IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 290

Tribunal Appeal No 9 of 2022

Between

The Management Corporation
Strata Title Plan No 2553

… *Claimant*

And

(1) Chia Yew Liang
(2) Lim Yi Fei (Lin Yifei)
(3) Chiu Chee Keen
(4) Soh Beng Suan
(5) Tan Chian Eng
(6) Teng Khar Imm (Ding Qiaoyin)

… *Defendants*

GROUNDS OF DECISION

[Land — Strata titles — Management council]

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v
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Introduction

1 This is an appeal by The Management Corporation Strata Title Plan No 2553 for the development known as Palm Gardens (the "MCST"), against the decision[1] of the Strata Titles Board (the "STB") in relation to s 53A of the Building Maintenance and Strata Management Act 2004 (2020 Rev Ed) (the "BMSMA").

2 The defendants are subsidiary proprietors ("SPs") in Palm Gardens. They filed an application to the STB to determine whether the MCST was wrong to have reserved a seat on the management council for a SP of a commercial

[1] *Chia Yew Liang and others v The MCST Plan No. 2553* [2022] SGSTB 4 ("GD").

shop unit in Palm Gardens, Mer Zhang Zhibin ("Mr Zhang"), during the 19th Annual General Meeting (the "AGM") of the MCST.

3 The STB held that s 53A of the BMSMA does not apply as Palm Gardens was a residential development and not a mixed development. Accordingly, the STB found that Mr Zhang did not have an automatic right to be on the council and his appointment was therefore invalidated. The grounds of decision issued by the STB on this will be referred to as the "GD". I allowed the appeal by the MCST. These are my grounds of decision.

Whether appeal is on a point of law

4 The first issue was whether the MCST could bring an appeal against the decision of the STB. Section 98(1) of the BMSMA states:

> No appeal shall lie to the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act 1967 [(2020 Rev Ed)] except on a point of law.

5 The Court of Appeal in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee*") held at [101] that *ex facie* errors of law would entitle a party to appeal under s 98(1) of the BMSMA. The court cited (at [90]) the following definition of errors of law from *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) ("*Halsbury*") at para 70, which stated:

> Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty

> to give reasons, and misdirecting oneself as to the burden of proof. [emphasis in original omitted]

6 Prior to affirming at [101] that *ex facie* errors of law entitle a party to appeal under s 98(1) of the BMSMA, the court in *Ng Eng Ghee* considered and rejected the narrower definition of "question of law" that had been applied in *Northern Elevator Manufacturing Sdn Bhd v United Engineers (Singapore) Pte Ltd* [2004] 2 SLR(R) 494 in the context of applications for leave to appeal against domestic arbitral awards brought under s 28(2) the Arbitration Act (Cap 10, 1985 Rev Ed). The court observed at [100] that different policy considerations apply in the context of private arbitrations, which were underpinned by the principle of party autonomy, as compared to a hearing before a STB, which performed functions that would affect the wider public interest.

7 The defendants submitted that the STB did not make an error of law, as its decision had been premised on findings of fact.[2] They argued that s 53A(2) of the BMSMA only requires that a MCST council office be reserved in the case of a mixed-use development. The STB's decision – that s 53A(2) of the BMSMA did not apply – was based on a finding of fact the STB had made, *ie*, that Palm Gardens was not a mixed-used development.

8 The MCST's case was that there were *ex facie* errors of law in the STB's decision. The MCST made the following submissions.

(a) The STB had asked and answered the wrong questions:[3]

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2 Defendant's Skeletal Arguments ("DSA") at paras 11–15.

3 Claimant's Written Submissions ("CWS") at para 7.

(i) by asking whether Palm Gardens was residential or mixed-use, because while there was no dispute that Palm Gardens was a residential development, it did not follow that Palm Gardens could not be a mixed-used development under s 53A BMSMA;[4] and

(ii) by asking whether the presence of one shop unit was sufficient to render an otherwise fully residential development a mixed-use development.[5]

(b) The STB had taken into account irrelevant considerations such as the Urban Redevelopment Authority (the "URA") Land Zoning.[6]

(c) The STB had wrongly relied on and/or misconstrued several emails from various officers in the URA and the Building and Construction Authority (the "BCA").[7]

(d) The STB had failed to take into account the following relevant considerations when purporting to apply the law to the facts:

(i) the disproportionately higher share value allocation in Palm Gardens for the shop unit compared to residential units, which suggested that Palm Gardens was a mixed-use development;[8] and

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4 CWS at paras 62–64.

5 CWS at paras 65–68.

6 CWS at paras 54–57.

7 CWS at paras 78–86.

8 CWS at paras 25–30.

(ii) the email replies from a senior BCA officer.[9]

9 The issues raised by the MCST related to whether the STB was correct in its interpretation of "mixed-use development" in s 53A(2) of the BMSMA. As will be seen below, this involved an interpretation of what the phrase "buildings authorised under the Planning Act 1998 [(2020 Rev Ed)] for 2 or more of the following classes of use" in s 53A(1) of the BMSMA means. Related questions included whether the STB had erred in considering if there needed to be a minimum number of a particular type of unit to constitute a class of use. These were questions of law and not merely factual questions.

10 Counsel for the defendants accepted during the hearing that this appeal involved questions of law.[10] I also agreed with the MCST that the allegations raised related to *ex facie* errors of law within the meaning set out by the court in *Ng Eng Ghee*, in that they allege that the STB asked and answered the wrong questions, took into account irrelevant considerations and failed to take into account relevant considerations (see [5] above).

11 I thus found that the MCST was entitled to bring this appeal.

The Appeal

12 The relevant part of s 53A BMSMA, which the STB had to apply, states:

> **Councils for mixed-use developments**
>
> 53A.—(1) This section applies only in relation to a management corporation with **more than 3 subsidiary proprietors** constituted for a parcel in a strata title plan, whether or not comprising limited common property but **consisting of**

[9] CWS at paras 87–90.

[10] Minute Sheet for HC/TA 9/2022, 27 October 2022 ("Minute Sheet for TA 9") at page 2.

> **buildings authorised under the Planning Act 1998 [(2020 Rev Ed)] for 2 or more of the following classes of use**:
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> (a) residence;
>
> (b) office;
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> (c) commercial (other than as an office), such as a shop, food establishment or theatre;
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> (d) boarding premises, such as a hotel, serviced apartment or nursing home;
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> (e) a prescribed purpose.
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> (2) Subject to this section, in the case of a management corporation of a mixed-use development mentioned in subsection (1), there must be reserved for each class of use mentioned in that subsection and authorised for that development under the Planning Act 1998 [(2020 Rev Ed)], at least one office as member of the council of that management corporation (called in this Act a reserved council office).
>
> [emphasis added]

13 In applying s 53A of the BMSMA to the present case, the first steps were to consider whether s 53A of the BMSMA was applicable to begin with. Pursuant to s 53A(1) of the BMSMA, s 53A of the BMSMA would only apply in relation to a management corporation which:

(a) has more than three SPs; and

(b) consists of buildings authorised under the Planning Act 1998 (2020 Rev Ed) (the "PA") for two or more of the classes of use identified under s 53A(1) of the BMSMA.

In relation to the second requirement, the identified classes of use include "residence" and "commercial … such as a shop, food establishment or theatre".

Whether there must be a minimum number of SPs in a particular class of use for a development to be "mixed-use"

14 As a preliminary issue, I noted that s 53A(1) of the BMSMA does not require a development to have a minimum number of SPs in a particular class of use, before it can be considered as a "mixed-use development" under s 53A(2) of the BMSMA. That was relevant to this case, as there was only one SP that was argued by the MCST to fall within the class of "commercial" use.

15 The STB had decided that although s 53A(1) of the BMSMA did not specify a minimum number of lots for the constitution of a different class of use, there remained an overarching issue to be addressed, namely, "whether the presence of one shop unit, particularly one in the form of a minimart or a pizza making and delivery outlet, is sufficient to render an otherwise fully residential development a mixed-use development for the purpose of Section 53A [of the] BMSMA".[11]

16 I was, with respect, unable to agree with this. Section 53A of the BMSMA plainly does not contain a requirement for a minimum number of SPs in order to constitute a class of use. There was accordingly no legal basis to inject an additional requirement that was unsupported by the text of s 53A of the BMSMA. In fairness to counsel for the defendants, he did not make any submissions in respect of this.

Whether Palm Gardens is a mixed-use development

17 Section 53A(2) of the BMSMA pertains to developments that meet the criteria of being a "mixed-use development". A development would be a

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[11] GD at [30].

"mixed-use development", where the two criteria in s 53A(1) of the BMSMA (identified at [13] above) are met. That a "mixed-use development" under s 53A(2) of the BMSMA is defined with reference to s 53A(1), is clear from the phrase in s 53A(2): "in the case of a management corporation of a mixed-use development mentioned in subsection (1)". As identified by the STB in the GD,[12] such a reading is also consistent with reg 2(1) of the Building Maintenance and Strata Management (Strata Units) Regulations 2005 (S 196/2005), which is substantially similar to s 53A(1), and defines a "mixed-use development" as "a development that consists or is to consist of 2 or more different classes of use".

18 In this case, it was not disputed that Palm Gardens was a MCST with more than three SPs.[13] Thus, the only issue was whether Palm Gardens consisted of buildings authorised under the PA for two or more of the classes of use identified under s 53A(1) of the BMSMA.

19 During the second reading of the Building Maintenance and Strata Management (Amendment) Bill (Bill No 29/2017), the Second Minster for National Development explained the rationale for the proposed introduction of s 53A of the BMSMA as such (Singapore Parliamentary Debates, Official Report (11 September 2017) vol 94 (Desmond Lee, Second Minister for National Development)):

> On the issue of fair representation, clause 38 or new section 53A provides that each class of use in a mixed-use development will be given a reserved seat in the council. Different classes of uses have different needs, so it is important for each to have a "voice". The classes of use include residential, commercial and single independent lot groups like hotels and serviced residences. There was feedback about a residential and retail

12 GD at [29].

13 CWS at para 42; DSA at para 26.

> development where the council was dominated by retail SPs. This resulted in a skewed decision by the council to lease common property cheaply to the retail shops in the development. The facility of reserved seats for each user class will go some way to address over-domination by any one user class, and put each group in a more equitable position in managing the MCST.

It was thus apparent that the legislative purpose of s 53A of the BMSMA is to ensure adequate representation across different classes of use within a development. With that as the background, I examined the specific question arising in this case, of *how* to determine whether a development was authorised for a particular class of use.

The grant of written permission by the URA

20 The "competent authority" under the PA is defined under s 2 of the PA as "any competent authority appointed under section 5 to be responsible for the operation of [the PA]". Section 5(1) of the PA confers on the Minister the power to "appoint any person or persons as the Minister thinks fit to be the competent authority or authorities responsible for the operation of [the PA]" by notification in the Gazette. In turn, by para 1(*a*) of the Planning Act (Appointment of Competent Authority) (Cap 232, N 7, 2007 Rev Ed) (GN No S 110/2001) ("GN 110/2001"), "the Chief Executive Officer of the [URA] established under the Urban Redevelopment Authority Act (Cap 340)" was appointed to be "the competent authority responsible for the operation of the provisions of the [PA] and any rules made thereunder, except sections 7 and 8 of the [PA] and any rules made under section 10 of the [PA]". By para 1(*b*) of GN 110/2001, the Chief Planner of the URA was appointed to be the competent authority for the operation of ss 7 and 8, and any rules made under s 10 of the PA.

21 Section 14(4)(*a*) of the PA states that subject to any rules, the competent authority, *ie*, the URA, may "grant written permission, either unconditionally or subject to any conditions the competent authority considers fit". Section 2 of the PA defines "written permission" as "a planning permission … granted by a competent authority". In other words, the URA is effectively the competent authority which determines whether buildings have been authorised for particular classes of use under the PA. Following from this, whether the development consists of "buildings authorised under the Planning Act 1998 for 2 or more of the following classes of use", such that s 53A of the BMSMA is applicable, may be assessed by examining the written permission issued by the URA for that property. This is also common ground among the parties.[14]

22 The Grant of Written Permission issued by the URA for Palm Gardens on 14 December 2000 under the Planning Act (Cap 323, 1998 Rev Ed) (the "WP"), is the latest grant on record. It states that strata subdivision permission was granted for the subdivision of the development into "695 separate strata units (comprising 694 residential units and 1 shop unit)"[15]. The residential units would clearly fall within the "residence" class of use stipulated under s 53A(1) of the BMSMA. Palm Gardens was also authorised to have "1 shop unit". In my view, the fact that Palm Gardens was authorised to have both residential units and a shop unit meant that Palm Gardens was authorised under the PA for two classes of use – residence and commercial.

23 The defendants submitted that merely because permission was granted for the opening of a shop within the development, did not necessarily mean that

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14 CWS at paras 51–53; DSA at para 38.

15 Affidavit of Chai Yi Ling, Gillian dated 28 September 2022 (Gillian Chai's Affidavit) at pages 73–74.

the development was authorised for the "commercial" class of use.[16] I was unable to agree with this, given what is plainly stated in s 53A(1) of the BMSMA. In particular, s 53A(1) of the BMSMA stipulates, as a class of use, "commercial … such as a *shop*, food establishment of theatre" [emphasis added]. It is thus clear that under s 53A(1) of the BMSMA, where permission has been granted for the opening of a *shop* in a development pursuant to a grant of written permission, that development would essentially have been authorised for commercial use for the purposes of s 53A of the BMSMA.

24 The defendants also submitted that because the header of some of the earlier written permissions issued by the URA described Palm Gardens as a "condominium housing development",[17] that meant that there was no other separate class of use that was authorised for the development.[18] However, that missed the question that had to be examined, which is whether a development, whether described as "condominium housing development" or otherwise, is authorised for two or more classes of use under s 53A(1) of the BMSMA.

25 Such information is contained in the latest WP for Palm Gardens, where it is stated that Palm Gardens would comprise "695 separate strata units (comprising 694 residential units and 1 shop unit)". As explained at [22] above, this would mean that Palm Gardens has two authorised classes of use under the PA, namely, residence and commercial. The requirements in s 53A(1) BMSMA (identified at [13] above) would consequently be satisfied.

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16 Minute Sheet for TA 9 at page 3.

17 See, *eg*, the Written Permission dated 14 Feb 2000 in the affidavit of the defendants dated 14 September 2022 ("Defendants' Affidavit") at page 41.

18 Minute Sheet for TA 9 at page 3.

26 The defendants further submitted that just because Palm Gardens was authorised for two or more different classes of use, it did not necessarily mean that the development is a "mixed-use development" within the meaning of s 53A(2) of the BMSMA. I was unable to agree with this submission. As explained above at [17], s 53A(2) of the BMSMA defines "mixed-use development" with reference to the requirements set out under s 53A(1) of the BMSMA. It follows that a development would be a mixed-use development under s 53A(2) of the BMSMA, where s 53A(1) of the BMSMA is satisfied.

The relevance of the URA's land zoning

27 While the STB agreed that the latest WP should be referred to, it was also influenced by the URA land zoning categories, and the fact that the land on which Palm Gardens is situated is zoned as "Residential". As s 53A(1) of the BMSMA makes specific reference to whether the property consists of "buildings authorised under the [PA] for 2 or more … classes of use", it was in my view, important to refer to the PA in ascertaining the significance (if any) of the URA land zoning categories, on whether a particular development was a mixed-use development.

28 I noted that under the PA, "zoning" is only mentioned in s 8(3)(*a*). This provision states that proposals for amendment to the Master Plan may provide for rezoning in relation to the whole of the area which is the subject of the Master Plan or any part thereof. The Planning Act Master Plan Written Statement 2019[19] sets out 31 different zoning categories. These include

[19] Gillian Chai's Affidavit at pages 131–156.

categories such as "Residential", "Residential with Commercial at 1st storey" and "Commercial & Residential".[20]

29 However, even where a condominium is situated on land that is zoned as "Residential", the URA guidelines allow for shops to operate in such developments under limited circumstances. For instance, such shops are limited to a maximum of 0.3% of the proposed residential gross floor area and may engage only in personal trade services (as the STB noted at [34] of the GD).[21] In other words, even where land is zoned as "Residential", the URA guidelines allow for commercial shops to operate in developments built on such land, within certain parameters. It was thus clear that the URA land zoning of a particular plot of land is not determinative of whether a development has two or more authorised classes of use under the PA. Whether there is such authorisation would still have to be assessed with reference to the latest WP issued by the URA (see [21] above).

30 The defendants submitted that a shop subsisting in land zoned as "Residential" is not a "shop" that falls under the "commercial" class of use under s 53A(1) of the BMSMA. Instead, shops which are operated on land zoned as "Residential" should be classified as "ancillary shops", which are allowed for under the URA guidelines. With respect, this went against the plain words of s 53A(1) of the BMSMA, which clearly indicates as a possible class of use "commercial … such as a shop". Section 53A(1) of the BMSMA does not state that *only* a non-ancillary shop can be authorised for commercial use. To accept the defendants' submission would have meant imputing into s 53A(1) of the BMSMA, the restriction that "shop" only refers to a shop that is not

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20 Gillian Chai's Affidavit at page 141.

21 Defendants' Affidavit at page 91.

ancillary to the development, when the plain language of s 53A(1) of the BMSMA cannot sustain such an interpretation.

31 In addition, if Parliament had intended that the authorised classes of use under the PA for the purposes of s 53A(1) of the BMSMA were to be determined according to the URA land zoning, the provision could have stated so expressly in those terms, but it did not. On the contrary, s 53A of the BMSMA makes no mention of land zoning.

The replies from officers of the BCA and the URA

32 The replies from the BCA officers and/or the URA officer to queries from the parties were not binding on the court in answering the question of whether Palm Gardens was a residential or mixed-use development, or more generally, how s 53A of the BMSMA was to be interpreted. However, as the STB made reference to these replies in the GD, I examined the correspondence for completeness.

33 When the MSCT's managing agent wrote to a Deputy Director in the Building Management Department, Building Plan and Management Group of the BCA (the "BCA Deputy Director"), to ask him generally whether s 53A of the BMSMA would apply to a development consisting of 600 plus residential units with one shop unit, the BCA Deputy Director replied:[22]

> … The following is an extract of section 53A(1) & (2) of the BMSMA. You may wish to refer to the Written Permission issued by URA for the development to check what class of use the 'shop' comes under. …

[22] Gillian Chai's Affidavit at pages 774–775.

34 In relation to a more specific query regarding Bayshore Park, a residential condominium, with more than 1,000 residential units and several shops, the BCA Deputy Director said:[23]

> …
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> 2 Under Section 53A of the Building Maintenance and Strata Management Act (BMSMA), a management corporation (MCST) comprising 2 or more classes of use authorised under the Planning Act, should first reserve at least one seat in the council for each class of use listed in this provision.
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> 3 We note that the grant of written permission of 16 May 1983 stated that there were housing units (residence) and shop units (commercial) in the development, which these two types of unit also fall under the classes of use in Section 53A of the BMSMA. Thus, Section 53A applies to this development. …

35 The STB did not explain in the GD why it did not refer to the BCA Deputy Director's explanations. The STB stated that replies from the BCA and the URA "unambiguously stated that [Palm Gardens] is classified as a residential development" (GD at [33]). It appears that the STB had relied on a reply from a more junior officer in the BCA, a Senior Manager in Building Management (the "BCA Senior Manager"), who stated (GD at [33]):[24]

> … Section 53A of the BMSMA provides for the election of council in a mixed - use development. Based on our records, MCST 2553 is registered as residential development….

36 As the exact question posed to the BCA Senior Manager was not disclosed in the records, it was not known what the registration mentioned by that officer relates to. In any event, the central inquiry under s 53A of the BMSMA is not whether the BCA had registered the MCST as residential or otherwise, but whether under the PA, the MCST consisted of buildings

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23 Gillian Chai's Affidavit at page 777.

24 Defendants' Affidavit at page 46.

authorised for two or more of the classes of use identified in s 53A(1) of the BMSMA. That must be answered with reference to the latest WP for Palm Gardens.

37 In determining that Palm Gardens was not a mixed-use development, the STB also noted that the URA stated that Palm Gardens is classified as a residential development. It appears that the other correspondence relied on by the STB was from an URA officer. The defendants had written to the URA to ask, with reference to the WP, whether Palm Gardens was a mixed-use development and whether Section 53A BMSMA applied to Palm Gardens. The URA officer replied:[25]

> … Palm Gardens is approved as a Residential (not mixed) development. *I am unable to comment on the BMSMA as it is administered by BCA*. … [emphasis added]

38 Notably, the URA officer specifically declined to comment on whether Palm Gardens was a "mixed-use" development under s 53A of the BMSMA. While s 53A of the BMSMA specifically states that the question of whether a development is "mixed-use" is assessed with reference to the authorisation under the Planning Act, the URA officer did not make reference to this, but instead simply said that she was not able to comment on the BMSMA. It thus appeared that she was not familiar with s 53A of the BMSMA.

39 From the above examination of the two correspondences from the URA and the BCA relied on by the STB, it could not be said that "both the authorities unambiguously stated that the Property is classified as a residential development", as the STB had found (GD at [33]). Instead, a more senior BCA officer, the BCA Deputy Director, had stated that reference should be made to

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[25] Gillian Chai's Affidavit at page 24.

the written permission issued by the URA (see [33] above) and that where the written permission stated that there were housing (residence) and shop units (commercial), s 53A BMSMA would apply (see [34] above).

40 I would add that the determination of what constitutes a "mixed-use development" for the purposes of s 53A of the BMSMA is not related to the duty or power of a MCST under s 29(1)(*a*) of the BMSMA. In the course of submissions, the defendants highlighted that in an earlier STB decision, the STB had found that the MCST has the power pursuant to s 29(1)(*a*) of the BMSMA to restrict members of the public who are not residents, guests of residents or related staff to enter the development and accordingly, to patronise the commercial units in the development.[26] As this issue was not before me, I made no judgment on this. However, it appeared that there was some concern that if Palm Gardens were found to be a "mixed-use development" under s 53A of the BMSMA, that would affect the ability of the MCST to make restrictions on entry. However, there is nothing in s 29(1)(*a*) of the BMSMA that refers to s 53A of the BMSMA, or vice versa. In my analysis, and in the submission of both counsels,[27] the two provisions are not related.

Conclusion

41 For the reasons above, I allowed the appeal. I consequently granted the two orders sought by the MCST, which were that:

(a) on a proper construction of s 53A of the BMSMA, the section applies so long as the conditions in s 53A(1) are satisfied; and

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26 Minute Sheet for TA 9 at pages 2–3.

27 Minute Sheet for TA 9 at page 3–4.

(b) the decision of the STB in STB No 6 of 2022 invalidating the election result of the AGM of the MCST, and ordering Mr Zhang to vacate his council seat, be set aside.

42 Before the STB, the MCST had been ordered to pay the defendants costs of $1600 (GD at [41(F)]). Some of the findings made by the STB were not appealed against. I awarded the MCST some of the disbursements sought for in the proceedings before the STB, in the sum of $800. I awarded the MCST costs for this appeal, in the sum of $15,000 plus disbursements in the amount of $5701.29.

Kwek Mean Luck
Judge of the High Court

Toh Kok Seng, Chai Yi Ling Gillian and Tan Hong Xun Enzel (Lee & Lee) for the claimant;
Tan Siang Teck Kenneth, Bridges Christopher and Elwyna Ee Lin Yu (Christopher Bridges Law Corporation) for the defendants.