Si-Hoe Kok Chun and Another v Ramesh Ramchandani
[2006] SGHC 15

Case Number : OM 28/2005

Decision Date : 24 January 2006

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Felicia Ng Hui-Li (Piah Tan and Partners) for the applicants; Ramesh Appoo (Just Law LLC) for the respondent

Parties : Si-Hoe Kok Chun; Tan Choon Lian — Ramesh Ramchandani

Land – Strata titles – Land titles (strata) act – Subsidiary proprietors of units in strata development applying to Strata Titles Board for various orders against respondent relating to affairs of management corporation of development – Respondent husband of another subsidiary proprietor of unit in development but not himself subsidiary proprietor – Whether application should have been made against management corporation instead of respondent – Whether application should have been made under ss 97(1), 97(2) or s 103(1)(c) Land Titles (Strata) Act – Whether court should allow application for various orders – Sections 97(1), 97(2), 103(1)(c) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

24 January 2006 *Judgment reserved.*

Andrew Ang J:

1 This appeal may justly be called a "storm in a teacup". It is against the decision of the Strata Titles Board ("the Board") dismissing the appellants' (hereinafter referred to as "the applicants") application for five orders (more particularly set out below) against the respondent.

2 The application relates to the affairs of the Management Corporation Strata Title Plan No 281 ("MCST Plan No 281" or "the Management Corporation"), a strata development comprising four units known as 4, 4A, 6 and 6A Robin Lane, Singapore.

3 The applicants are the co-subsidiary proprietors of units 6 and 6A as joint tenants. The respondent is not a subsidiary proprietor but he is the husband of Mdm Shanti Ramesh Ramchandani ("Mdm Shanti"), the subsidiary proprietor of unit 4A. Unit 4, the remaining unit, is owned by Mr and Mrs Yeo who, I gather, agree with the respondent as to his status.

4 Before the Board, the applicants sought orders against the respondent that:

(a) The respondent had not been properly authorised to represent Mdm Shanti in the affairs of MCST Plan No 281 ("the 1st Order").

(b) The respondent had not been properly elected as a member of the council of MCST Plan No 281 and therefore all acts done by him in his capacity as council member from February 1996 are void and of no effect ("the 2nd Order").

(c) The respondent wrongfully acted as a member of the council of MCST Plan No 281 simultaneously with Mdm Shanti and consequently all acts done by him in his capacity as council member from February 1996 are void and of no effect ("the 3rd Order").

(d) The respondent wrongfully signed the cheques of MCST Plan No 281, including OCBC cheque No 137428 dated 13 January 2000 for $2,181.50 and that the respondent reimburse MCST Plan No 281 the sum of $2,181.50 ("the 4th Order").

(e) The respondent be restrained from further participating in the affairs of MCST Plan No 281 and its council ("the 5th Order").

5 The application was made under s 103(1)(*c*) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") which empowers the Board to make an order, *inter alia*, for the settlement of a dispute or the rectification of a complaint with respect to the exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by the Act.

6 Although the Act has been amended in the manner set out in the Third Schedule to the Building Maintenance and Strata Management Act 2004 (Act No 47 of 2004), its provisions as they stood prior to such amendment continue to apply to the applicants' case by virtue of the transitional and savings provisions contained in the Fourth Schedule to Act No 47 of 2004 (para 9(*a*) of Pt II). I make the observation in passing that there appears to be an editorial error in para (*a*) which provides that proceedings before the Strata Titles Board prior to the amendment may be continued and everything in relation thereto may be done "… as if this Schedule [*ie*, the Fourth Schedule] had not been enacted". It seems clear that reference therein to "this Schedule" should properly be to "the Third Schedule" as otherwise para 9(*a*) itself, together with the rest of the Fourth Schedule, would be rendered of no effect.

The decision of the Strata Titles Board

7 The Board raised two preliminary issues for the parties to address:

(a) whether the respondent (as opposed to MCST Plan No 281) was the correct party to the application; and

(b) whether the Board had the power or jurisdiction to make a declaratory order or judgment in respect of the orders sought.

8 The Board heard submissions on the two preliminary issues but reserved its decision until after the hearing. The Board's decision on the two preliminary issues was as follows:

(a) Since the order sought is whether there is authority for a person to represent a subsidiary proprietor in the Management Corporation, the proper party to be named in the application should be the Management Corporation and not the respondent as the authority to determine the rightful participation of the alleged person rests with the Management Corporation.

(b) As the order sought concerns the valid election of council members in the Management Corporation, the application should be taken out under s 97 of the Act and not s 103.

9 The Board did not specifically state whether or not it considered itself competent to make a declaratory judgment but that was probably because, having ruled that s 103 of the Act was not the appropriate section to apply under, the question did not arise under s 97. The applicants contend that the Board erred in law in its decision on the two preliminary issues as well as on the 1st to 5th Orders.

Preliminary issues

10 In so far as the 1st Order is concerned, it is clear that the appropriate section of the Act that the applicants should have applied under is s 97 which provides as follows:

> (1) Where, pursuant to an application by a subsidiary proprietor or first mortgagee of a lot, a Board considers that the provisions of this Act have not been complied with in relation to a meeting of the management corporation, the Board may, by order —
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> (*a*) invalidate any resolution of, or election held by, the persons present at the meeting; or
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> (*b*) refuse to invalidate any such resolution or election.
>
> (2) A Board shall not make an order under subsection (1) refusing to invalidate a resolution or election unless it considers —
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> (*a*) that the failure to comply with the provisions of this Act did not prejudicially affect any person; and
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> (*b*) that compliance with the provisions of this Act would not have resulted in a failure to pass the resolution, or have affected the result of the election, as the case may be.

11 Mdm Shanti's appointment of the respondent as her attorney did not involve an "exercise or performance of, or the failure to exercise or perform, a power, authority, duty or function conferred or imposed by [the] Act or the by-laws" within the ambit of s 103(1)(*c*). But even if the wording of s 103(1)(*c*) was wide enough to accommodate such an application, s 103(7) makes it clear that where any matter is dealt with in any other section of the Act, an order should not be made under s 103.

12 It is also clear that an application under s 97 should be made against the Management Corporation as the invalidation of a resolution of, or election held by, the persons present at the meeting cannot be directed solely at one participant at the meeting. Accordingly, so far as the 1st Order is concerned, clearly the application therefor should have been made under s 97 against MCST Plan No 281.

13 Similarly, the application for the 2nd, 3rd and 4th Orders should have been directed against the Management Corporation. Under the Act, a council member has no powers as such; any power or authority which he exercises is conferred upon him under the by-laws or by resolution of the council or the general meeting. Any attempt to impugn or invalidate any act of the respondent as council member would be ineffective against the Management Corporation unless the Management Corporation was made a party. Exceptionally, if any act carried out by the respondent had not been authorised or ratified, whether under the by-laws or otherwise, then perhaps it might not be essential to join the Management Corporation; *ex hypothesi* the Management Corporation would presumably have no interest in defending that act.

14 It is far from clear which acts of the respondent the applicants seek to impugn but it would appear that they challenge the acts of the respondent in his capacity as council member only because the respondent had, in their view, been improperly elected and not because no authority had been purportedly conferred on him. On this basis, s 97 is the appropriate section the applicants ought to have proceeded under.

15 So far as the 5th Order is concerned, it is worded so widely that no section of the Act could

accommodate an application for such an order. However, if it is construed narrowly as an attempt to restrain the respondent from participating in the affairs of MCST Plan No 281 and its council on the grounds that, and for as long as, he has not been properly authorised or elected (as the case may be) then, like the others, the application should be made under s 97.

16 I note from the applicants' submissions that the order applied for was with reference to the respondent's representation of Mdm Shanti at general meetings of the Management Corporation and also at council meetings. The Board noted the paucity of records kept by the Management Corporation. However, it found that the minutes of earlier meetings in 1993, 1994 and 1996 clearly stated that the respondent was participating as proxy for his wife. In addition, the Board noted that at the 1998 and 1999 Annual General Meetings ("AGMs"), Mdm Shanti was present with the respondent. The Board therefore concluded that the respondent did have the authority to represent Mdm Shanti by virtue of the Power of Attorney ("PA") or the proxy given as well as the presence of the wife at the meetings.

17 The gravamen of the applicants' objections really is that the provisions of paras 17 to 19 of the Third Schedule to the Act had not been fully complied with. Paragraph 18 sets out the form that the proxy should take. Paragraph 19 requires that the form of proxy be deposited at the required address of the Management Corporation not less than 48 hours before the time for holding the meeting in default of which the proxy "shall not be treated as valid".

18 At common law there is no right to appoint a proxy, this being a right conferred by contract: *Harben v Phillips* (1883) 23 Ch D 14. Accordingly, a party seeking to exercise such right has to observe the requirements stipulated by the contract. Likewise, where the right is conferred by statute, the requirements set out therein should be observed.

19 Whilst the PA may arguably be regarded as being in substantial compliance with the provisions of para 18, the failure to lodge the same timeously would appear to be fatal to its validity for the purpose of the particular meetings at which it was sought to be relied upon. I would therefore allow that the respondent had not been properly authorised to vote *as proxy* on behalf of the wife at AGMs where the PA had not been timeously lodged.

20 But that is not the end of the matter. The fact remains that the subsidiary proprietors had chosen to adopt an informal manner of conducting the proceedings at the AGMs and had on each occasion informally appointed the council members by consensus without a vote being taken. Even if the respondent was regarded as incapable of voting as proxy (by reason of the requirement of para 19 of the Third Schedule) the PA was wide enough to empower his representation of the wife where no vote was called for. Arguably, where no vote was called for, the omission to lodge the PA was not fatal to the respondent's participation in arriving at a consensus. In any case, as noted by the Board, the wife was present at the 1998 and 1999 AGMs. Therefore, there was in fact unanimity amongst the subsidiary proprietors (including the applicants) in the appointment of the council members and that should not now be disturbed, least of all by a willing participant in the consensus who himself accepted appointment as such.

21 The applicants cited *Pender v Lushington* (1877) 6 Ch D 70 and *Petrie Christopher Harrison v Jones Alan* [2005] 2 SLR 387 for the proposition that the right to vote is an important right of property and a person entitled to vote is entitled to exercise his right of property without alienation or curtailment. However, the cases are easily distinguishable. Unlike the facts in those cases cited, there was no denial of the applicants' right to vote. It was just that the subsidiary proprietors unanimously chose to appoint the council members by consensus.

22 In company law, it is not essential that decisions of the council members be made by the passing of resolutions at general meetings. The informal assent of all members to some matter within the purview of a general meeting is as valid as a resolution properly passed: *Jimat bin Awang v Lai Wee Ngen* [1995] 3 SLR 769. In that case, Lai Kew Chai J delivering the judgement of the Court of Appeal said at 776, [22]:

> Generally, a company exercises any of its powers by means of resolutions in general meetings. It is also a well-entrenched common law principle that the unanimous and informal assent by all the members of a company in some other manner is as effective as a resolution passed at a general meeting, even if the assent is given at different times: see *Parker and Cooper Ltd v Reading*, and even if otherwise a special or extraordinary resolution is required: see *Cane v Jones & Ors*.

I see no reason why the same principle should not apply in the present case.

23 So far as the council meetings are concerned, I do not understand the respondent to have contended that his participation at such meetings was as an alternate or attorney for his wife; rather it was on the basis that he had been duly "elected" or (more appropriately) appointed as a council member by consensus. Accordingly, the applicants' contention, that not having been elected as council member herself, the wife could not delegate such function to him is not *apropos*.

24 There is no requirement that a council member has to be a subsidiary proprietor. Section 60(5)(*c*) of the Act provides that a member of the immediate family of subsidiary proprietor who is nominated for election by the subsidiary proprietor is eligible for election. No particular formality is prescribed for such nomination.

25 From the minutes of the AGMs in 1993, 1994 and 1996, it is clear that the parties present were aware that the respondent was not a subsidiary proprietor but that he represented the wife. The 1996 AGM was attended by the first applicant, he and his wife having bought unit 6A on 28 February 1996. However, he alleged that the minutes of that meeting were fabricated to show that the respondent was representing Mdm Shanti. Even though evidence was led to show that a copy of the same minutes had been given to the Building Control Authority on 17 May 1996 (about one month after the meeting), the first applicant insisted that it was a fabrication. The rhetorical question posed by counsel for the respondent is *apropos*. Why would someone have fabricated the minutes way back in 1996 before there was any dispute? Although the Board did not categorically say that the applicants' allegation of fabrication was false, it implicitly confirmed the authenticity of the 1996 minutes when in [15] of the Grounds of Decision (*Re Robin Lane (Strata Titles Board No 281)* [2005] SGSTB 2), it stated that "the minutes of the annual general meetings held in 1993, 1994 and also 1996 … clearly stated that the respondent was participating in the MCST affairs as proxy for his wife". (Unfortunately, the Board mistakenly went on to say that "[t]his was the period before [the] applicants became co-subsidiary proprietors".)

26 Given that the applicants knew the respondent's status, the minutes for the meeting of 6 April 1998 (at which the council members including the respondent were retained by consensus) recorded by the first applicant himself as secretary assumes greater significance. As for the meeting of 21 April 1999, curiously the minutes record the election of only two council members, *viz*, Koh Tiong Chwee as chairman and the respondent as secretary. Mdm Shanti herself was present as were the applicants. The minutes of the meeting were again recorded by the first applicant as secretary. In these circumstances, it does not lie in the mouth of the applicants to challenge the election.

27 The next complaint of the applicants is that the respondent wrongfully acted as a member of the council simultaneously with his wife. The applicants contend that an order should be issued to

declare all acts done by him as council member from February 1996 to be void and of no effect. The complaint lacks particularity in that it does not say which year it was in which both the respondent and his wife were council members. From what I have been able to glean from the records, it appears to be the year following the 1999 AGM. But, for that matter, both the applicants were also appointed council members and for more years than one in breach of ss 60(6) and 60(7) of the Act which state:

> (6) A person who is a co-subsidiary proprietor of a lot may not be a candidate for election as a member of the council if another co-subsidiary proprietor of that lot is a candidate or has nominated another person for election.
>
> (7) A subsidiary proprietor who owns 2 or more lots in a sub-divided building and is a candidate or has nominated an individual as a candidate for election as a member of a council shall not be entitled to nominate any other individual for election as a member of a council.

The applicants therefore can hardly complain. More importantly, it is for the Board upon application under s 97(1) to decide whether or not to invalidate any resolution. Where the failure to comply with the provisions of the Act did not prejudicially affect any person and compliance with the provisions of the Act would not have resulted in a failure to pass the resolution, the Board is not bound to invalidate the resolution.

28 The Board did not see any reason to intervene, citing para 6 of the Second Schedule to the Act which provides that:

> Any act or proceeding of a council done in good faith shall, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was —
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> (*a*) a vacancy in the office of a member of the council; or
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> (*b*) any defect in the appointment, or any disqualification of any such member,
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> be as valid as if the vacancy, defect or disqualification did not exist and the council were fully and properly constituted.

I see no reason to disturb that decision.

29 It was agreed amongst the subsidiary proprietors and recorded in the minutes of meeting of 7 January 2000 that the legal charges of M/s Chor Pee & Partners were to be paid by the Management Corporation. Therefore the signing of the cheque by the respondent and one other council member pursuant thereto was not invalid and the respondent is not obliged to refund the sum of $2,181.50 paid to M/s Chor Pee & Partners.

30 It also follows from the foregoing that the Board was not wrong to deny the application for the 5th Order.

31 In closing, I should perhaps add a few remarks regarding the differences between the parties. From the affidavits of evidence-in-chief of the parties, I can see that their differences have long been brewing; there have been less than cordial exchanges of letters and even a defamation suit. Sadly, while this judgment answers the technical legal disputation between the parties, I fear the discord between them may manifest itself in other ways in the future unless they come to realise that they have got to learn to live together as neighbours. Evenly split as the votes are between the applicants and the other subsidiary proprietors, it will hereafter be well-nigh impossible to form a

council without agreement between them. I hope that realisation will dawn sooner than later.

32 The appeal is dismissed with costs to be taxed unless agreed.