Tunas Pte Ltd *v* Management Corporation Strata Title Plan No 562
[2015] SGHC 236

Case Number : Originating Summons No 505 of 2014

Decision Date : 08 September 2015

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Cheong Yuen Hee (Y H Cheong) (Instructed) and Peter Pang Giap Oon (Peter Pang & Co) for the plaintiff; Lim Chee San (TanLim Partnership) for the defendant.

Parties : Tunas Pte Ltd — The Management Corporation Strata Title No 562

Land – Land charges – Removal

Land – Strata titles – Management corporation

8 September 2015

Belinda Ang Saw Ean J:

Introduction

1 The plaintiff, Tunas Pte Ltd, was at all material times, the subsidiary proprietor of units #27-01 to #27-08 and #28-00 in Hub Synergy Point, a commercial development located at 70 Anson Road, Singapore 079905 ("the Premises"). The defendant, the Management Corporation Strata Title Plan No 562, is the Management Corporation of Hub Synergy Point.

2 This round of dispute between the parties started after the plaintiff sold the Premises in May 2014. It was common ground that instruments registered as IB24036N and IB31843D were still registered against the plaintiff's estate and interest in the Premises despite full and final satisfaction of the plaintiff's indebtedness in 2008. On 9 May 2014, the defendant for the first time claimed that it was owed substantial legal fees in the total sum of $112,176.37 ("the 2014 demand"). This 2014 demand surfaced after the plaintiff informed the defendant about the sale of the Premises on 7 May 2014 and asked that the registered instruments against the Premises be withdrawn or discharged.

3 On 22 May 2014, the defendant threatened legal action if the 2014 demand was not paid by 29 May 2014. [note: 1] The plaintiff rejected the 2014 demand and filed Originating Summons No 505 of 2014 ("OS 505") on 30 May 2014 to compel, *inter alia*, the defendant, at its own legal costs, to withdraw or discharge the registered instruments, IB24036N and IB31843D. Subsequently, on 5 June 2014 (*ie*, after OS 505 was filed), the defendant indicated its willingness to withdraw or discharge three registered instruments, namely, IB24036N, IB31843D and IB484820J (registered on 2 October 2009), if the plaintiff paid the total sum of $20,647.90 being legal fees in connection with the lodgements and the withdrawal and discharge (as the case may be) of all the three registered instruments. On 10 June 2014, the sum of $20,647.90 was paid under protest and upon reservation of the plaintiff's right to reclaim this payment. At that time, OS 505 had not been listed for hearing and payment was made so as not to hold up the completion of the sale of the Premises.

4 On 20 May 2015, I made the following orders on the amended prayers in OS 505:

(a) The defendant had wrongfully refused to withdraw the Writ of Seizure and Sale registered in the Land Titles Register as IB24036N under s 132 of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA") despite the plaintiff's demand made on or about 7 May 2014.

(b) The defendant had wrongfully refused to discharge the charge IB31843D registered under s 43 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the BMSMA") despite the plaintiff's demand made on or about 7 May 2014.

(c) The defendant was not entitled to payment of $20,647.90 before discharging IB240336N and IB31843D.

(d) The defendant to pay costs on a standard basis to be taxed if not agreed.

5 The defendant has appealed against the orders made on 20 May 2015.

OS 505

6 The main issue in OS 505 (as amended) was the legal basis of the plaintiff's claim for re-payment of $20,647.90. Put another way, could the defendant have lawfully demanded payment of legal fees in the total sum of $20,647.90 before taking steps to withdraw or discharge the registered instruments IB24036N and IB31843D? Significantly, the defendant never pursued solicitor and client costs ("S&C costs") as an additional component of its claims against the plaintiff in 2008. The issue was whether those legal fees were by necessary implication compromised upon full and final satisfaction of the plaintiff's indebtedness in 2008. Other arguments advanced by the plaintiff were the defence of limitation and the paucity of the material to substantiate the defendant's claim of $20,647.90.

7 This Grounds of Decision will discuss the scope of s 43 of the BMSMA in the context of the defendant's claim for S&C costs as well as the legal character of the management corporation's resolutions relied upon by the defendant as its basis to make the claim for S&C costs.

The facts

The Registered Instruments

8 The facts are straightforward. I start with the two instruments that were lodged with the Registrar of Titles in 2008:

(a) The first instrument, IB24036N, was an Order of Court made on 4 March 2008 to execute on the Premises to satisfy a Judgment in MC Suit No 17644 of 2007/Z ("MC Suit 17644"). That Order of Court was entered as a memorial on the land register following the acceptance of the Application to Register the Order of Court made on 4 March 2008 pursuant to s 132 of the LTA ("the 2008 Memorial").

(b) The second instrument, IB31843D, was a Management Corporation Charge registered pursuant to s 43 of the BMSMA ("the 2008 MCST Charge").

9 On 16 September 2009, the defendant lodged a second Management Corporation Charge which was registered as IB484820J ("the 2009 MCST Charge"). Even though the substantive dispute in OS 505 did not relate to the 2009 MCST Charge, the figure of $20,647.90 nonetheless included the legal

fees connected with the lodgement and discharge of the 2009 MCST Charge.

Events leading to the 2008 Memorial and settlement on 6 May 2008

10 On 3 August 2007, the defendant commenced MC Suit 17644 to recover the outstanding contributions and interest levied in relation to upgrading works for the period from March to July 2007. [note: 2] The defendant obtained summary judgment against the plaintiff for the total sum of $43,553.70 plus interest and costs on 21 February 2008 ("the February Judgment").

11 Thereafter, the defendant obtained a court order to execute against the Premises to satisfy the February Judgment. The *ex-parte* Summons No 2980/2008 ("SUM 2980") filed on 3 March 2008 was for an order of execution. On 4 March 2008, an Order of Court to execute on the Premises and the Writ of Seizure and Sale No 1290/2008/D ("the 2008 WSS") were issued. As stated, the Order of Court of 4 March 2008 was entered as a memorial on the land register under s 132 of the LTA on 18 March 2008 (*ie*, the 2008 Memorial). [note: 3] For present purposes, the parties treated the Order of Court of 4 March 2008 as the 2008 WSS.

12 On 6 May 2008, the plaintiff through its lawyers, KhattarWong LLP ("KhattarWong"), paid $51,229.82 being the judgment sum, interest and costs inclusive of disbursements fixed at $4,000. Other than the costs and disbursements of $4,000, the defendant did not demand payment of additional legal fees in connection with SUM 2980, the Order of Court dated 4 March 2008, the 2008 WSS and the 2008 Memorial. According to the plaintiff, full payment of $51,229.82 was tendered and received in respect of the March WSS. Reference to the 2008 WSS was understood by the parties to encompass SUM 2980, the Order of Court dated 4 March 2008 and the 2008 Memorial.

13 KhattarWong's covering letter dated 6 May 2008 reads:

> Central Chambers Law Corporation
>
> 150 Cecil Street #16-00
>
> Singapore 069543
>
> Attention: Mr Rajendran Kumaresan
>
> Dear Sirs
>
> WRIT OF SEIZURE AND SALE NO. 1290 OF 2008/D
>
> MC SUIT NO. 17644 OF 2007/Z
>
> RA 39 OF 2008/T
>
> RA 84 OF 2008/Z
>
> We refer to the above matter.
>
> We enclose herewith or firm's cheque (UOB487720) for the sum of $51,229.82 with respect to the Writ of Seizure and Sale no. 1290/2008/D made payable to your clients pursuant to Judgment entered against our clients.

Our clients reserve their rights to proceed with the appeals with respect to the matter.

Yours faithfully

[signed]

R. NANDAKUMAR

Enc.

cc. clients

14 After receiving full and final payment of $51,229.82, the defendant, according to the cause papers, filed a Request dated 20 May 2008 directing the Sherriff to release the Premises from the 2008 WSS. However, the 2008 Memorial remained entered on the land register.

Events leading to the 2008 MCST Charge and payment before 17 April 2009

15 The 2008 MCST Charge was lodged on 21 April 2008 to recover arrears of contributions amounting to $103,641.89. Again, the contributions levied were for upgrading works inclusive of interest from August 2007 to an unspecified date. [note: 4]

16 Despite the 2008 MCST Charge, the outstanding contributions were not paid and further contributions levied for upgrading works together with interest continued to accrue. On 25 February 2009, solicitors for the defendants, Rajah & Tann LLP ("Rajah & Tann") sent a statutory demand for payment of the sum of $181,099.78 being "outstanding contributions … due and payable from [the plaintiff] to [the defendant]". [note: 5]

17 The plaintiff paid the sum of $181,099.78 on 9 April 2009 and its payment voucher dated 9 April 2009 described the sum of $181,099.78 as "payment of outstanding contributions of upgrading works from Aug 2007 to date and including interests [*sic*]". [note: 6] As the description in the payment voucher made clear, the plaintiff was not required to pay other fees like S&C costs. After receipt of full and final payment of $181,099.78, the defendant discontinued its Company Winding up Petition No 33/2009 ("the CWU petition") on 17 April 2009. The 2008 MCST Charge was not discharged.

18 Plainly, the defendant's intention was to recover $181,099.78 without requiring the plaintiff to pay its lawyer's fees seeing that Rajah & Tann's statutory demand did not ask the plaintiff to pay for any legal fees in connection with: (a) the issuance of the statutory demand letter, and (b) the 2008 MCST Charge. In sum, the defendant did not require the plaintiff to pay any legal fees in exchange for full and final payment of $181,099.78. That payment led to the discontinuance of CWU petition with no costs order against the plaintiff.

2014 demand for legal fees

19 Before completion of the sale of the Premises, on 22 May 2014, the defendant's solicitors, TanLim Partnership, sent the 2014 demand to the plaintiff's solicitors, Mak & Partners (representing the plaintiff in the sale of the Premises). A breakdown of the 2014 demand for legal fees is found in the table provided by TanLim Partnership. The table is reproduced here:

OUTSTANDING BILL

STATEMENT OF ACCOUNT FROM YEAR 2008 TO 2013

S/N	CASE	DETAILS	AMOUNT PAID
			LEGAL FEES
1	STB 39 of 2008 TUNAS PTE LTD	Recovery of capital levy including mediation sessions and letters to the Strata Title Board and the reviewing of the documents	$54,297.31 Paid to Rajah & Tann
2	MC SUIT NO 26047 OF 2006/Y: TUNAS PTE LTD	Recovery of outstanding from Tunas Pte Ltd with review of the Strata Title Board application and correspondence with Tunas Pte Ltd lawyers	$37,259.83 Paid to Rajah & Tann
3	MC SUIT NO 17644/2007/Z	Recovery of capital levy including letter of demand served to Tunas Pte Ltd	$8,243.39 Paid to Rajah & Tann
4	-	Recovery of outstanding from Tunas Pte Ltd including the lodgement of charge IB/484820J	$3,583.55 Paid to Rajah & Tann
5	CWU 104 of 2013	Legal fee for the winding up application	$8,792.29 Paid to TKQP
		TOTAL	**$112,176.37**

20 Essentially, TanLim Partnership relied on the resolutions passed at the defendant's 2007 to 2013 Annual General Meetings ("the AGM resolution") as the bases of the defendant's right to recover legal fees in the total sum of $112,176.37 from the plaintiff. Briefly, the AGM resolution resolved that the defendant would claim from defaulting subsidiary proprietors, like the plaintiff, all costs, such as S&C costs, disbursements and incidental costs, incurred in the recovery of any outstanding payment, interest or other amounts owing to the defendant in any actions taken against such subsidiary proprietors. [note: 7]

21 As can been seen from TanLim Partnership's table in [19] above, the legal bill for MC Suit 17644 was wrongly tabulated as $8,243.39 instead of $11,230.80. Nothing turned on this error. The other legal bill stated at S/N 4 in the table was dated September 2009 and it was for the recovery of outstanding contributions including the costs connected with the lodgement of the 2009 MCST Charge, amounting to $3,583.55 ("the September 2009 Bill"). Curiously, the TanLim Partnership's table excluded a claim for legal fees in respect of the 2008 MCST Charge.

22 Counsel for the plaintiff in OS 505, Mr Cheong Yuen Hee ("Mr Cheong"), argued that the 2014 demand was untenable and without merit. Evidently the defendant must have reviewed its 2014 demand after OS 505 was filed. On 5 June 2014, TanLim Partnership, put forward a revised amount of $20,647.90 together with the following proposal to the purchaser's solicitors, Wee, Ramayah & Partners: [note: 8]

… our client is prepared to deliver the duly executed instruments … for lodgement by [the purchaser's lawyers] provided that they are paid the following legal costs:

a) Legal costs incurred in lodging the [two MCST Charges] amounting to $7,167.10;

b) Legal costs to be incurred in preparing the duly executed Total Discharge of Charge pertaining to both the said [MCST Charges] amounting to $1,500;

c) Legal costs pertaining to the writ of seizure and sale on immovable property in respect of which the [2008 Memorial] was lodged amounting to $11,230.80; and

d) Legal costs to be incurred in preparing the duly executed Application To Withdraw/Cancel Order of Court [*ie*, the 2008 Memorial] amounting to $750.

23 Upon payment by the plaintiff of the total sum of $20,647.90 on 10 June 2014, the defendants filed: (a) Total of Discharge of Charge to discharge the two MCST Charges; and (b) Application to withdraw the 2008 Memorial. As stated, the payment of $20,647.90 was made under protest and with reservation of the plaintiff's right to reclaim the payment.

The relevant statutory provisions

24 As stated, the 2008 Memorial was entered on the land register pursuant to s 132 of the LTA, and the 2008 MCST Charge was lodged pursuant to s 43 of the BMSMA. Both the current version of the BMSMA and the older version of the Act (*viz*, the Building Maintenance and Strata Management Act 2004 (Cap 30C)) are applicable to aspects of the present case. For convenience, I will refer only to the current version of the BMSMA since the applicable provisions in both versions of the Act are identical.

25 Under s 40 of the BMSMA, subsidiary proprietors are required to pay contributions levied by management corporations. If a subsidiary proprietor fails to pay the contribution levied that is due and payable, a management corporation may recover the amount due, together with interest, as a debt (see s 40(6) of the BMSMA). If the subsidiary proprietor fails to pay the outstanding contributions after a written demand has been served, the management corporation may lodge an instrument of charge on the subsidiary proprietor's lot (see s 43 of the BMSMA).

26 The interpretation of s 43 of the BMSMA was a matter of some dispute, and I will deal with the arguments later on. For the moment, it will suffice to note that a charge registered under s 43 of the BMSMA secures both outstanding contributions owing to management corporations, as well as "reasonable legal costs and reasonable expenses incurred in connection with the collection or attempted collection" of outstanding contributions. Such costs secured by a charge registered under s 43 shall hereinafter be referred to as "section 43 costs". The relevant provisions of s 43 read as follows:

Recovery of contribution from sale of lot

43.—(1) Where —

(*a*) an amount is recoverable by the management corporation from the subsidiary proprietor of a lot under section 30; or

(*b*) any contribution is levied under section 40 or 41,

and such amount or contribution remains unpaid on the expiry of a period of 30 days after the management corporation has served a written demand for the amount or contribution, that amount or contribution, including any interest thereon (if any), shall constitute a charge on the lot in favour of the management corporation upon lodgment of an instrument of charge by the management corporation with and the registration thereof by the Registrar of Titles.

(2) Upon registration of the instrument of charge by the Registrar of Titles —

(*a*) the management corporation shall, subject to subsection (3), have the power of sale and all other powers relating or incidental thereto as if such management corporation is a registered mortgagee; and

(*b*) the amount or contribution due (including interest thereon) shall be subject to all statutory charges of any public authority over the lot and to all encumbrances registered or notified prior to the date of lodgment of that instrument of charge except that in the case where a prior registered mortgagee or chargee has sold the lot in exercise of his power of sale, the registered charge of the estate or interest of the lot when transferred to a purchaser by the mortgagee or chargee shall not be over-reached by the exercise of the power of sale by the mortgagee or chargee of a prior registered mortgage or charge.

…

(5) Where an instrument of charge has been registered against a lot under this section, the subsidiary proprietor of the lot shall —

(*a*) upon payment of the whole amount or contribution due (including interest thereon) and any necessary or incidental charges (including legal costs) to the management corporation before it has exercised its power of sale conferred by this section, be entitled to an instrument of discharge executed and acknowledged by the management corporation as to the receipt of such payment; and

(*b*) upon registration of the instrument of discharge or, in the event of the management corporation refusing to execute a discharge, an order of court declaring that the lot shall be discharged from the charge, the lot shall be freed from the charge constituted under this section.

…

(7) Notwithstanding section 80 of the Land Titles Act (Cap. 157) and section 15 of the Registration of Deeds Act (Cap. 269) —

(*a*) where further contributions and interest thereon are due to the management corporation after the registration of an instrument of charge under this section; or

(*b*) where the management corporation has incurred or become liable for any reasonable legal costs and reasonable expenses incurred in connection with the collection or attempted collection of the unpaid amount or contribution or further amount or contribution,

such amount or contribution due (including interest thereon) and such legal costs and expenses shall rank in priority to any other claims as if the amount or contribution were due at the date of the registration of the charge.

(8) A charge under subsection (2) shall continue in force until all the amount or contributions (including interest thereon) and the legal costs and expenses, as the case may be, secured by the charge have been paid.

(9) This section shall not affect the rights and powers conferred on the management corporation by sections 30 and 40 to recover the amount or contribution due and all interest thereon including any legal costs and incidental charges necessarily incurred for the recovery of the amount or contribution in respect of any lot as a debt from the subsidiary proprietor of, or his successor in title to, the lot.

…

The 2008 Memorial

27 I now turn to the main question which is whether the plaintiff could reclaim payment of the defendant's lawyer's professional fees in connection with: (a) the execution of the February Judgment amounting to $11,230.80, and (b) the withdrawal of the 2008 Memorial in the sum of $750 (see [22] above).

The legal fees of $11,230.80

28 Counsel for the defendant, Mr Lim Chee San ("Mr Lim"), contended that the AGM resolution entitled the defendant to recover S&C costs incurred in the enforcement of the February Judgment. It is not disputed that reference to the 2008 WSS would include the 2008 Memorial. The defendant's claim of $11,230.80 was based on a bill of 13 May 2008 rendered by Central Chambers Law Corporation to the defendant ("the CCLC Bill"). The defendant's Peter Teo said in his affidavit that the CCLC Bill was for work done in relation to the 2008 WSS and the 2008 Memorial seeing that the bulk of the disbursements itemised in the CCLC Bill were connected with the 2008 WSS and the 2008 Memorial. Whilst that point was not disputable, the description in the header of the CCLC Bill was clearly for work done in connection with "MC Suit 17644/2007" as well as for "Writ of Seizure and Sale No 1290 of 2008/D". [note: 9] I was not persuaded that the CCLC Bill issued to the defendant related solely to the enforcement of the February Judgment.

29 Apart from my observation on the header of the CCLC Bill, there were a number of other problems with the defendant's case. First, the February Judgment (which was for unpaid contributions levied for upgrading works) included a sum of $4,000 being indemnity costs and disbursements sought against the plaintiff pursuant to the resolutions passed at an Extraordinary General Meeting held over two days in 2007 ("2007 EOGM"). This position was made clear in the statutory demand sent by Rajah & Tann in February 2009: [note: 10]

MCST PLAN NO 562

OUTSTANDING CONTRIBUTIONS BY TUNAS (PTE) LTD

…

2. We are instructed that at the Extraordinary General meetings on 4 January 2007 and 5 February 2007, the subsidiary proprietors duly approved, in accordance with Section 41 of the Building Maintenance and Strata Management Act 2004, the following resolutions:

…

(b) The costs of upgrading works be paid by the subsidiary proprietors in twenty-four (24) monthly instalments at S$2,067.49 per share value per instalment, with effect from 1 March 2007. … In this regard, as your client owns 8 out of 121 shares of the common property, you are liable for a monthly contribution of S$8,539.94, or an aggregate sum of S$181,099.78;

(c) Interest at the rate of 12% per annum be levied on all late contributions and any other payment that in future fall due after a grace period of thirty (30) days from the due date; and

(d) Where a subsidiary proprietor defaults in payment of any of the contributions and/or interest accruing thereon, and where the MCST incurs any costs, charges, fees (including legal fees), the MCST shall be entitled to recover all such costs, fees, expenses and other charges from the subsidiary proprietor concerned on a full indemnity basis.

…

According to the defendant, legal costs on a "full indemnity basis" would include S&C costs incurred by the management corporation.

30 It was apparent from the cause papers filed in MC Suit 17644 that the defendant made use of the 2007 EOGM resolution to claim full indemnity costs in the Statement of Claim and summons for summary judgment. It successfully recovered in the summary judgment costs of $4,000 including disbursements. More to the point, the defendant did not dispel the belief that the $4,000 was the indemnity costs it had claimed. Double charging was a concern seeing that: (a) the CCLC Bill covered work done in connection with the MC Suit 17644; and (b) the Plaintiff paid $4,000 as indemnity costs on 6 May 2008.

31 The second problem was connected to the Order of Court dated 4 March 2008. The defendant did not ask for any costs order in SUM 2980. Consequently, there was no provision of costs on the face of the Order of Court dated 4 March 2008. The position taken in SUM 2980 was the opposite of its claim in MC Suit 17644 where full indemnity costs were obtained against the plaintiff.

32 Mr Cheong objected to the belated claim for payment of the CCLC Bill citing *Henderson v Henderson* [1843–60] All ER Rep 378 to make the point that the defendant ought to have asked for S&C costs at the time it applied for a writ of execution, and it was now too late to bring it up. I agreed that every point that properly belonged to the subject of the application to enforce the February Judgment, and, in this case, S&C costs, ought to have been brought up with reasonable diligence and claimed for at the time of SUM 2980. There was no explanation for the omission bearing in mind that the defendant had earlier sought full indemnity costs pursuant to the EOGM resolution in the Statement of Claim and in its application for summary judgment.

33 Thirdly, on an objective view of the overall evidence, the matter of the defendant's claim in 2014 for reimbursement of the CCLC Bill was by necessary implication compromised by the payment of $51,299.82 in full and final satisfaction of the February Judgment on 6 May 2008. The defendant did not require the plaintiff to pay any legal fees in exchange for full and final payment of $51,299.82. The material on the compromise would be SUM 2980, the absence of any provision of costs on the face of the Order of Court dated 4 March 2008 that was obtained to attach and execute on the Premises to satisfy the February Judgment, and finally KhattarWong's letter of 6 May 2008 stating that the payment of $51,299.82 was to cover the 2008 WSS. I also refer to the Request dated 20 May 2008 directing the Sherriff to release the Premises covered by the 2008 WSS (see [14] above). Notably, the Request was filed seven days after the CCLC Bill was submitted for immediate payment.

The plaintiff was not called upon to settle the CCLC Bill before the Request was filed. The defendant's silence over a period of six years is significant for the reason that it is overt proof of the defendant's mindset and conduct that was plainly consistent with the compromise.

34 Fourthly, the claim for legal fees in the sum of $11,230.80 was time-barred. Mr Lim conceded that the claim of $11,230.80 was time-barred. This was an appropriate concession. The claim for legal fees would have accrued under s 6(1) of the Limitation Act (Cap 163, 1996 Rev Ed), at the latest, when the CCLC Bill was rendered. The CCLC Bill was rendered on 13 May 2008 and the payment term was stated as "immediate". The defendant did not sue for legal fees and it could no longer do so after 12 May 2014.

35 All in all, the four points, in my view, provided sufficient and cumulative reasons for the disposal of the defendant's claim of $11,230.80. Before moving on to the next topic, I wish to comment on Mr Lim's contention that the claim of $11,230.80 was protected by s 43(5) of the BMSMA despite the limitation defence.

36 Mr Lim stated (rather obliquely) that the defendant's claim for S&C costs represented by the CCLC Bill would be "protected by the charges registered against the [Premises]". [note: 11] Interestingly, Mr Lim did not develop the point he raised. Be that as it may, I understood Mr Lim as suggesting that the defendant could "piggyback" on the 2008 MCST Charge to demand payment of $11,230.80 ("the 'piggyback' argument"). Mr Lim also relied on the AGM resolution on costs. Mr Lim would have to show that the plaintiff as a subsidiary proprietor was (adopting Mr Lim's words) "bound by the said resolutions". [note: 12] Mr Lim's contention invited an assessment of the legal character of the AGM resolution on costs. I will come to this matter later.

The "piggyback" argument

37 Mr Lim relied on s 43(5) of the BMSMA as entitling the defendant to seek recovery of the CCLC Bill from the plaintiff as the subsidiary proprietor of the Premises. In connection with s 43(5), s 43(8) provides that a charge registered under s 43(2) "shall continue in force" until the outstanding contributions, interest and section 43 costs which are "secured by the charge" have been paid.

38 The fallback on s 43 stemmed from the suggestion that the defendant could "piggyback" on the 2008 MCST Charge to demand payment of its lawyer's bill as existing registered charges like the 2008 MCST Charge would have somehow protected the claim of $11,230.80 from the defence of limitation. As stated earlier, Mr Lim did not really argue and develop the "piggyback" argument. In any case, the "piggyback" argument was a non-starter for several reasons.

39 Firstly, the legal fee of $11,230.80 was not an amount "secured by the charge" within the meaning and ambit of s 43. I will elaborate on this point at [71] to [72] below.

40 Secondly, I do not see Parliament intending s 43 of the BMSMA to prevail over the limitation regime in s 6(1) of the Limitation Act so far as it allows the management corporation to pursue section 43 costs. I favour the view that recovery of section 43 costs was left to be dealt with in the usual way by order in court proceedings, or by agreement between the parties.

41 Thirdly, given the recent decision of the Court of Appeal in *Maryani Sadeli v Arjun Permanand Samtani and another and other appeals* [2015] 1 SLR 496 ("*Maryani*"), full recovery of S&C costs (*ie*, the actual legal costs incurred as between a party and his solicitor) could only be recoverable by parties in litigation in exceptional circumstance, for example, where there was a contractual agreement between the parties to this effect, or if there was a statutory provision allowing for it.

4 2 *Lee Tat Property Management Pte Ltd v Management Corporation Strata Title Plan No 360* [1990] 2 SLR(R) 660 ("*Lee Tat Property*") was a case where a subsidiary proprietor failed to pay contributions which were due. The management corporation sued for the recovery of unpaid contributions and succeeded. In the court below, costs were awarded on a party and party basis. On appeal, the management corporation argued that it was entitled to costs on a solicitor and client basis. T S Sinnathuray J relied on s 37(8) of the Land Titles (Strata) Act (Cap 158, 1985 Rev Ed) ("LT(S)A 1985") (a section *in pari materia* with s 43(9) of the BMSMA) and held (at [18]):

> In my opinion, s 37(8) of the Act is explicit. It envisages the situation in which a management corporation would be compelled by the refusal of a subsidiary proprietor to pay contributions to the management fund to instruct solicitors to take legal action to recover such contributions. The refusal by that subsidiary proprietor to make payment had made it necessary for the management corporation to incur legal costs to recover the contributions. If costs are awarded on a party and party basis the management corporation will be out of pocket, as costs on this basis will not fully compensate the management corporation in respect of the fees it has to pay its own solicitors. In my view, the learned district judge ought to have awarded costs to the respondents on a solicitor and client basis.

43 From the passage quoted above, Sinnathuray J was dealing with the question of the appropriate basis on which to make a costs order for the proceedings which were before him. On that footing, *Lee Tat Property* is no longer good law in light of the recent decision of the Court of Appeal in *Maryani*. The appellate court explained:

> [30] One fundamental aspect of our scheme of costs recovery is a cost-shifting rule which dictates that the successful litigant is ordinarily indemnified by the losing party for the legal costs incurred as between the successful party and his solicitor. This is commonly referred to as the principle that costs should generally follow the event, and is also known as the indemnity principle …
>
> [31] The legal costs recoverable by the successful party from the losing party are more often than not less than the actual legal fees incurred as between the successful party and his solicitor. This is because the indemnity principle is also subject to a series of rules governing how recovery of costs is quantified, and those rules operate such that a full indemnity for legal costs is only recoverable by parties to litigation in exceptional circumstances (for example, where there is a contractual agreement between the parties to this effect).
>
> …
>
> [34] Ultimately, *our* legal regime on costs recovery is calibrated in a manner such that full recovery of legal costs by the successful party is the exception rather than the norm. What we need to bear in mind is that this state of affairs is not something which exists to prejudice the winning party in litigation, but is a manifestation of the law's policy of *enhancing access to justice for all*. Put another way, unrecovered legal costs is something which is part and parcel of resolving disputes by seeking recourse to *our* legal system and all parties who come before our courts must accept this to be a *necessary incidence* of using the litigation process. It is in this light that the general rule must be understood.
>
> [emphasis in original]

44 The result of all this is that S&C costs are only recoverable from the other party if the parties

have agreed to it by contract, or if this is statutorily provided for. On the latter point, s 37(8) of the LT(S)A 1985 (the section that Sinnathuray J relied on in *Lee Tat Property*) does not explicitly entitle the MCST to seek reimbursement of legal costs on a solicitor and client basis. Notably, s 37(8) requires the management corporation to show that the legal costs were "necessarily incurred".

45 I now come to the third point which is Mr Lim's argument that the plaintiff as a subsidiary proprietor was bound by the defendant's AGM resolution. In this particular case, the defendant had not produced the defendant's by-laws, and unless the by-laws provide otherwise, the general rule governing the nature of a resolution is against Mr Lim's contention.

Legal character of the AGM resolution on costs

46 The defendant relied on the AGM resolution to recover S&C costs from the plaintiff. For convenience, I set out the AGM resolution on costs passed in the year 2007: [note: 13]

> 7.3 [The] Meeting resolved that *all* costs (e.g. legal costs on a solicitor and client basis, disbursements and incidental costs, which include but not limited to postage, transport, etc, incurred in the recovery of any outstanding payment, interests or such other amounts owing to the Management Corporation in any actions taken against any subsidiary proprietors, occupiers or lessee for any breach, contravention or non-compliance with any duty, by-law, resolution and regulation relating to the subdivided building), *shall be recovered* from the subsidiary proprietors, occupiers or lessees concerned… [emphasis added]

47 Resolutions of similar effect were passed at the defendant's 2008 and 2009 Annual General Meetings. As for the defendant's 2010 to 2013 Annual General Meetings, the minutes were not produced, but Mr Lim's position was that the 2010 to 2013 resolutions were of similar effect.

48 In my view, the defendant's submission on the binding nature of the AGM resolution on costs was misconceived. This is because a resolution is a decision of a meeting of a corporate body (see N E Renton, *Guide for meetings and organisations, Volume 2: Guide for Meetings* (LBC Information Services, 7th Ed, 2000) at para 4.1 and A D Lang, *Horsley's Meetings: procedure, law and practice* (LexisNexis, 6th Ed, 2010 at para 11.1)). *Black's Law Dictionary* (Bryan A Garner chief ed) (Thomson Reuters, 10th Ed, 2014) defines "resolution" as "[f]ormal action by a corporate body of directors or other corporate body authorising a particular act, transaction or appointment" [emphasis added]. This decision is one that may be varied or rescinded by a later resolution.

49 The general rule is that a resolution is not a contract between the entity and the members or between the entity and third parties, but is instead a decision of the entity, made by the members of that entity. It may however be binding on members of the entity if this is provided for statutorily, or in the constitutional documents of the entity (*eg*, the strata plan's by-laws) (*Koh Sin Chong Freddie v Singapore Swimming Club* [2015] 1 SLR 1240 at [74]; see also Tan Cheng Han SC gen ed, *Walter Woon on Company Law* (Sweet & Maxwell, 2009) at para 6.69).

50 As stated, the defendant did not produce its by-laws. In any event, standard by-laws would ordinarily deal with the use and enjoyment of the parcel comprised in the strata title plan (see ss 32(2) and 32(3) of the BMSMA and the Second Schedule of the Building Maintenance (Strata Management) Regulations 2005 (Cap 30C, S 192/2005)).

51 Turning to the AGM resolution itself (at [46] above), the language used there did not go far enough to categorically state that the defendant could *ipso facto* bill to the subsidiary proprietor the defendant's S&C costs. The AGM resolution did not record or allude to an agreement by subsidiary

proprietors to pay the defendant's S&C costs. Rather, as a matter of construction, the AGM resolution was a mandate or authority given by the subsidiary proprietors in the Annual General Meeting for the management corporation to pursue claims for S&C costs against defaulters who were subsidiary proprietors, occupiers or lessees. Mr Lim's bare assertion that the plaintiff was contractually bound by the AGM resolution was misconceived and unhelpful.

Debate on the scope of s 43 of the BMSMA

52 The defendant is a creature of statute; its rights and powers are derived from the BMSMA (see *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418). Specifically, the defendant has no right to recover legal costs and expenses as a debt within the meaning and ambit of s 43. On a closer scrutiny of s 43(9), there can be no suggestion that the provision confers a free-standing right on the management corporation to recover legal costs and incidental charges as a debt from subsidiary proprietors. The purpose of the sub-section is to clarify that the rights and powers conferred by ss 30 and 40 of the BMSMA are not affected by s 43.

53 An examination of ss 30 and 40 shows that what may be claimed as a debt under both sections is limited to the cost of or expenditure incurred in carrying out certain work under s 30 (see sub-s (3) to (6)), or the amount of unpaid contributions and interest thereon under s 40 (see sub-s (6)). Neither statutory provision allows the management corporation to claim "legal costs and incidental charges" as a debt from the subsidiary proprietor.

54 The position under the BMSMA may be contrasted with the position in New South Wales. The relevant provision in New South Wales may be found in s 80 of the Strata Schemes Management Act 1996 (No 138 of 2009) (NSW) ("SSMA"), an Act which deals with the management and dispute resolution aspects of strata schemes in New South Wales. Section 80 of that Act provides:

> **80 How does an owners corporation recover unpaid contributions and interest?**
>
> (1) An owners corporation *may recover as a debt* a contribution not paid at the end of one month after it becomes due and payable, *together with any interest payable* ***and the expenses*** *of the owners corporation incurred in recovering those amounts*.
>
> (2) Interest paid or recovered forms part of the fund to which the relevant contribution belongs.
>
> [emphasis added in italics and in bold italics]

55 A comparison between s 80 of the SSMA and s 40(6) of the BMSMA shows that they are similar in material aspects. However, unlike s 40(6) of the BMSMA, s 80(1) of the SSMA expressly provides that expenses incurred in recovering unpaid contributions may be recovered as a debt. In *The Owners – Strata Plan No 36131 v Dimitriou* [2009] NSWLR 370 ("*Dimitriou*"), the New South Wales Court of Appeal held that the word "expenses" in s 80 of the SSMA includes legal costs and disbursements that are reasonably incurred and reasonable in amount.

56 To summarise, nothing in ss 30 and 40 of the BMSMA confer a right on the defendant to claim its S&C costs "as a debt" from the plaintiff so as to invoke the protection of s 43. A related point of significance that needs to be considered is the meaning of section 43 costs. Mr Lim did not deal with the question raised by Mr Cheong which was whether "reasonable costs" in s 43 meant party and party costs or S&C costs. Mr Cheong cited *Dimitriou* for the proposition that legal costs in the statutory provision meant "party and party costs on the ordinary basis" (given the interrelationship of that statutory provision permitting recovery of reasonable costs with the costs rules in the Rules of

Court) and not S&C costs (see *Dimitriou* at [38] to [40]). Hodgson JA explained his reasoning as follows (at [40]):

> In my opinion, the onus is on an owners corporation to prove that the costs and disbursement it claims have been reasonably incurred and are reasonable in amount, so that if a selection has to be made from the three different bases I have referred to, the second basis [party and party costs on the ordinary basis] is most appropriate. In my view, the third basis [party and party costs on the indemnity basis] would not be appropriate, because that would include any costs that are not shown to appear to be unreasonable. Further, in my opinion the costs and disbursements cannot be made reasonable by agreement between the owners corporation and its legal practitioner …

57 In the final analysis, the New South Wales Court of Appeal in *Dimitriou* construed "legal expenses" in s 80(1) to extend to legal costs and disbursements that are "reasonably incurred" and "reasonable in amount" and that the owners corporation would have to prove this in order to obtain a judgment for them. This approach is consistent with the appellate court's ruling that under s 80(1) of the SSMA, legal expenses form part of recoverable debt and they should be limited to legal expenses that are properly incurred and reasonable in amount (per Basten JA at [64])). The term "expenses" did not include S&C costs paid to the lawyers for the purpose of recovery proceedings.

58 Although phrases like "any legal costs and incidental charges" are found in s 43, effect must be given to the plain words of s 43, particularly the terms "reasonable legal costs" and "reasonable expenses incurred" by the management corporation in connection with the collection or attempted collection of the unpaid amount or contribution or further amount or contribution in s43(7). Such costs would have to be proved to be reasonably incurred in the context of section 43 costs (see [67]–[67] below). I agree with Hodgson JA that legal fees and disbursements cannot be made reasonable by an agreement between the management corporation and its lawyers to pay. Thus, section 43 costs are not S&C costs per se as the defendant claims. To this end, the enforcement of S&C costs by the defendant in the absence of any prior agreement between the defendant and the plaintiff for payment of S&C costs was legally unsustainable. Separately, the defendant has not satisfied the requirements of s 43 in respect of its claim for the CCLC Bill. In this regard, I revert to four points made in [28]–[34] above.

The legal fees for withdrawing the 2008 Memorial

59 I now turn to the defendant's claim of $750 as legal fees for the withdrawal of the 2008 Memorial. The defendant argued that the 2008 Memorial had lapsed and the plaintiff could have applied for the 2008 Memorial to be cancelled without the defendant's assistance.

60 Section 134(4) of the LTA states that the Registrar shall cancel the registration of a lapsed writ upon the application of the proprietor. It does not limit the persons who may apply for the cancellation of the lapsed writ only to the proprietor. In fact, s 136(1) of the LTA states that a writ or order of court may be withdrawn by the judgment creditor. Under s 136(2), the Registrar may cancel the writ where sufficient evidence has been produced to show that the writ has been satisfied. Crucially, under r 38(2) of the Land Titles Rules (Cap 157, R 1, 1999 Rev Ed), an application to withdraw the registration must be signed by the party who applied to register the writ or order of court (*ie*, the defendant in this case). The defendant was therefore wrong in submitting that the plaintiff should or could have procured the withdrawal without its assistance.

61 However, as between the plaintiff (the judgment debtor) and the defendant (the judgment creditor), who should bear the cost of the withdrawal of the 2008 Memorial? Firstly, the AGM

resolution would not assist the defendant (see [46]–[51] above). Secondly, the defendant received the sum of $51,229.82 in full and final settlement of the February Judgment and the 2008 WSS. The defendant did not ask for costs incidental to the writ of execution even though it could have done so under O 46 r 8 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) which provides that unless the court orders otherwise, the costs of and incidental to writs of execution are, in the ordinary course, to be allowed against the person liable (*ie*, the plaintiff). Furthermore, the defendant had filed a Request to the Sherriff to release the Premises on 20 May 2008 (see [14] above). The defendant could not after a valid compromise seek payment of the legal fees to withdraw the 2008 Memorial.

Conclusion

62 For all these reasons given above, I concluded that the defendant was not entitled to be paid the further sums of $11,230.80 and $750. Consequently, the defendant wrongfully refused to unconditionally withdraw the 2008 Memorial when requested by the plaintiff to do so.

The 2008 MCST Charge

63 The 2008 MCST Charge was lodged against the Premises under s 43 of the BMSMA on 21 April 2008. The defendant argued that the plaintiff was not entitled to an instrument of discharge until the plaintiff paid the legal fees incidental to the lodgement and discharge of the 2008 MCST Charge (see [22] above).

The legal fees for lodging the 2008 MCST Charge

64 The defendant cited s 43(8) of the BMSMA to support its claim. Sub-section (8) states that a charge registered under s 43(2) shall continue in force until all the outstanding contributions and legal costs and expenses have been paid.

65 In contrast, the plaintiff contended that under ss 43(5)(*a*) and 43(8) of the BMSMA, the phrases "necessary and incidental charges (including legal costs)" and "legal costs and expenses" in the respective sub-sections should both be interpreted to mean the legal costs incurred between registration and the exercise of the power of sale pursuant to the charge. It did not cover the legal costs incurred prior to the registration of the charge, or the costs required to discharge the charge.

66 The plaintiff further argued that s 43(7) does not create a new or further charge over: (a) additional contributions (and interest thereon) which became due to a management corporation after the charge had been registered; and (b) additional section 43 costs. Rather, s 43(7) is the statutory equivalent of the doctrine of tacking. In this regard, s 43(7) would permit contributions and section 43 costs that were subsequently incurred to be tacked to the charge and given the same priority, as if these amounts were due on the date that the charge was registered. The plaintiff also submitted that s 43(8) was inconsistent with s 43(7) and that logically the provisions of 43(8) should sequentially appear before s 43(7).

67 The present dispute requires the court to resolve not only the meaning but the scope of section 43 costs. I have already dealt with the meaning of section 43 costs in [56]–[58] above. On the scope of section 43 costs, I am of the view that sub-sections (5)(*a*), (7)(*b*) and (8) should be read harmoniously. Thus, although the language of s 43(5), (7) and (8) is not identical and these sub-sections seem to describe section 43 costs differently, nonetheless they should be interpreted consistently. Hence, charges and legal costs are only "necessary and incidental" under s 43(5)(*a*) and secured by the charge under s 43(8) when they are "reasonable" and "incurred in connection with the collection or attempted collection" of the unpaid contributions as stated in s 43(7)(*b*).

68 As stated, in the context of s 80(1) the SSMA (set out at [54] above), the New South Wales Court of Appeal in *Dimitriou* held that "expenses of the owners corporation incurred in recovering" contributions did not extend to all of the costs which the owners corporation incurred, but only those costs that were reasonably incurred and were reasonable in amount. The onus was on the owners' corporation claiming such costs and disbursements to prove this in order to obtain a judgment for them (per Hodgson JA at [37])). The plaintiff relied on *Dimitriou* to submit that the onus was on the defendant to show that the legal costs it claimed were "reasonable". In the present case, although I have explained that a management corporation does not have a similar ability under the BMSMA to claim for legal costs as a debt and that section 43 costs are not S&C costs, to the extent that a subsidiary proprietor is entitled to an instrument of discharge only after necessary and incidental charges are paid, I agree with the plaintiff's submission that the onus was similarly on the defendant to prove the reasonableness of the costs and expenses incurred. In my view, the defendant did not discharge this legal and evidential burden.

69 The views of Professor Teo Keang Sood in *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012) were also instructive. He states (at p 235–236):

> Where further contributions and interest thereon are due to the management corporation after the registration of an instrument of charge, or where it has incurred or become liable for any reasonable legal costs and expenses incurred in connection with the collection or attempted collection of the unpaid amount or contribution or further amount or contribution, such amount or contributions due (including interest thereon) and such legal costs and expenses shall rank in priority to any other claims as if the amount or contributions were due at the date of the registration of the charge, which shall continue in force until all the amount or contributions (including interest thereon) and the legal costs and expenses, as the case may be, secured by the charge have been paid. Thus, all legal costs and expenses incurred by a management corporation in seeking recovery of outstanding contributions will be made part of the charge against the lot of the defaulting subsidiary proprietor even though these may be incurred after the charge has been lodged and registered. This is to facilitate recovery of legal costs and incidental expenses which would not have been incurred if the subsidiary proprietor had not defaulted in the contribution payments.

70 In line with Professor Teo's above commentary, section 43 costs would include the reasonable legal fees and expenses incurred in lodging the charge. As a matter of policy, this is desirable as it not only facilitates the recovery of costs and expenses which would not have been incurred if the subsidiary proprietor had not defaulted on contribution payments, but also ensures that other promptly paying subsidiary proprietors are not prejudiced by having to subsidise the costs of going after defaulting subsidiary proprietors.

71 Hence, although s 43(5)(*a*) provides that a subsidiary proprietor would be entitled to an instrument of discharge where the whole contribution due including necessary or incidental charges are paid to the management corporation, this must be read in the light of ss 43(7) and 43(8). That sub-s (8) came after sub-s (7) lends weight to the interpretation that what the charge under s 43 secures was not only the original amount of contribution due and the interest as well as necessary and incidental charges thereto, but also any further unpaid contribution which became due together with any reasonable legal costs and expenses incurred in the recovery of the unpaid amounts that arose *after* the registration of the charge. It is only where a subsidiary proprietor satisfies all such amounts due at the time of payment that he may obtain an instrument of discharge pursuant to s 43(5) read with s 43(8) of the BMSMA.

72 I digress to state that the above interpretation of s 43 puts paid to the defendant's

"piggyback" argument (see [39] above). The sum of $11,230.80 was not incurred in respect of unpaid contributions that arose *after* the registration of the 2008 MCST Charge. On the defendant's case, the sum of $11,230.80 was legal fees relating to the enforcement of the February Judgment, which in turn concerned sums owed by the plaintiff to the defendant for the period March to July 2007. The 2008 MCST Charge secured outstanding contributions due from August 2007 [note: 14]. Hence, the legal fees incurred in respect of the enforcement of the February Judgment are not sums which are "secured by the charge" within the meaning of s 43(8).

73 Returning to the present issue, the defendant tried to claim reimbursement of S&C costs of $7,167.10 (see [22] above) but it only produced the September 2009 Bill of $3,583.55 leaving the other sum of $3,583.55 to imagination and speculation. Without a legal bill for the 2008 MCST Charge, the defendant decided to use the quantum of the September 2009 Bill to make out its claim for the lodgement of the 2008 MCST Charge. In short, the defendant merely doubled the amount of the September 2009 Bill to derive the claim amount of $7,167.10. This charade was pivotal to the outcome. All in all, the defendant was not able to prove that the sum of $7,167.10 as claimed was "reasonable" or was "legal costs" and "reasonable expenses" that were "incurred in connection with the collection or attempted collection" of the unpaid contributions. In short, the requirements of s 43 were not satisfied.

74 TanLim Partnership's table in [19] above stated that the September 2009 Bill of $3,583.55 was for the 2009 MCST Charge. Indeed the relevant portions of the September 2009 Bill state as follows: [note: 15]

> **RECOVERY OF OUTSTANDINGS FROM TUNAS (PTE) LTD**
>
> TO OUR PROFESSIONAL CHARGES for legal services rendered in respect of the above matter and including, where applicable, correspondence with you and other relevant parties, taking your instructions, attendances …, discussions, inquiries, review of correspondence and documents, advice …, drafting and all incidental work for the period *from 21 July 2009 to 17 September 2009* … [emphasis added]

75 It is clear that this bill related to work done from 21 July 2009 to 17 September 2009. In contrast, the 2008 MCST Charge was lodged against the Property more than a year earlier, on 21 April 2008, for unpaid contributions in the sum of $103,641.89.

76 The September 2009 Bill was for a different matter and this is discernible from the words "work done in connection with drafting a reply letter to Robert Wang & Woo LLC". Rajah & Tann's statutory demand explained that Robert Wang & Woo LLC represented the plaintiff in a separate matter that concerned the non-payment of contributions towards maintenance and sinking funds.

77 A variant of the "piggyback" argument arises here. As stated, ss 43(7) and 43(8) mention that legal costs incurred in connection with the collection or attempted collection of any further outstanding amounts *after* the registration of the 2008 MCST Charge is to be "secured" by the 2008 MCST Charge. Thus future contributions (extending beyond the indebtedness of $103,641.89 claimed in the 2008 MCST Charge) that become outstanding including reasonable legal costs and expenses incurred would be secured by the 2008 MCST Charge. However, where a subsequent charge is lodged in respect of future outstanding contributions (in this case, the 2009 MCST Charge), legal costs that pertain to the lodgement of the 2009 MCST Charge and its subsequent discharge cannot be secured by a previous charge (*ie*, the 2008 MCST Charge). This is because s 43 does not contemplate allowing management corporations to have "double-security", at least not where legal costs and expenses are concerned. To that extent, the 2008 MCST Charge only secures the expenses incurred in the

lodgement and discharge of the 2008 MCST Charge itself. As no bill was produced in connection with the lodgement of the 2008 MCST Charge, there was no basis to claim legal fees in respect of this.

78 I now refer to the September 2009 Bill for $3,583.55. The defendant copied this amount to pass off as its legal fees in respect of the 2008 MCST Charge. This approach was detrimental. There was nothing to show that the legal fees as claimed were reasonably incurred or were connected to the collection or attempted collection of the unpaid contributions, and above all were reasonable in amount.

79 Finally, I return to [15] to [18] above. As explained, the defendant did not require the plaintiff to pay any legal fees in exchange for full and final payment of $181,099.78. On an objective view of the overall evidence, the matter of legal fees concerning the 2008 MCST Charge was by necessary implication compromised by the full and final payment of $181,099.78.

The legal fees for discharging the 2008 MCST Charge

80 Mr Cheong submitted that Parliament had intended by s 43 to allow a management corporation's claim for contributions to have the character of a registered mortgage. He referred to s 43(2)(*a*) and 43(5)(*a*) of the BMSMA and s 77(1) of the LTA. Accordingly, the plaintiff was entitled to a discharge after paying up the outstanding contributions in full in the same way a mortgagor was entitled to a discharge after performing its obligations under the mortgage. To support this, the plaintiff cited *Rourke v Robinson* [1911] 1 Ch 480 where Warrington J stated that "[t]he engagement of a mortgagee is to give a reconveyance to the mortgagor on repayment of the money secured". Thus the plaintiff could not be required to pay the cost of discharging the charge. Furthermore, the costs of discharging the charge was not incurred in connection with the collection of unpaid contributions under s43(7), and the plaintiff would not be required to pay it.

81 The important question is whether cost of discharge of a s 43 charge is "secured by the charge" under s 43(8).The plaintiff argues that it is not costs incurred in "connection with the collection or attempted collection of the unpaid amount or contribution". While this may be so on a literal reading of the provisions, I am of the view that interpreting the provisions purposively, cost of discharge may arguably fall within the ambit of ss 43(7)(*b*) and 43(8) if legal costs were shown to be reasonably incurred and reasonable in amount.

82 A number of points remained in the defendant's way. For one, it is not clear that these costs were excluded from the payment made by the plaintiff in April 2009 (see [17] above). Second, no bill was tendered for either the lodgement or discharge of the 2008 MCST Charge. Third, I have already concluded that the entire matter was compromised. Similar to the conclusion reached on the cost of withdrawing the 2008 Memorial, the defendant could not after a valid compromise seek payment of the cost of discharging the 2008 MCST Charge. Besides, on the facts, the cost of discharging the 2008 MCST Charge was not secured by the 2008 MCST Charge.

Conclusion

83 In the circumstances, I concluded that the defendant was not entitled to be paid the costs of lodgement and withdrawal of the 2008 MCST Charge. It follows from this that the defendant wrongfully refused to withdraw the 2008 MCST Charge when requested by the plaintiff to do so.

The 2009 MCST Charge

84 The 2009 MCST Charge was not part of the substantive dispute of OS 505. However, sums that

related to the lodgement and withdrawal of the 2009 MCST Charge were part of claim figure of $20,647.90 which the plaintiff in OS 505 sought to reclaim (see [22] above).

85 I have explained in [77] above why certain amounts in the September 2009 Bill could not be secured by the 2008 MCST Charge. In any case, the defendant had not discharged the legal and evidential burden of showing that the full amount in the September 2009 Bill was reasonable and reasonably incurred in connection with the collection or attempted collection of outstanding contributions. Merely producing a bill, without more, would not satisfy the requirements of s 43.

86 The cost of discharging the 2009 MCST Charge was not a sum secured by the 2008 MCST Charge (see [77] above). As the facts concerning the 2009 MCST Charge are not before this Court in OS 505, the question whether the defendant could legally require the plaintiff to pay the cost of discharging the 2009 MCST Charge before agreeing to its discharge remains an open one.

87 In the circumstances, the defendant was not entitled to any further payment of money in the sum of $20,647.90 before discharging the 2008 Memorial and the 2008 MCST Charge.

Conclusion

88 For the reasons stated, I granted the orders set out in [4] above.

[note: 1] Affidavit of Clement Tong dated 15 July 2014, Exhibit "CT-8".

[note: 2] Affidavit of Clement Tong dated 30 May 2015, p 39.

[note: 3] Affidavit of Clement Tong dated 30 May 2015, Exhibit "CT–2".

[note: 4] Affidavit of Clement Tong affirmed on 29 May 2014, p 17.

[note: 5] Affidavit of Clement Tong dated 30 May 2015, p 39.

[note: 6] Affidavit of Clement Tong affirmed on 29 May 2014, p37.

[note: 7] Affidavit of Teo Peter dated 7 October 2014, Exhibit "TBK–5"; Affidavit of Teo Peter dated 18 May 2015, Exhibit "TBK–6".

[note: 8] Affidavit of Teo Peter dated 24 June 2014, p 14.

[note: 9] Affidavit of Teo Peter dated 7 October 2014, [3] and pp 6–7.

[note: 10] Affidavit of Clement Tong dated 30 May 2014, Exhibit "CT-6", p 38.

[note: 11] Defendant's submissions dated 18 May 2015, para 23.

[note: 12] Defendant's submissions dated 18 May 2015, para 8.

[note: 13] Affidavit of Teo Peter dated 18 May 2015, p 7.

[note: 14] Affidavit of Clement Tong dated 30 May 2015, p 39/

[note: 15] Affidavit of Teo Peter dated 7 October 2014, p 9.