

BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT

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(STRATA TITLES BOARDS) REGULATIONS 2005**

STB No. 82 of 2017

In the matter of an application under **section 113** of the Building Maintenance and Strata Management Act in respect of the development known as **Balestier Point** (MCST Plan No. 1420)

Between

Timothy Siah Yang Tek

... Applicant

And

28th Management Council to MCST 1420

... Respondent

GROUNDS OF DECISION

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5 April 2018

Coram:	Mr Alfonso Ang	(President)
	Ms Elaine Chew	(Member)
	Dr Tan Teng Hooi	(Member)

1. The Applicant, Siah Yang Tek, Timothy is the subsidiary proprietor of unit #01-04 in the development known as Balestier Point located at 279 Balestier Road Singapore 329727 and the Respondents, 28th Management Council to MCST Plan No. 1420 (the “MCST”), is the 28th Management Council to the management corporation of the development.
2. This is a matter concerning section 47 of the Building Maintenance and Strata Management Act, Chapter 30C (“BMSMA”), where the Applicant made a request to obtain a copy of an audio recording made by MCST Plan No. 1420 at the 28th Annual General Meeting (the “AGM”).

BACKGROUND

3. The AGM of the MCST was held on 22 July 2017. The Applicant was unable to be present at the AGM and appointed his father, Siah Ooi Choe Francis as his proxy to attend the AGM on his behalf.
4. Following the AGM, the Applicant's father informed him that matters regarding allocation of parking lots within the development and the income generated from parking lots of the development were discussed during the AGM (the "**Discussions**"). However, the Applicant's father could not remember the details of the Discussions.
5. By a circular dated 24 July 2017, the MCST informed all subsidiary proprietors of the resolutions passed at the AGM. The circular did not mention matters related to the Discussions.
6. On 18 August 2017 and by a WhatsApp message to Mr Richard Tang, Director of Dickson Property Consultants Pte Ltd and managing agent of the development ("**Richard**"), the Applicant requested for "*the audio / video recording of the latest AGM at Balestier Point.*" Richard replied on the same day and confirmed that an "*audio recording in CD format*" was available. However, he informed the Applicant that approval from the Respondents had to be obtained.
7. Upon further queries made by the Applicant regarding the AGM recording, Richard replied and sought to clarify the Applicant's intentions for requesting for the AGM recording and which portion of the recording he required. Richard also informed the Applicant that the Respondents were concerned with legal implications such as the Personal Data Protection Act 2012 ("**PDPA**"). The Applicant responded to Richard's message and stated that he was requesting for the AGM recording as a subsidiary proprietor and that no explanations for his request were needed.
8. By a WhatsApp message on 29 August 2017, Richard notified the Applicant that the advice he had received was not to release the AGM audio recording. Instead, a copy of the minutes of the AGM was extended to the Applicant.
9. By a letter dated 29 August 2017, the Applicant through his solicitors, M/s Lee & Lee, wrote to the Respondents requesting to "*inspect and take copies of the audio recording of the entire proceedings of the 28th Annual General Meeting held on 22 July 2017*", pursuant to section 47 of the BMSMA. It was further highlighted that the provisions of the PDPA do not entitle the MCST to refuse the Applicant's request.
10. The Respondents replied by way of letter dated 5 September 2017, and indicated that the MCST were in no position to provide the Applicant with a copy of the AGM's audio recording due to legal implications such as the PDPA. However, the Applicant was invited

by the Respondents to listen to the AGM's audio recording at the MCST's office by prior appointment.

11. By a letter dated 8 September 2017, M/s Lee & Lee reiterated the legal position that the Applicant is entitled to inspect and take copies of the AGM's audio recording pursuant to s.47 of the BMSMA. In addition, it also specified that the MCST was not entitled to refuse the Applicant's request by reason of the PDPA as s.4(6)(b) of the PDPA states that "*the provisions of other written law shall prevail to the extent that any provision of Parts III to VI is inconsistent with the provisions of that other written law.*"
12. On 19 September 2017, the Applicant made an application to the Strata Titles Boards for an order under section 113 of the BMSMA.

APPLICANT'S CASE

13. The Applicant relied on the case of *Tan Hee Chye v MCST Plan No. 395* [2016] SGSTB 1 ("*Tan Hee Chye*"), where the Board had previously held that the audio recordings of an annual general meeting is a 'record or document' under section 47 of the BMSMA. The Board applied the literal Oxford Dictionary meanings of 'record' and 'document' and held that audio recordings of an annual general meeting fell within both definitions.
14. The Applicant relies on the express wording of the word 'shall' under section 47 of the BMSMA, the claims that the Respondents are bound by a mandatory obligation to allow the Applicant to inspect and take copies of the AGM audio recording. Section 47(1)(b)(iv) BMSMA and section 47(4) BMSMA states:

*"A management corporation **shall**, upon application made to it in writing in respect of a lot which is the subject of the subdivided building concerned by a ... subsidiary proprietor ... and on payment of a prescribed fee ... make available for inspection by the applicant or his agent ... any other record or document in the custody or under the control of the management corporation".* (emphasis ours)

"A person entitled to inspect a document made available under subsection (1)(b) may take extracts from or make a copy of, the document..."
15. In addition, the Applicant relies on the Strata Titles Board decision in *Tan Hee Chye* which states that:

*"(A Management Corporation's) duties under section 47 of the BMSMA **require** the (Management Corporation) to make all available for inspection the documents specified in the section upon payment of the prescribed fee."* (emphasis ours)
16. The Applicant contends that as the Respondents had invited the Applicant to listen to the AGM audio recording by its letter dated 5 September 2017, the Respondents had in doing

so, acknowledged that it was bound under section 47(1)(b)(iv) of the BMSMA to allow an inspection of the AGM audio recording without the Applicant providing any reasons.

17. The Applicant also maintains that there was no breach of the PDPA pursuant to section 4(6)(b) of the PDPA, as the Respondents' obligations under section 47 of the BMSMA prevail over any provisions of Parts III to VI of the PDPA. Section 4(6)(b) of the PDPA provides that:

“Unless otherwise expressly provided in this Act – the provisions of other written law shall prevail to the extent that any provisions of Parts III to VI is inconsistent with the provisions of that other written law”.

18. At paragraph 7 of Mr Loo Ngee Long's (Chairman of the Respondents) affidavit of evidence-in-chief, Mr Loo had affirmed that the *“audio recordings are and were at all material times under the custody and control of Dickson Property Consultants”* and that *“at no time were the recordings ever under the custody and control of the Respondent”*. The Applicant disputes the above position taken by Mr Loo and contended that the Respondents and its representatives have by their conduct and through various correspondences shown clearly that the AGM audio recording is in the Respondents' custody or under its control.

RESPONDENTS' CASE

19. The Respondents gave their evidence through Loo Ngee Long (Chairman of the Respondents), and Tang Kiam Peng (Director of Dickson Property Consultants Pte Ltd), also known as Richard.
20. The Respondents also referred to the case of *Tan Hee Chye*. In contrast, the Respondents' position is that the decision in *Tan Hee Chye* should not be followed as the Board had previously failed to recognise that the right of a subsidiary proprietor to make copies only extends to documents in the written form. The Respondents submit that as section 47(4) of the BMSMA only provides a person to *“take extracts from, or make a copy of, the document”*, the provision only provides the Applicant with the right to make a copy of a *“document”* and not of a *“record”* or any other item.
21. In addition, the Respondents state that a *“document”* referred to in section 47(4) BMSMA should be taken to be something in the written form due to section 11 of the Building Maintenance (Strata Management) Regulations 2005 (**“BMSMR”**). The Respondents' argument is that as section 11 of the BMSMR provides that making a copy of any document would cost 50 cents per page, this in turn, made it clear that section 47(4) of the BMSMA is referring only to documents in the written form that can be printed out in pages and not to information in the form of audio recordings or any other medium

22. The Respondents contend that its obligations under s.47 of the BMSMA should be guided by the requirements and restrictions in the PDPA. The Respondents' position is that according to section 13 of the PDPA, the managing agent is allowed to record the AGM only if the managing agent has been given consent or deemed consent by the individuals present at or attending the AGM. It was the Respondents' position that the express or deemed consent of the subsidiary proprietors was only obtained with regards to the collection of their personal data for purposes of setting the minutes of meeting in the written form, and at the very most, the purpose of collecting the information was for recording attendance at AGM and identification of proposer and seconder for the resolutions which needed to be passed at the AGM. Thus, the Respondents would not be able to release or disclose copies of the AGM audio recording due to the lack of consent.
23. Furthermore, the Respondents specifically highlighted section 21(3)(c) of the PDPA which precludes an organisation from providing an individual with his personal data or other information if the provision of such data or other information could "*reasonably be expected to reveal personal data about another individual*". The Respondents highlighted that should the audio recording be released in its entirety, it would definitely reveal personal data about the other subsidiary proprietors.
24. The Respondents relied on Tang Kiam Peng's Affidavit of Evidence-in-Chief, which states that the AGM audio recordings are and were at all material times under the custody and control of the managing agent and that they were never under the custody and control of the Respondents. Thus, the Respondents submitted that the AGM audio recording cannot be said to be '*in the custody or under the control of the management corporation*' as required under section 47(1)(b)(viii) of the BMSMA or '*in the possession or under the control of the organisation*' as required under section 21(1)(a) of the PDPA.
25. The Respondents also submit that under section 113 of the BMSMA, the Board is not mandated to order a management corporation to make available a record or document that it had failed to make available for inspection to the applicant. The Respondents state that it is only where the Board "considers" that the Respondents had "*wrongfully (b) failed to make available for inspection...any record or document that, under this Act, he is entitled to inspect...*", may the board order that the Respondents supply or make available the record or document to the Applicant.
26. The Respondents urges the Board not to exercise its discretion in making available the record or document for inspection for the following reasons:
 - (i) The Respondents have already offered the Applicant to listen to the AGM audio recording;
 - (ii) The Respondents are not entitled under the BMSMA to make copies of the AGM audio recording;
 - (iii) The subsidiary proprietors who attended the AGM and who may be identified would not have consented to the AGM audio recording being used for any purpose other

- than the recording of their attendance at the AGM and identification of proposer and seconder for the resolutions which need to be passed at the AGM; and
- (iv) To guard against the high likelihood and reasonable expectation that personal data of other subsidiary proprietors may be revealed in the process.

BOARD'S DECISION

27. Both the Applicant and Respondents cited the previous Strata Titles Boards case of *Tan Hee Chye*, albeit with different interpretations. Having considered the submissions from both the Applicant and the Respondents, the Board rejects the Respondents' proposed distinction between the words 'records' and 'documents' under section 47 of the BMSMA.
28. It is not disputed that under section 47(4) of the BMSMA, a person who is entitled to inspect a document may take extracts from, or make a copy of that document. With reference to the Strata Titles Boards decision in *Tan Hee Chye* and by construing section 47(4) of the BMSMA in the context of section 47 BMSMA, the Board agrees with the Applicant's submission that the Respondents' proposed distinction between the words 'records' and 'documents' is by its nature, artificial. In the Board's view, the case of *Tan Hee Chye* should be followed and the AGM audio recording must logically fall within the definition of a 'document'.
29. The Board notes that section 11 of the BMSMR only provides for the fees payable to a management corporation based on the rate of 50 cents per copied page. Nevertheless, the Board is of the view that the Respondents' narrow interpretation of the wordings in section 11 of the BMSMR should not be employed as a basis for disallowing the Applicant to obtain a copy of the AGM audio recording. Despite the absence of a prescribed fee to make copies of an audio recording, the Respondents are not in any way prohibited from making a copy of the AGM audio recording by charging a reasonable fee.

NATURE OF SECTION 47 AND 113 BMSMA

30. Having considered the case of *Tan Hee Chye* and the imperative nature of the word 'shall' under section 47(1) of the BMSMA, the Board finds that the management corporation is under a mandatory obligation to make available for inspection any record or document in the custody or under the control of the management corporation upon a written application by an applicant and on payment of a prescribed fee. In accordance with section 47(4) of the BMSMA, this mandatory obligation extends to the making of copies of such a document.
31. The Board agrees with the Respondents' view that under section 113 of the BMSMA, the Board is given the discretion to order a relevant party to supply or make available the information, record or document to an applicant if the Board considers such information, document or record was wrongfully withheld from the applicant or that a party had

wrongfully failed to make such information available for inspection by the applicant or his agent.

32. The concurrent reading of sections 47(1) and 113 of the BMSMA provides a clear indication as to the dynamics and application of the two sections. It is clear from the reading of section 47(1) of the BMSMA that an applicant is not required, in his written application, to inform the management corporation (or as the case may be) of his reasons for requesting such information, document or record. This is the nature of the mandatory obligation placed upon the management corporation under section 47(1).
33. Where a management corporation fails to make available for inspection (section 43(1) BMSMA) or fails to provide the applicant with an extract or copy of the document (section 43(4) BMSMA), the applicant may make an application to the Strata Titles Boards under section 113 of the BMSMA. It is then for the constituted Board to decide pursuant to its discretion under section 113 of the BMSMA, whether a management corporation had wrongfully withheld or failed to make available such information, record or document to the applicant. If the Board is satisfied that the information was not wrongfully withheld or that the management corporation did not wrongfully failed to make available any record or document, the Board has the discretion not to exercise its power under section 113 of the BMSMA.
34. The Applicant had by a letter dated 29 August 2017 and through his solicitors, M/s Lee & Lee, wrote to the Respondents requesting to inspect and take copies of the audio recording of the AGM. Pursuant to section 47 of the BMSMA, the Respondents were under a mandatory obligation to allow the Applicant to inspect and take copies of the AGM audio recording. The Applicant subsequently clarified in his submissions that he had requested to takes copies of the AGM recordings as “*he was unable to be present at the AGM on 22 July 2017 where there was a discussion on income generated from parking within the development.*”

PERSONAL DATA PROTECTION ACT 2012

35. In the course of the proceedings, it was evident that the positions taken by the Respondents regarding the legal implications of the PDPA were inconsistent. At paragraph 37 of the Respondents’ submissions, the Respondents stated that an “*audio recording is taken to contain personal data if an individual can be identified from that audio recording, or from that recording and other information that the organisation has or is likely to have access to*” and as a result of that, copies of the AGM recordings cannot be provided as to do so would be a breach of the PDPA.
36. By contrast, the Respondents were willing to allow the Applicant to inspect the AGM recording under section 47 of the BMSMA as reflected by the letter dated 5 September 2017 to the Applicants, despite the fact that subsidiary proprietors may also be at risk of being identified if the Applicant was given the opportunity to listen to the AGM recording.

As such, it is difficult to appreciate the fine distinction drawn by the Respondents in the above two situations regarding the protection of an individual's personal data.

37. Having considered the PDPA concerns of the Respondents, the Board is of the view that the Respondents' contention as to a subsidiary proprietor's personal data protection in the above two situations are inconsistent with one another.
38. Moreover, in (1) *Exceltec Property Management Pte Ltd*; (2) *Management Corporation Strata Title Plan No 2956*; (3) *Strata Land Property Consultants Pte Ltd* [2017] SGPDP 8, the Personal Data Protection Commission decided at [37] that "*the names, unit numbers, and voting shares of the residents...are publicly available information under the PDPA.*" The Commission's decision was based on the fact that such information can be found in the strata roll, which is generally available to the public and that there were few restrictions under the BMSMA for a person to gain access to the strata roll.
39. In light of the above, the Board finds that section 47 of the BMSMA does not, in any manner, contradict the provisions in the PDPA as information relating to subsidiary proprietors are considered publicly available pursuant to section 17(3) of the PDPA and Paragraph 1(d) of the Fourth Schedule of the PDPA.

CUSTODY AND CONTROL

40. Both the Respondents and the managing agent of the development, Richard contended that at no time were the AGM recordings "*ever under the custody and control of the Respondent*". The Board notes that during the cross-examination of Richard, he had stated that the AGM recordings were currently under his custody and control. However, when questioned as to whether the Respondents would ever obtain custody and control of the AGM recordings, Richard indicated that the AGM recording would be given to the Respondents upon its request.
41. Having considered Richard's response, it is indisputable that while the AGM recording was not under the custody of the Respondents, it was undoubtedly under the control of the Respondents. It was clear from Richard's response that the Respondents would be given the AGM recording if they had requested for it.
42. The Board accordingly orders that the Respondents supply the Applicant a copy of the audio recording of the AGM held on 22nd July 2017, pursuant to section 47(4) of the BMSMA. As there is no prescribed fee for making a copy of the AGM audio recording, the Board orders that the Respondents may charge a reasonable fee not exceeding S\$300.00.

43. The Board orders that the Respondents pay the Applicant costs as follows:
- (i) Costs of S\$5,000.00;
 - (ii) Reimbursement of all fees payable to the STB for the sum of S\$1,100.00, being application fee, hearing fee and fee for delivery of decision; and
 - (iii) Reasonable disbursements.

Dated this 5th day of April 2018

MR ALFONSO ANG
President

MS ELAINE CHEW
Member

DR TAN TENG HOOI
Member

Mr Daniel Chen (M/s Lee & Lee) for the Applicant.
Ms Valerie Ang / Mr Hiren Jonas (M/s Straits Law) for the Respondents.