of the 13th MC will expire upon the conclusion of the next AGM. It would be futile therefore to prolong these proceedings and continue the debate about whether the Intervener was elected validly into the 13th MC.

100 In the course of hearing the Appellant's application in SUM 112/2020, when most of the above concerns were pointed out to counsel for the Appellant, he decided to withdraw the application. We granted the Appellant leave to withdraw the application accordingly.

Conclusion

101 For the reasons set out above, we dismissed the appeal. We ordered the Appellant to pay the Intervener's costs fixed at $38,000 (inclusive of disbursements) for both SUM 112/2020 and the appeal. We further ordered the Appellant to pay the Respondent's costs of attendance for the appeal fixed at $2,500. The usual consequential orders relating to the security for costs are to apply.

Judith Prakash	Tay Yong Kwang	Belinda Ang Saw Ean
Judge of Appeal	Judge of Appeal	Judge

Lee Sien Liang Joseph and Muk Chen Yeen Jonathan (LVM Law Chambers LLC) for the appellant;
Chew Kei-Jin and Tan Silin Stephanie (Chen Silin) (Ascendant Legal LLC) for the respondent;
Wah Hsien-Wen Terence and Mok Zi Cong (Dentons Rodyk & Davidson LLP) for the intervener.