IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 88

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*

And

Lee Chuen T'ng

… *Intervener*

JUDGMENT

[Land] – [Strata Titles] – [Meetings] – [Requirements for valid adjournment] – [Chairman's residual common law power to adjourn meetings]

[Land] – [Strata Titles] – [Management Councils] – [Elections] – [When council members are obliged to step down]

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

[2020] SGHC 88

High Court — Originating Summons No 1203 of 2019 and
Summons No 193 of 2019
Lee Seiu Kin J
7 February 2020

29 April 2020 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 The 13th Annual General Meeting of the defendant was held on 3 August 2019 ("the AGM") at the Keppel Club.[1] The AGM was chaired by the intervener, Ms Lee Chuen T'ng ("Lee"). In her opening address, she recounted how 2018 had been a particularly harrowing year for the management council. Reports of quarrels among the residents, legal actions, multiple complaints of both a verbal and physical variety and even a police report were alluded to in her opening address.[2] Despite her calls for a return to the idyllic and peaceful

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1 Intervener's Bundle of Affidavits ("IBOA") Tab 1, p 24

2 Plaintiff's Core Bundle of Documents ("PCB") Tab 1, pp 7- 8

state of yesteryear, the AGM itself proved to be yet another occasion for conflict and acrimony.

2 In short, the AGM ran out of time. Even with the benefit of an extension, there were some 19 motions[3] left unaddressed. Notably, the AGM was midway through elections for a fresh management council ("the 13th Management Council") at the time the adjournment was declared. Ten out of the eleven spots had been filled, leaving one more spot open for contest. The election for this last position and remaining matters in the agenda were postponed to 19 October 2019.[4]

3 In this originating summons ("OS"), the plaintiff, Ms Chan Sze Ying ("Chan"), seeks a declaration that the AGM had been improperly adjourned and that it had accordingly concluded on 3 August 2019 ("the Adjournment Declaration"). She also seeks a declaration that those persons who were elected to the 13th Management Council at the AGM had taken office on that day ("the Election Declaration"). For the reasons that follow, I decline to grant both declarations and dismiss this OS.

Facts

The parties

4 The defendant is the management corporation of a condominium called The Caribbean at Keppel Bay ("The Caribbean"). Its managing agent, the company appointed to supervise the day-to-day administration of the condominium, is Savills Property Management Pte Ltd ("Savills"). Mr Chan

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3 Intervener's Written Submissions ("IWS") p 23 para 96; IBOA Tab 3, p 13 para 73

4 IBOA Tab 3, p 14 para 74

Kok Hong ("Kok Hong") is Savills' representative. As in normal in such cases, he was the person in charge of organising the AGM and guided Lee in chairing the proceedings at the AGM. At this point I should mention that the defendant has adopted a neutral position in these proceedings. This is entirely understandable since the management corporation has no real interest in this dispute (save perhaps, an interest in "having the matter resolved with finality"[5]) and the real quarrel was between Lee and Chan.

5 Lee was the chairperson of the outgoing management council ("the 12th Management Council").[6] By virtue of that position, she chaired the AGM. During the AGM, she stood for elections to be part of the 13th Management Council.[7]

6 Chan also stood for election at the AGM. She was one of the ten candidates duly elected to the 13th Management Council.[8] Lee, on the other hand, was tied with another candidate for the 11th and last seat of the 13th Management Council.[9] Before the tie could be broken by a runoff vote of the two candidates, Lee declared the AGM to be adjourned. I now set out the circumstances leading to this event.

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5 Defendant's Written Submissions ("DWS") p 2 para 6

6 PCB Tab 1, p 5 lines 1 - 4

7 PCB Tab 1, p 153 lines 11 – 25 and p 154 lines 1 – 8.

8 PCB Tab 1, p 216 line 4

9 PCB Tab 1, p 207 lines 15 - 16

Background to the dispute

7 The AGM began fairly unremarkably. When it was called to order at 2.30p.m., [10] there were minimal interruptions to the chairperson's address, few questions were posed and all was proceeding according to the agenda that had been circulated earlier. [11] This state of affairs however, did not last long.

8 Simple requests for clarification soon gave way to extensive explanations and defensive posturing. These in turn invited further questions and criticism. A question about the management corporation's expenditure on legal fees, for example, prompted an extensive historical account of controversies that arose at the previous annual general meeting.[12] Personal grievances, legitimate or otherwise, hijacked the discussion for extended periods of time.[13] Accusations of "draconian" mismanagement,[14] tokenistic engagement with the residents ("fake dialogue")[15] and opaque governance[16] pockmarked the proceedings. As one resident memorably put it, the AGM resembled a stage for personal grievances more than a meeting about condominium administration.[17]

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10 PCB Tab 1 p 4 line 20

11 IBOA Tab 3 page 45

12 PCB Tab 1 pp 51 - 56

13 PCB Tab 1, pp 69 – 74.

14 PCB Tab 1 p 76 lines 6 - 9

15 PCB Tab 1 p 78 line 9

16 PCB Tab 1 p 78 lines 1 - 4

17 PCB Tab 1 p 82 lines 10 – 11

9 There were multiple attempts to rein in the meeting. Lee urged attendees to keep their comments relevant to the item being discussed,[18] limited the number of questions asked per item[19] and restricted the amount of time given for personal speeches.[20] Notwithstanding this, it soon became apparent that the AGM would not conclude its business by 7pm as originally intended.[21] Indeed, at 6pm, the candidates for the 13th Management Council had barely started introducing themselves.[22] With some 23 candidates standing for election, there was hardly enough time to hear 23 campaign speeches from these candidates, let alone time for voters to deliberate and for the organisers to count the votes. In light of this, Kok Hong secured an extension till 8pm hoping to finish this item on the agenda. Kok Hong announced to the meeting, somewhat over-optimistically that: "We have been able to get an extension of one more hour to stay here, so it looks like we will be able to go through the elections and counting of the votes, okay?".[23] Lee shared the same sentiment: "I think we should just hear everybody out and at least get this done".[24]

10 Unfortunately, further complications arose. More issues were raised. Term limits,[25] voter secrecy,[26] and other ancillary matters captured the attention

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18 PCB Tab 1 p 79 lines 4 - 5

19 PCB Tab 1 p 110 lines 2 – 6,

20 PCB Tab 1 p 162 lines 18 - 19

21 PCB Tab 1 p 171 lines 10 -12; 23 - 25

22 IBOA Tab 3 p 10 para 57

23 PCB Tab 1 p 174 lines 13 - 16

24 PCB Tab 1 p 171 lines 13 - 14

25 PCB Tab 1 p 143 lines 11 - 17

26 PCB Tab 1 p 147 line 10

of the attendees.[27] Kok Hong did his best to address them[28] but it was apparent that time was running out. The AGM was already operating on borrowed time and the goodwill of the venue operator and Kok Hong was acutely aware of the (extended) deadline - this much was clear from the way he hurried proceedings along[29] and from his peremptory declarations that an adjournment was inevitable. Indeed, he insisted on it on multiple occasions – first as the AGM approached its initial 7pm deadline,[30] again as it neared its 8pm deadline[31] and once more right before he announced the results of the elections.[32]

11 Despite Kok Hong's efforts, one more hiccup awaited the AGM. The elections themselves were hamstrung by a tie at the very last minute. Whilst counting the votes, it transpired that there had been a tie for the 11th seat on the 13th Management Council and that a 'run-off' between the two contenders would be necessary.[33] Kok Hong declared that an adjournment was in order and Lee agreed, and promptly declared the AGM adjourned to another date. By this time, it was around 9pm, two hours after the scheduled time of 7pm.

12 To be clear, Lee's call for an adjournment was hardly a democratic decision. No motion for adjournment was called and Lee simply declared the meeting to be adjourned. In fact, there had been multiple objections to an adjournment before the elections were fully concluded. One resident suggested

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27 PCB Tab 1 p 145 lines 2 - 5

28 PCB Tab 1 p 143 lines 18 – 23; p 145 lines 21 – 24 and p 146 lines 18 - 19

29 PCB Tab 1 p 191

30 PCB Tab 1 p 172 lines 3 - 6

31 PCB Tab 1 p 186 lines 16 - 19

32 PCB Tab 1 p 193 lines 18 - 19

33 PCB Tab 1 p 207 lines 15 – 16 and p 213 lines 23 - 25

continuing the AGM at The Caribbean's clubhouse.[34] Another asked whether October was too late for an adjourned AGM,[35] while others questioned whether an adjournment was warranted at all – "the election should not be split into two different meetings" someone said.[36] Even a recount was suggested, following the unexpected tie for the 11th seat,[37] but Kok Hong did not entertain any such requests:

> MR CHAN KOK HONG : If you want a re-count, you call for it, okay? But I'm going to just announce it. I'm going to adjourn the meeting, and then we decide on 19 October. […] We have no time really; we already exceeded 8 o'clock.
>
> UNIDENTIFIED SPEAKER: Mr Chan [*ie*, Kok Hong], point of order.
>
> MR CHAN KOK HONG: Yes.
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> UNIDENTIFIED SPEAKER: May I suggest that we resolve the election here so that we don't carry that forward. Is that assuming what you're suggesting?
>
> MR CHAN KOK HONG: Sir, we have to leave this place by 9 pm.
>
> UNIDENTIFIED SPEAKER: No, but the election should not be split into two different meetings, so if –
>
> MR CHAN KOK HONG: Yes, it can. We are calling an adjournment, sir.
>
> UNIDENTIFIED SPEAKER: But it's the same election, so I am suggesting that it is best that we resolve it tonight. It's just only one item which is a split vote. […]
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> MR CHAN KOK HONG: No, I'm sorry, sir. I don't – we don't have the time […] it's late as [*sic*] *9* o'clock, isn't it?

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34 PCB Tab 1 p 195 lines 15 -16

35 PCB Tab 1 p 195 lines 9 - 10

36 PCB Tab 1 p 215 lines 11 – 12

37 PCB Tab 1 p 214 lines 9 -12

> We already exceeded our 8 o'clock […] everybody has to go. Otherwise they switch off the lights.[38]

13 Lee adjourned the AGM shortly after this exchange.[39] Notwithstanding the adjournment, there was one final objection by a concerned and hitherto unidentified resident. He said that because of the nature of the tie, which was between Lee and another electoral candidate, there was a "conflict of interest with the current chairlady".[40] He questioned whether the postponement was fair and asked for his objection to be put on record.

Issues to be determined

14 I first examine the common law powers of the chairperson to adjourn a meeting. I find that there is a residual power under common law on the part of the chairperson to adjourn the meeting in the circumstances and that it had been exercised reasonably ("The Residual Power Issue").

15 I then turn to examine whether the statutory provisions for adjournment found in para 3A (1) of the First Schedule of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the Act") has excluded such residual common law power in the case of a general meeting under the Act ("The Mandatory Motion Issue"). I find that it does not, and therefore, I do not grant the Adjournment Declaration.

16 The Election Declaration concerned the interpretation of s 54(1)(*e*) of the Act. The inquiry pertained to the moment that members of an outgoing

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38 PCB Tab 1 p 214 lines 22 – 25 and p 215 lines 3 - 25

39 PCB Tab 1 p 216 lines 9 -12

40 PCB Tab 2 p 245

management council are to vacate office and accordingly, when members of the incoming council would assume office. ("The Election Issue") I find that members of the outgoing management council were only obliged to vacate office at the end of the adjourned AGM on 19 October 2019. Accordingly, I do not grant the Election Declaration.

The parties' cases

17 As set out earlier, my decision centred on three main issues:

(a) The Residual Power Issue;

(b) The Mandatory Motion Issue; and

(c) The Election Issue.

The Residual Power Issue

18 It was common ground among counsel that, under common law, the chairperson possessed a residual power to adjourn meetings.[41] As to the particular circumstances under which such a power could be said to arise, the submissions by the parties varied in nuance but shared the same baseline – the residual power arises only in certain exigencies.

19 Chan however, argued that chairpersons could not rely on a power that arose from an exigency of their own making.[42] She pointed out that there had been plenty of time to call for a motion to adjourn and that any delays had been

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41 Plaintiff's written submissions ("PWS") p 12 para 34; IWS p 21 para 86 and DWS p 9 paras 42 - 45

42 PWS p 18 para 51

entirely foreseeable. It had been apparent as early as 6pm[43] that an adjournment would be necessary and yet, Lee had failed to take the opportunity to seek an adjournment in accordance with para 3A (1) of the First Schedule of the Act.[44] Lee's assertions that extenuating circumstances necessitated an adjournment were therefore disingenuous at best.

20 In the alternative, Chan argued that the powers had been invalidly exercised. Applying the principles set out in *Fu Loong Lithographer Pte Ltd and others v Mok Wai Hoe and another and another matter* [2014] 3 SLR 456 at [37] ("*Fu Loong"*), Chan contended that Lee had exercised her powers improperly. Lee had run roughshod over the wishes of the residents present at the meeting even though those concerns had been explicitly raised in the form of numerous objections.[45] For that reason, the AGM had been invalidly adjourned.

21 Lee disagreed. She pointed to the extenuating circumstances that surrounded, informed and ultimately justified the decision to adjourn the meeting. Many of the setbacks at the AGM were unforeseen,[46] the venue had to be handed back to Keppel Club[47] and an extension of time had already been exhausted.[48] Ultimately, it had been impracticable for the AGM to continue and impossible to host a motion soliciting views about the adjournment.[49]

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43 PWS p 17 para 47

44 PWS p 18 para 52

45 PWS p 19 para 53 - p 20 para 59

46 IWS p 22 para 91a

47 IWS p 22 para 91b

48 IWS p 22 para 91a

49 IWS p 22 para 91c

The Mandatory Motion Issue

22 Chan's case was straightforward. Paragraph 3A (1) of the First Schedule to the Act ("para 3A (1) of the First Schedule") mandated that all adjournments be effected through a motion. There was no motion called for at the AGM. The adjournment was therefore invalid.[50]

23 Lee adopted a radically different interpretation of para 3A (1) of the First Schedule. According to her, the provision merely listed one possible scenario in which management corporations could adjourn their meetings;[51] there was no requirement that adjournments had to be effected through motions. This, according to her, was discernible from both a plain reading of the provision[52] as well as the Act's legislative history[53]. In that regard, Lee asserted that prior to the introduction of para 3A (1) of the First Schedule, the common law had long recognised that the right to adjourn a meeting vests in the meeting itself.[54] But more importantly, the common law had always envisaged multiple ways to validly adjourn a meeting.[55] The bill which introduced para 3A (1) of the First Schedule supposedly sought to preserve that position.[56] Paragraph 3A (1) of the First Schedule in other words, is "permissive" [57]- it regards motions as a valid way of seeking adjournments but permits other methods as well.

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50 PWS p 11 paras 28 – 30 and p 14 para 36

51 IWS p 14 paras 58 – 60

52 IWS p 14 para 58

53 IWS p 14 paras 59 - 64

54 IWS p 15 para 65

55 IWS p 15 para 69

56 IWS p 15 para 64

57 IWS p 14 para 58

24 Lee contended that in any case, technical non-compliance with procedural provisions was not fatal to the validity of the adjournment.[58] In the absence of any severe prejudice, she argued that procedural safeguards should not be pedantically upheld. There being no conceivable prejudice to Chan[59] – both episodes of the AGM having already long concluded by the time of the hearing – she argued that blind adherence to technical requirements were unnecessary. After all, the matter complained of had long since been overtaken by subsequent events.[60]

The Election Issue

25 As mentioned earlier, another question was whether the outgoing council had been obliged to vacate office by 3 August 2019 after the 13th Management Council had been partially elected at the AGM. This issue turned on the statutory interpretation of s 54(1)(*e*) of the Act. This provision had two disjunctive limbs. Management council 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 election of a replacement member at a *general meeting*. Chan made submissions on both limbs.

26 Chan's first argument was really an extension of her arguments in relation to the Mandatory Motion and Residual Power Issues. If the court grants the Adjournment Declaration, the AGM would be deemed to have concluded on 3 August 2019. It follows that the council members would have been obliged

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58 IWS p 15 para 71; p 16 para 72 – p 18 para 75

59 IWS p 27 paras 111- 114

60 IWS p 30 paras 129 - 130

to step down on 3 August 2019, pursuant to the first limb of s 54(1)(*e*) of the Act.[61]

27 To this, Lee argued that even if the adjournment was deemed to be invalid, it did not have the effect of concluding the AGM. An invalidly adjourned AGM was merely held in "abeyance" and would "continue at the next practicable date".[62] The date of the AGM's conclusion, irrespective of whether there had been a valid adjournment or not, would therefore have been 19 October 2019. That, according to Lee, would have been the day that the outgoing management council would have been obliged to vacate office.[63] The defendant however, astutely pointed out that Lee's interpretation would have emptied procedural requirements for an adjournment of all meaning – there would be no difference whether a motion was validly adjourned or not; the meeting would simply resume at a later date.[64]

28 Chan's second argument was that an incumbent council member was obliged to vacate office immediately "upon the election at a *general meeting* of another person to that office" [emphasis added]. This was the second limb of s 54(1)(*e*) of the Act. Chan, along with nine others, was elected on 3 August 2019. The incumbents were therefore obliged to give way to the council elects on 3 August 2019, so the argument went.

29 In contrast, the defendant suggested that the "general meeting" referred to in limb two of s 54(1)(*e*) of the Act could not have been intended to refer to

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61 PWS p 22 paras 65 - 66

62 IWS p 24 para 100

63 IWS p 24 para 100

64 DWS p 11 para 50

annual general meetings. If so, it would render the first limb, which refers to "the end of the next annual general meeting" otiose.[65] "General meeting" must have referred to *extraordinary* general meetings instead and since these elections were held at an *annual* general meeting, the incumbent council was not obliged to vacate office immediately after the elections. Lee naturally agreed and added on that if council members were to vacate their positions immediately upon election of a new management council, there would be no chairperson to oversee the rest of the AGM. Indeed, the incoming management council would not nominate its chairperson until much later at a separate council meeting.[66] The draftsmen could not have intended for such an absurd result.

30 Having set out the parties' positions, I now turn to my decision on the issues identified.

Issue 1: The Residual Power Issue

31 At common law, an adjournment of a meeting may be brought about by a resolution of the meeting or by the action of the chairperson: Madeline Cordes & John Pugh-Smith, *Shackleton on the Law and Practice of Meetings* (Sweet & Maxwell, 13th Ed, 2014) at 6-15 ("*Shackleton"*). The starting point is that, where the will of the meeting demands it, the meeting can be adjourned for any reason. This mandate can either be expressed in the form of a motion, or through informal but unanimous assent of the attendees: *Si-Hoe Kok Hong Chun and another v Ramesh Ramchandani* [2006] 2 SLR(R) 59 at [20] and [22] which stands for the proposition that generally, in meetings of the management corporation, unanimous and informal assent to some matter within the purview

65 PWS p23 para 68,DWS p 12 para 54

66 IWS p 25 para 102.

of a general meeting is as valid as a motion properly passed. Beyond this, the common law also empowers the chairperson to adjourn of his own volition under certain circumstances: see *Byng v London Life Association Ltd* [1990] Ch 170 at 188D (*"Byng"*).

32 In *Byng*, the defendant company held an extraordinary general meeting for the purpose of amending its memorandum of association. The company initially estimated the size of the turnout to be less than 300 and booked Cinema 1 at the Barbican Centre which could accommodate that number. As the meeting approached, the company was concerned that it would not be adequate and booked two overflow rooms and the foyer at the Barbican Centre, with space for an additional 200 or more, to accommodate those who could not fit into Cinema 1. Arrangement was made for a video-link between the four venues. But the organisers of the meeting feared this would still not have been enough and booked another room at the Café Royal from 1.30pm to 5pm. The room there could take 800 people.

33 On the day of the meeting, the organisers' fears were realised and an unprecedented number of attendees showed up. Although the meeting was fixed for 12pm, registration could not be completed in time. The chairman, Dawson, announced that the start of the meeting would be delayed by 20 minutes. He later delayed it by another 10 minutes, to 12.30pm. But due to the poor arrangements for registration, it was still not completed by then. When Dawson called the meeting to order at 12.30pm, a member rose to object that it was not fair to start the meeting when there were people outside still trying to get into the meeting. One member proposed to take a vote on an adjournment but others voiced opposition to it. Dawson pointed out that such a vote would take a

considerable time and the member withdrew the proposal. Then the following events took place [at p 181A]:

> The time was now about 12.45 or 12.50. One of the doors of the cinema was forced open letting in a "muted roar" from the foyer. At that stage Mr. Dawson said that he proposed the adjournment of the meeting himself and proposed that it should adjourn to alternative accommodation at the Café Royal where the meeting would resume at 2.30 p.m. A policy holder objected that he had appointments for the afternoon and received support from the body of those in the cinema. The chairman repeated that he proposed the adjournment to the Café Royal but said that he would like it to be done with the majority consent of the members. Another policy holder suggested that such an adjournment of the meeting would be invalid (which again received support) and pointed out that the meeting could not continue if part of the membership was excluded. Another policy holder said words to the effect that such an adjournment would exclude those who could not attend at 2.30 and that such an adjournment would prejudice those who had appeared at the right time and in the right place. This again received support from the floor. Another policy holder then proposed a vote of no confidence in the board. The chairman then adjourned the meeting to the Café Royal at 2.30.

34 The meeting resumed at 2.30pm at the Café Royal and the resolution was passed. One of the issues for the English Court of Appeal was whether the meeting was validly adjourned by Dawson. The court held that although at common law a chairperson had no *general* power to adjourn a meeting of his own will, there were *certain* circumstances in which he had the power to adjourn. Hence, *per* Sir Nicolas Browne-Wilkinson V-C at p.186B, "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" and [at p 186C] "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".

35 The Vice-Chancellor also considered that the chairperson of a meeting has a responsibility to preserve order in a meeting for the meeting to achieve its purpose. Hence at p 186E, he said:

> 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." [emphasis in original]
>
> 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" [emphasis in original]

36 The Vice-Chancellor was of the view that the chairperson [at p 187B]:

> would at common law have had power to adjourn the meeting at the cinema since the inadequacy of the space available rendered it impossible for all those entitled to attend to take part in the debate and to vote. A motion for adjournment could not be put to the meeting as many who would be entitled to vote on the motion were excluded. Therefore, at common law it would have been the chairman's duty to regulate the proceedings so as to give all persons entitled a reasonable opportunity of debating and voting. This would have required him either to abandon the meeting or to adjourn it to a time and a place where the members could have a reasonable opportunity to debate or vote. I see no reason to hold that in all circumstances the meeting must be abandoned: in my judgment the chairman can, in a suitable case, merely adjourn such meeting.

37 Having established the chairperson's residual power in common law to adjourn meetings, the question turns to whether Lee had properly exercised this power. For the reasons that follow below, I find that she had.

38 The meeting had gone on some two hours beyond the time that the hall had been booked for. An extension of one hour was obtained but that had been exceeded by another hour. By around 9pm,[67] Kok Hong was concerned about testing the patience and goodwill of the venue operators any further and he declared that "everybody has to go. Otherwise [Keppel Club will] switch off the lights"[68]. Furthermore, some attendees were leaving or preparing to leave. It had been apparent from as early as 6pm that the meeting would not conclude its business by the originally scheduled time[69] and, more importantly, that some attendees would not be able to stay past 7pm.[70] It goes without saying that a meeting that extended past 9pm, even if it had been at all possible, could not

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67 IBOA Tab 3 p 16 paras 78 and 80

68 PCB Tab 1 p 215 lines 24 - 25

69 PCB Tab 1 p 171 lines 9 - 24

70 PCB Tab 1 p 171 lines 17 - 18

have accommodated those who had entirely ordinary expectations of when the meeting was supposed to conclude. Their opportunities to vote and speak would have been prejudiced. This is exacerbated by the fact that there was an unforeseen tie for the 11th seat. In short, the meeting had gone on two hours beyond the scheduled time, some people had left, others were anxious to leave, it was not possible to finish the remaining items in the agenda that night and there was a threat that the lights would be cut off. It is in this context that we must consider whether Lee's adjournment of the meeting was valid. The words of Sir Nicholas Browne-Wilkinson V-C in *Byng* [at p.188A] are instructive:

> As the judge pointed out, the contrary result would produce manifest absurdities. Say that there was a disturbance in a meeting which precluded the taking of any vote on a motion to adjourn. Would this mean that the meeting had to be abandoned even though a short adjournment would have enabled peace to be restored and the meeting resumed? Again, say that in the present case the adjoining Barbican theatre had been available on 19 October so that a short adjournment to the theatre would have enabled an effective meeting of all members wishing to attend to be held that morning. Can it really be the law that because a valid resolution for such an adjournment could not be passed in the cinema (many members entitled to vote being excluded from the cinema) no such adjournment could take place?

39 As chairman, Lee had the responsibility of ensuring that the meeting gave adequate opportunity to the attendees to consider the resolutions to be voted upon, including adequate opportunity to share their opinions on each matter, so that the resolutions truly reflect the will of the meeting. At the same time, she had the responsibility of ensuring the safety of the attendees and to ensure that the defendant did not breach its obligations to the venue operator. In the circumstances of the case, it is clear that the meeting would not have been able to complete all the agenda items and would have to be adjourned. If a resolution to adjourn had been put up, it would have taken some time for it to

be put to a vote. And even if the meeting had voted against an adjournment, the meeting would have to stop at that point. Under these circumstances, if Lee had acted *in good faith* to adjourn the meeting, it was well within her powers as chairman under common law.

40 A key requirement to the exercise of this power is that it be made in good faith, expressed in *Byng* as "the right which every chairman has to make a bona fide adjournment": see [35] above. It goes without saying that if Lee had adjourned the meeting with an ulterior motive, the adjournment could be invalidated. However Chan did not allege this and indeed there is nothing on the evidence before me to suggest that this was the case.

41 At best, Chan's contention was that chairpersons cannot rely on a power arising from an exigency of their own making.[71] Certainly, if the exigency had been manufactured by the chairman for the purpose of engineering circumstances that would justify an adjournment, then it could be evidence of bad faith. However, the facts of the present matter simply do not bear out this allegation. It seemed to me that Chan's contention was simply that Lee had been negligent in allowing the meeting to go way beyond schedule. Lee may have been an inept chairman, but that is far from bad faith.

42 On the other hand, it may well be argued that if Lee had held an iron grip on the meeting in view of the large number of items on the agenda to go through, there could well have been complaints that she did not conduct the meeting fairly. Indeed, there were spirited discussions about the audited accounts and the proposed annual budget of the MCST. These items (just two

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[71] PWS p 18 para 51

out of the 33 sub-motions on the agenda)[72] spanned some 85 out of 371 pages of the transcript.[73] There were also numerous hiccups that were not on the agenda to begin with (see [10] – [11] above). None of this could have been foreseen. If anything, Lee and Savills (the management agent) had tried their best to anticipate how long the AGM would take. The 2015 AGM had 27 sub-items on the agenda but "still managed to end at 6:35pm".[74] They therefore took the view that a meeting which started at about the same time (2pm) would have ended no later than 7pm. This was not an unreasonable assumption to make.

43 There being no evidence of bad faith, I find that in the circumstances set out above, Lee had validly exercised her power under common law as chairman to adjourn the meeting on 3 August 2019.

Issue 2: The Mandatory Motion Issue

44 Paragraph 3A of the First Schedule to the Act ("para 3A") pertains to adjournments of general meetings. It reads as follows:

> **Adjournment of general meetings**
>
> **3A.**—(1) A general meeting of a management corporation or a subsidiary management corporation may be adjourned for any reason if a motion to adjourn the meeting is passed at the meeting.
>
> (2) The person presiding at a general meeting adjourned under sub-paragraph (1) must fix the time and place the general meeting adjourned is to be resumed.
>
> (3) The secretary of the management corporation … must give notice of the time and place fixed under sub-paragraph (2) at

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72 IBOA Tab 3 pages 45 - 54

73 PCB Tab 1 page 32 – 117 (85 pages); PCB Tab 1 pages 4 – 216 and Tab 6 pages 261 - 418 (371 pages in total)

74 IBOA Tab 3 p 5 para 25

> least 14 days before the time fixed for the resumed meeting, as follows:
>
> > (*a*) by displaying the notice on the notice board of the management corporation …;
> >
> > (*b*) by serving the notice on every subsidiary proprietor.

45 Paragraph 3A(1) of the First Schedule simply provides that a general meeting may be adjourned "for any reason" whatsoever if it is passed by motion at a general meeting of a management corporation. This provision is descriptive, not prescriptive. It empowers the meeting, upon a vote on a motion to adjourn, to adjourn a general meeting. Once the motion is carried, para 3A(2) requires the person chairing the meeting to fix a time and place for the adjourned meeting. Paragraph 3A(3) requires the secretary of the management corporation to give notice at least 14 days in advance of the adjourned meeting in the manner prescribed.

46 There is nothing in the language of para 3A that displaces the residual common law power described in the preceding section. This is unlike the exclusionary language used in neighbouring provisions, for example, para 3(1) of the First Schedule, which states that "No business *shall* be transacted at any general meeting … unless a quorum of subsidiary proprietors is present" (emphasis added). And para 5(1) of the First Schedule states that "A vote at a general meeting … by a person entitled to vote or by a proxy *must* be cast in person" (emphasis added). Paragraph 3A(1) of the First Schedule does not contain the same mandatory flavour of its adjacent provisions.

47 In *Byng*, Sir Nicholas Browne-Wilkinson V-C examined whether art 18 of the articles of association of the company ("Article 18") restricted this common law power. Article 18 provides that the chairperson "may, with the consent of any meeting … (and shall if so directed by the meeting) adjourn the

meeting from time to time and from place to place …". He held that it did not, stating as follows [at p.187G]:

> … In my judgment article 18 regulates the chairman's powers of adjournment to the extent that its machinery is effective to cover the contingencies which occur. Therefore if the circumstances are such that it is possible to discover whether or not the meeting agrees to an adjournment, article 18 lays down a comprehensive code. But if the circumstances are such that the wishes of the meeting cannot be validly ascertained, why should article 18 be read as impairing the fundamental common law duty of the chairman to regulate proceedings so as to enable those entitled to be present and to vote to be heard and to vote? In my judgment *Jackson v. Hamlyn* [1953] Ch. 577 is an authority in support of that view since in that case there was an article in much the same terms as article 18 in the present case.

48 Indeed there is much sense in preserving the residual common law power of the chairman as there may be circumstances, as occurred in the present case, in which such powers are needed and if sensibly exercised, there is no reason for the court to invalidate it. Accordingly, I find that the residual common law power of the chairperson to adjourn the AGM is not excluded by Para 3A.

Issue 3: The Election Issue

49 This issue went towards determining whether those persons who were elected to the 13th Management Council at the AGM had taken office on that day *ie,* 3 August 2019. Chan took the view that these council elects had assumed office on 3 August 2019. The analysis ultimately turned on the interpretation of s 54(1)(*e*) of the Act ("section 54(1)(*e*)"):

> **54.**—(1) A person who is the chairperson, secretary or treasurer or a member of a council shall vacate his office as such a member —
>
> …

> (*e*) at the end of the next annual general meeting of the management corporation or upon the election at a general meeting of another person to that office, if earlier;

50 This provision provides that management council 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 election of a replacement member at a general meeting. Flowing from my decision in Issues 1 and 2 (see [31] and [44]), it follows that the AGM was validly adjourned on 3 August 2019 and concluded at the adjourned meeting on 19 October that same year. Therefore, the arguments which Chan mounted on the first limb of s 54(1)(*e*) fall away.

51 Consequently, I do not have to address Lee's counterargument, namely that even if the adjournment had been invalid, the AGM would not have concluded on 3 August 2019. As mentioned earlier at [27], the precise effects of an invalid adjournment are unclear at law. As this finding is rendered unnecessary by my decision on the Residual Power and Mandatory Motion Issues, it is perhaps better to leave this issue to a more appropriate case. I would only note that there is some force in the defendant's observations that Lee's interpretation would empty valid adjournments of all meaning. Her interpretation would mean that there is no difference whether a meeting was validly adjourned or not – the meeting would simply resume at a later date.[75] That being said, there is also some authority for the proposition that an invalid adjournment need not have the effect of concluding a meeting: *Jackson and others v Hamlyn and others* [1953] 2 WLR 709 at 716.

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75 DWS p 11 para 50

52 The question then turns to whether a council member is obliged to vacate office immediately upon election of a replacement member at an annual general meeting. The second limb of s 54(1)(*e*) is unclear. It only provides that a council member need do so upon election of a replacement at a *general meeting*.

53 I find that "general meeting" in the second limb of s 54(1)(*e*) refers exclusively to *extraordinary* general meetings and not annual general meetings. Accordingly, a council member is not obliged to vacate office immediately upon election of a replacement at an *annual* general meeting.

54 To my mind the most convincing reason is that the alternative interpretation (namely, that "general meeting" includes an *annual* general meeting) would render the first limb otiose. The first limb covers elections at an annual general meeting. Under this limb, the outgoing council members only step down at the *end* of the annual general meeting. If they were to step down immediately upon election of a new council (which could conceivably happen midway through an annual general meeting), it would be internally inconsistent with the first limb of s 54(1)(*e*).

55 To this, Chan's argument was that the two limbs were reconcilable – the first limb merely provided a long-stop date by which a council member had to vacate office while the second limb obliged the council member to step down upon an earlier election.[76] I am not persuaded by this argument. If the council members were to step down immediately upon election of a new council, there would be serious confusion at the meeting. There would be no chairperson to chair the rest of the AGM since the existing chairperson would have had to

[76] PWS p 24 para 74 and 76

relinquish his/her post immediately after the elections. The incoming management council could not have supplied a replacement chairperson either – the meeting would not have had the opportunity as yet, to elect a chairperson or to empower the incoming management council to appoint one pursuant to s 55 (2) of the Act.

56 I reject Chan's other arguments as well. Chan suggested that the second limb of s 54(1)(*e*) references an "election". Elections, according to her, were only possible at annual general meetings.[77] In support, she relied on s 53(4) of the Act ("All the members of the council of a management corporation shall be elected at each annual general meeting of the management corporation"). Therefore "general meeting" in the second limb of s 54(1)(*e*) referred to an *annual* general meeting. I am not persuaded by this argument either. Section 53(4) of the Act simply means that annual general meetings always host elections for council membership. It does not mean that annual general meetings are the exclusive venues for election to council membership. Moreover, extraordinary general meetings are perfectly capable of hosting elections for council members too: Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 5th Ed, 2015) at [9.19].

57 Chan also pointed to s 27(3) of the Act. This provision states that "the First Schedule shall apply to and in respect of *any* meeting of a management corporation, and voting at that meeting" (emphasis added). The implication was that "general meeting" in the second limb of s 54(1)(*e*) could therefore refer to annual general meetings as well.[78] This was misconceived. Section 27(3) of the

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77 PWS p 25 para 82

78 PWS p 23 paras 70 – 71

Act merely meant that the First Schedule, as a whole, applies to all types of meetings. It does not follow that every provision in the First Schedule applies to every type of meeting. Such a statutory purpose would have been achieved by phrasing to the effect that "every reference to meetings in the First Schedule shall be a reference to all types of meetings".

58 For these reasons I refuse to grant the Election Declaration.

Conclusion

59 In closing, I would like to make this comment. The defendant is Management Corporation Strata Title Plan No 2948. One can easily conclude from the number that there are well over 2,000 entities in Singapore that are governed under the Act (even taking into account those that have been de-registered). Each entity is run by a management council comprising in the main, it would be fair to surmise, persons who are not lawyers or with extensive experience in running meetings. They are volunteers who step up to help administer their estate. The court will take this into account in considering the conduct of chairpersons of general meetings under the Act and will, unless there has been bad faith, lean in favour of the chair. In my view, this is important to discourage the use of the courts in petty quarrels among residents which ought to be resolved through mediation, or by simply voting the delinquent management council out at the next annual general meeting. It will also save the management corporation from having to bear legal expenses of any court action taken against it, which cost will ultimately be borne by all subsidiary proprietors. And it will not discourage people from volunteering to serve in the management council in the spirit of community responsibility, which is a very important principle for the successful governance of entities under the Act.

60 Chan's application in this OS is accordingly dismissed. I will hear the parties on costs.

Lee Seiu Kin
Judge

Joseph Lee and Dickson Chew (M/s LVM Law Chambers LLC) for the plaintiff;
Chew Kei-Jin and Stephanie Tan (M/s Ascendant Legal LLC) for the defendant;
Ling Tien Wah, Terence Wah and Mok Zi Cong (M/s Dentons Rodyk & Davidson LLP) for the intervener.
