

LAND TITLES (STRATA) ACT
(CHAPTER 158)

BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARDS) REGULATIONS 2005

STB No.43 of 2007

In the matter of an application under section 84A of the Land Titles (Strata) Act in respect of the development known as Horizon Towers (Strata Title Plan No. 993) comprised in Land Lot No. TS21-792W

1. Doreen Siow
2. Halimah Tan Bee Lay
3. Henry Lim Meng Loke

... Applicants

AND

1. Lo Pui Sang/ Kuah Kim Choo
2. Ng Eng Ghee
3. Mohammed Yusuf (withdrawn)
4. Hendra Gunawan/Sulistiwati Kusumo
5. Rudy Darmawan/Widia Seteono
6. Maryani Dadeli
7. Then Khek Koon/Jasmine Tan Kim Lian
8. Ong Sioe Hong
9. Quek Keng Seng
10. Canterford Limited

... Respondents

Coram:

Dr Philip Chan
Deputy President

Panel Members:

Mrs Tan Sook Yee
Mr Kong Mun Kwong
Mr Teo Pin
Dr Richard Tan

Counsel:

Mr C R Rajah
Mr Burton Chen
(M/s Tan Rajah & Cheah for the Applicants)

Mr S Rajah
Mr Philip Fong
(M/s Harry Elias Partnership for the 2nd, 4th, 8th and 9th
Respondents)

Mr Ramesh Kannan
Mr Michael Chia
(M/s Tan Kok Quan Partnership for the 5th, 6th and 7th
Respondents)

Mr Michael Huang
Dr Phang Sin Kat
(M/s Phang & Co for the 10th Respondent)

GROUNDS OF DECISION

Preliminary background

1. The Applicants in this case represent the subsidiary proprietors of the development known as Horizon Towers who entered into a collective sale agreement. The original Applicants were Arjun Samtani, Wee Hian Siew and Chan Siew Chee. They were subsequently replaced by Doreen Seow, Halimah Tan Bee Lay and Henry Lim Meng Loke. The Applicants were originally represented by Drew & Napier LLC and subsequently replaced by Messrs Tan Rajah & Cheah. The Respondents are the subsidiary proprietors of the development who did not sign the collective sale agreement and who filed objections. There were nine sets of Respondents with the 1st Respondent appearing in person, the 2nd, 4th, 8th and 9th Respondents were represented by the firm of Messrs Harry Elias Partnership while the 5th, 6th and 7th Respondents were represented by Messrs Tan Kok Quan Partnership. The 3rd Respondent withdrew his objection before the hearing commenced. There was a late filing of an objection by a subsidiary proprietor represented by Messrs Phang & Co which the Board accepted despite the objections of the Applicants. This last objector is the 10th Respondent.

2. The Board was duly constituted as no objections were received as to its composition. Two sessions of mediation were conducted on 30 May 2007 and 8 June 2007 without success. Dates for hearing were set by the Registrar for Sep. 2007. On 26 June 2007, the Board granted an application for early dates for hearing and advanced the dates to 27, 28, 30 and 31 July and 2 August 2007.

Hearing

3. The hearing commenced at 2.30 pm on Friday, 27 July 2007. After some preliminary matters, including those raised by Mr KS Rajah SC who represented the 2nd, 4th, 8th and 9th Respondents, were dealt with, the Applicants' first witness Mr Alvin Er of First Tree Properties Pte Ltd took the stand and was cross examined by Counsel for the 2nd, 4th, 8th and 9th Respondents, Mr Philip Fong. Following that, Mr. Ramesh, counsel for 5th, 6th and 7th Respondents, also cross examined Mr Alvin Er. Mr Michael Hwang SC, counsel for 10th Respondent, then began his cross examination. During the cross examination by Mr Michael Hwang SC certain queries were raised which caused the Board to request a short adjournment to allow the Board to meet with counsel for all parties. This is dealt with in greater detail below at paragraph 12. The witness was then re-examined by Mr Chelva Rajah SC, counsel for the Applicants.

4. After the cross-examination and re-examination of the first witness on Thursday, 2 August 2007, the Board took time to consider the parties' submissions filed on the morning of Friday, 3 August 2007, and delivered its oral decision to dismiss the

*Delete whichever is inapplicable.

application after the hearing resumed after lunch. A verbatim record of the said decision is set out below.

"...having considered the matter and read the submissions on the points of law we now come to a decision. We have decided that in the light of the admissions in the Applicant's submission itself, the certain admissions in the submission as regards the failure to include certain documents and so these are not contested in that sense, it is not an issue, we have decided that therefore the application does not comply with the requirements as set out in the relevant legislation in this particular application filed with us.

So, therefore, our decision will be: The application is dismissed on the face of the application filed, but not on the merits because we never considered the merits and there will be no order as to costs. That will be all. Thank you."

Grounds of decision

5. The Board now gives the written grounds of decision. The reason for stating that the dismissal is based on the face of the application documents or Form 1 is to make it clear that the decision was arrived at without the Board considering any of the evidence that have been brought to the Board's attention thus far except on the face of the application documents or Form 1. As will be explained (see para. 12 below) the Board's decision was based on the admissions made by the Applicants in response to the questions raised by the Board at the private meeting on 2 August 2007.

between all counsel and the Board. This avoids the situation where a party may raise the issue of *res judicata* and allows a re-filing of the application documents or Form 1.

6. If the facts subsequently admitted had been brought to the Board's attention earlier, the Application could then have been dismissed right at the beginning and a simple re-filing of the application documents or Form 1 would have followed. The current situation of dismissing the Application after the hearing had commenced would have been avoided. Be that as it may, the Board sets out the reasons for coming to that decision.

7. The starting point of this collective sale attempt is Section 84A(1) of the Land Titles (Strata) Act ("LTSA") which is set out below.

"Section 84A(1)

An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by —

(a) the subsidiary proprietors of the lots with not less than 90% of the share values where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later; or

(b) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,
who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7)."

8. It is clear that "...*the subsidiary proprietors of the lots with not less than 80% of the share values...*" must "...*have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement....*" Before the Board proceeds further, it should be noted that the dismissal was not based on the proof of the Applicant's failure to comply with this 80% requirement as alleged by the 10th Respondent. If it were so, the Board would have had to look into the evidence produced before the Board and would have made a decision based on the merits rather than based on the face of the application documents or Form 1 as stated in the Board's oral decision.

Defects in Application documents or Form 1

9. Of greater concern to the Board was the provision of paragraph 4 of the Fourth Schedule of the LTSA and in particular, sub-paragraphs (a) and (b) read together paragraph 1e (i) which are set out below in that order.

"Fourth Schedule

Paragraph 4.

An application to a Board shall be made by the subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) within 14 days of the publication of the advertisement referred to in paragraph 1 (d), enclosing

- (a) the documents specified in paragraph 1(e);
- (b) a statutory declaration made by the representatives appointed under section 84A (2) or their solicitors stating —
 - (i) the date the permitted time for the collective sale agreement started;
 - (ii) the date on which collective sale agreement referred to in paragraph 1 (a) was last executed by any subsidiary proprietor or proprietor referred to in section 84A (1), 84D (2) or 84E (3), as the case may be;
 - (iii) the date or dates on which the notice or notices referred to in paragraph 1(b) were affixed; and
 - (iv) that sub-paragraphs (c), (d), (e) and (f) of paragraph 1 have been complied with;
- (c) a list of the names of the subsidiary proprietors who have not agreed in writing to the sale, their mortgagees, chargees and other persons (other than lessees) with an estate or interest in the lots or flats whose interests are notified on the land-register; and
- (d) such other document as the Board may require.

Paragraph 1.

Before making an application to a Board, the subsidiary proprietors referred to in section 84A (1) or the proprietors of flats referred to in section 84D (2) or 84E (3), as the case may be, shall —

(a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —

(i) in the case of an application under section 84A, all the lots and common property in a strata title plan; or

(ii) in the case of an application under section 84D or 84E, all the flats and the land in a development to which section 84D or 84E, as the case may be, applies;

(b) ...

(c) ...

(d) ...

(e) serve notice of the proposed application on all the subsidiary proprietors of all the lots and common property in the strata title plan concerned or on all proprietors of all flats in the development concerned, as the case may be, by registered post and by placing a copy of the proposed application under the main door of every lot or flat, together with a copy each of the following:

(i) the collective sale agreement referred to in sub-paragraph (a);

(ii) the sale and purchase agreement which is to be the subject of the application

to the Board;

(iii) a statutory declaration made by the purchaser under the sale and purchase agreement on the nature of his relationship (if any) or, if the purchaser is a

body corporate, the nature of the relationship of every one of its directors (if any), to any subsidiary proprietor of any lot comprised in that strata title plan or any proprietor of any flat in the development, as the case may be;

(iv) the minutes of the extraordinary general meeting or meeting referred to in sub-paragraph (c);

(v) the advertisement referred to in sub-paragraph (d);

(f) a valuation report that is not more than 3 months old; and

(g) a report by a valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement; ...”

10. By paragraph 4(a), the Applicants must include in their application documents known as Form 1, “*the documents specified in paragraph 1(e);*”. The document specified in paragraph 1(e)(i) is “*the collective sale agreement referred to in sub-paragraph (a);*”. As admitted by the Applicants on 3 August 2007, the collective sale agreement filed did not contain documents that ought to have been included.

Particulars of defects in the collective sale agreement

1. by the admission in the Applicant’s counsel’s submission at paragraph 1, the execution page of the subsidiary proprietor of Block 29 #07-01, Tan Chor Hoon, was not included in Form 1;
2. by the admission in the Applicant’s counsel’s submission at paragraph 2, the execution page of the subsidiary proprietor of Block 15 #09-05, Lee Pang Hoe Michael, was not included in Form 1;

3. by the admission in the Applicant's counsel's submission at paragraph 22, the execution page of the subsidiary proprietor of Block 29 #11-05, Daniel Gunawan, was not included in Form 1;

Accordingly, this document would be invalid so far as the Application is concerned, having not fully complied with the statutory requirements.

11. The other document that caused the Board much concern is the "...statutory declaration made by the representatives appointed under section 84A (2) or their solicitors..." In the statutory declaration, the Applicants must declare pursuant to paragraph 4(b)(iv) "that sub-paragraphs (c), (d), (e) and (f) of paragraph 1 have been complied with". In this application, the original Applicants made the statutory declaration jointly. The relevant part of the statutory declaration is extracted and set out below.

Particulars of the statutory declaration

"We, ...do solemnly and sincerely declare, to the best of our information and belief, that all the particulars, statements and declarations made by us and contained in this application and marked as "Form A" are true and correct an every respect. ..."

12. Therefore, in regard to the application documents or Form 1, the Board is entitled to rely on what purports to be a true and correct copy of the collective sale agreement that is verified by a statutory declaration, and on the truth and correctness of the documents as declared by the original Applicants. It should also be noted that the persons who are given notice of the application documents or Form 1 are not limited to the parties in this proceeding. Indeed notice is given to the whole world as paragraph 6 of the Fourth Schedule of the LTSA requires the Applicants to cause “...a copy of the application to be registered under the Act, the Land Titles Act (Cap. 157)...”

“Fourth Schedule

Paragraph 6.

The subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) shall, after making an application to the Board, cause a copy of the application to be registered under the Act, the Land Titles Act (Cap. 157) or the Registration of Deeds Act (Cap. 269), as the case may be.”

13. Upon being made aware of the possible discrepancy between the collective sale agreement that was part of the application documents or Form 1 and a true copy of the collective sale agreement during the cross-examination of the first witness by Mr Michael Hwang SC, counsel for the 10th Respondent, the Board asked to meet all the lawyers in the

Strata Titles Board's Mediation Room. At the private meeting, the Board expressed concern over the discrepancy and gave directions to make submissions as regards the seriousness of the matter. These were the main concerns: (1) whether the Board has the power to allow an amendment of the application documents or Form 1 by the Applicants and to carry on with the hearing or (2) would the situation be one where the possible defect in the application documents or Form 1 could not be cured and consequently the Board might be compelled to dismiss the Application as a defective Application. If the application documents or Form 1 were defective this would affect the validity of the whole proceeding. The Board is a statutory creature and has only such powers and jurisdiction as the statute confers. It does not have any inherent powers.

14. Having read the submissions of the parties, the Board came to the decision to dismiss the Application on the face of the Application. In all the submissions by the respective counsel of the Respondents, it was their position that the Board should be guided by the decisions of *Ling Ah Tie and Others v Tham Kai Shui and another* [2000] SGSTB 1 also called the case of "Mandalay Court" and *Karel Paul Stephen alias Charles Paul Stephen and Others v Singterprise Pte Ltd and Others* [2000] SGSTB 2 also known as the case of "Grenville Condominium".

15. In the case of Mandalay Court, the Board there decided that there was an invalid application on the ground that there was a failure to consider the collective sale at an extraordinary meeting to be held in accordance with the Act before making an application to a Board. And in the case of Grenville condominium, the Board there agreed with the 6th Respondent that paragraph 1(a) in the Fourth Schedule was not complied with prior to the application to the Board, contrary to the mandatory requirement of section 84A(3) since it was conceded by the Applicants that when the EGM was held, the percentage of the

subsidiary proprietors who agreed in writing to the sale owned less than 80% of the share values.

16. It is to be noted that in both cases, the two respective Boards had received evidence in respect of the matter in dispute which involved whether the process of the conduct of the extraordinary meeting complied with the requirements of the Act. In this case before the Board, the Board did not look into the various processes prescribed by the Fourth Schedule for compliance but merely looked at the contents of the application documents or Form 1. Therefore, the Board did not rely on these two cases in arriving at the Board's decision

Board's own procedure and power to allow amendments of defects in application

17. The Board found it necessary to adopt its own procedure as stated above. In particular, the Board had, by its own motion, dismissed the Application in the middle of the hearing after deciding that it has no power to allow the Applicants to amend the application documents or Form 1. The Board now gives its reason. Section 92(2) of the Building Maintenance and Strata Management Act requires the Board to determine the procedure for the proceeding which is called "mediation-arbitration".

"Section 92(2)

Subject to the provisions of this Act or the Land Titles (Strata) Act (Cap. 158), a Board shall determine the procedure for mediation-arbitration, but shall allow the parties to present evidence and make submissions to it."

18. However, unlike most domestic arbitrations which are governed by the Arbitration Act ("AA"), section 92(6) expressly provides that the proceeding before the Board is not governed by the said AA.

"Section 92 (6):

The Arbitration Act (Cap. 10) shall not apply to mediation-arbitration proceedings before a Board."

By this provision, the Board understands the intention of Parliament to be that unlike the domestic arbitrations, proceedings before the Board does not have a very important characteristic of all arbitrations, that is, the concept of party autonomy to decide, *inter alia*, the procedure for the arbitration if the parties so agree.

19. Although, the practice of this Board is to be guided by the Rules of Court wherever it is appropriate to do so, in this decision to dismiss the application, the Board had to face a unique situation not found in the Rules of Court, that is, the Application is commenced by a statutory declaration, the effects of which have been

discussed above in paragraphs 10 and 11. Thus the Board was required to deal with a defective Application that is primarily dependent on a statutory declaration that makes reference to a false document that ought to be true.

20. It was submitted by the Respondents that the Board has no discretion to allow an amendment while the Applicants did not offer an opinion. In particular, it was submitted by counsel for the 2nd, 4th, 8th and 9th Respondents that:

“29. Although section (sic) 12(1)(a) of the Building Maintenance and Strata Management (Strata Titles Board) Regulations 2005 provides that an interlocutory application may be made to the registrar for an order to amend any application or other document furnished to a Board under these Regulations, this provision was intended to cover situations where minor amendments would be made, i.e. amend names of parties. It was not, and could not have, been intended to include amendments which in essence allows the Board to render an invalid application valid, as in the case at hand.”

21. The Board accepts this position as correct and gives two reasons in support of this position. First, as the Board is created by the Application filed by the Applicants, any incurable defect in the application would mean that the very existence of the Board is put into question. Accordingly, the whole proceeding must come to an end. By regulation 6(1), a Board is constituted by the president when the registrar refers an application to the president. In this case, the president must be empowered to do so only upon the referral of a valid

application. Therefore any Board constituted in response to an invalid application that could not be cured would result in a failure to properly constitute a Board. Thus, where the defect is incurable, the Board must dismiss the application. However, in situations where the defect is curable, the proceeding may continue after leave is given to amend the application so that the defect may be cured.

22. Arising from the fact that a copy of the application documents or Form 1 is required to be registered under the LTSA pursuant to paragraph 6 of the Fourth Schedule of the LTSA, thereby serving as a notice to the world, the Board has a further reason to dismiss the Application where the defect is incurable. Under paragraph 7 of the Fourth Schedule of the LTSA where an application is dismissed, the applicants are required to cancel the registration of Form 1 but in regard to the Application at hand, if the Application is not dismissed but merely given leave to be amended, a false document would remain as good notice to the world. This would be unacceptable.

23. Second, a false statutory declaration that is part of the application documents or Form 1 would be an example of such an incurable defect since the Board is not empowered to allow an amendment to a statutory declaration. Indeed, there is no provision under the Oaths and Statutory Declaration Act for the amendment of statutory declarations although there is a provision for the punishment of false statutory declaration. This situation would require the Applicants to withdraw the

statutory declaration already filed and re-file a new statutory declaration to commence the constitution of a new Board.

Conclusion

24. The Board's oral decision having been made on the face of the documents and not on the merits, the Applicants are not prevented from re-filing a fresh set of documents.

25. As to the issue of costs, no order was given since a defective application leading to a dismissal was not made an issue of the objections filed by the Respondents.

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MRS TAN SOOK YEE

Member
Strata Titles Boards

MR TEO PIN

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22 AUG 2007