Fu Loong Lithographer Pte Ltd and others *v* Mok Wai Hoe and another and another matter [2014] SGCA 30

Case Number : Civil Appeal No 110 of 2013 and Summons No 6634 of 2013

Decision Date : 23 May 2014

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Leo Cheng Suan and Teh Ee-Von (Infinitus Law Corporation) for the appellants; Lee Peng Khoon Edwin, Poonam Bai d/o Ramakrishnan Gnanasekaran and Chan Ying Keet Jasmine (Eldan Law LLP) for the first respondent; Tan Tian Luh and Lin Zixian (Chancery Law Corporation) for the second respondent.

Parties : Fu Loong Lithographer Pte Ltd and others — Mok Wai Hoe and another

LAND – Strata Titles – meetings

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2014] 1 SLR 218.]

23 May 2014 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

Introduction

1 The appellants (collectively, "the Appellants") are five subsidiary proprietors of a strata development ("the Development"). The second respondent ("the 2nd Respondent") is the Management Corporation Strata Title Plan No 1024 ("MCST 1024"), the management corporation of the Development. The first respondent ("the 1st Respondent") is the chairperson of the 2nd Respondent.

2 At an extraordinary general meeting ("EGM") of the 2nd Respondent held on 5 June 2013 ("the 5 June 2013 EGM"), the 1st Respondent, in his capacity as chairperson, ruled that certain motions put forth by the Appellants were out of order and that the Appellants were conflicted out of voting on another motion. The Appellants subsequently brought an application to invalidate the 1st Respondent's rulings and to restrain him or any chairperson subsequently elected from making such rulings in future. Most of the prayers in the Appellants' application were dismissed by the High Court judge who heard the matter ("the Judge"); this decision of the Judge (see *Fu Loong Lithographer Pte Ltd and others v Mok Wai Hoe and another* [2014] 1 SLR 218 ("the GD")) forms the basis of the present appeal.

3 The key issue in this appeal is whether the 1st Respondent, acting in his capacity as the chairperson of a general meeting of the 2nd Respondent, was entitled to rule certain motions out of order and reject the votes of certain subsidiary proprietors on the basis of conflict of interest. This appeal therefore concerns the duties and powers of the chairperson of a general meeting of a management corporation under the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("the BMSMA").

Background to the dispute

4 The present dispute stems from a long-standing tussle between two factions of the subsidiary proprietors of the lots in the Development. One faction comprises companies run by the Mok family ("the Mok Camp"), which owns a majority of the number of lots in the Development and therefore controls the council of the 2nd Respondent ("the Council"). The other faction comprises the Appellants and other subsidiary proprietors aligned with them ("the Appellants' Camp"), which possesses a majority in terms of share value in the Development and therefore can decide whether or not to pass motions requiring a simple majority that are put to a vote in a general meeting.

5 The disagreement between the two factions, which began in about 2008, concerns certain renovations works carried out on the Development and the acts of the former chairperson of the 2nd Respondent, Mr Mok Wing Chong ("MWC"). MWC is the father of the 1st Respondent. According to the Appellants, MWC wrongfully used the funds of the 2nd Respondent for the renovation works without authorisation and also breached his duties as chairperson by, *inter alia*, favouring the units owned by the Mok Camp in carrying out the renovation works.

6 In July 2011, the Appellants requisitioned an EGM to call for a vote of no confidence in MWC as chairperson and to elect a new chairperson with immediate effect. Upon receiving notice of the requisition, the Council, in what appeared to be a pre-emptive move, convened a meeting on 5 August 2011 ("the 5 August 2011 Council Meeting"), during which MWC resigned and the 1st Respondent was elected as the new chairperson of the 2nd Respondent.

7 The Appellants nevertheless proceeded to convene an EGM on 5 September 2011 ("the 5 September 2011 EGM"), which the Mok Camp attended. At the EGM, the 1st Respondent, in his new capacity as chairperson, explained that the motions put forth by the Appellants were out of order since MWC had already resigned; he then called the meeting to a close. However, the Appellants' Camp purported to continue the meeting and elected one Lim Chee Yong ("Mr Lim") as chairperson instead. The next day, 6 September 2011, the Council (with the 1st Respondent as chairperson) convened an annual general meeting ("the 27th AGM"), during which various resolutions were passed. The Appellants' Camp did not attend this meeting as it did not recognise the 1st Respondent as chairperson. Instead, the Appellants' Camp convened its own annual general meeting ("AGM") in the same room wherein it purported to elect new members to the Council.

8 The Mok Camp then applied to a Strata Titles Board ("STB") in STB No 78 of 2011 ("STB 78/2011") to invalidate the election of Mr Lim as chairperson at the 5 September 2011 EGM and the election of new Council members by the Appellants' Camp at its purported AGM on 6 September 2011. The STB allowed this application on 18 February 2013, and also validated MWC's resignation as chairperson of the 2nd Respondent as well as the election of the 1st Respondent as the new chairperson by the Council during the 5 August 2011 Council Meeting. The Appellants' Camp did not appeal against the STB's decision.

9 On 8 May 2012, while the proceedings in STB 78/2011 were still ongoing, the Appellants commenced Suit No 311 of 2012 ("Suit 311/2012") against MWC seeking, *inter alia*, to compel MWC to make restitution to the 2nd Respondent for the moneys used without authority to carry out the renovation works to the Development. The 2nd Respondent and other individuals who were Council members at the material time were subsequently added as third parties to Suit 311/2012 pursuant to an application by MWC.

10 This brings us to the 5 June 2013 EGM, which was requisitioned by the Appellants' Camp to consider and pass various motions by ordinary resolution. At the 5 June 2013 EGM, the 1st Respondent ruled that a number of motions were out of order for various reasons. The 1st Respondent also rejected the votes of the Appellants and certain other subsidiary proprietors from

the Appellants' Camp ("the Contested Votes") on Motion 2, which was a motion "[t]hat the appointment of Chancery Law Corporation as legal representatives of MCST 1024 be terminated with immediate effect", [note: 1] on the basis that the voters concerned were in a conflict of interest.

11 Dissatisfied with the 1st Respondent's rulings, the Appellants filed an application in the High Court to invalidate his ruling that Motions 1(b), 1(e), 3(a), 3(b), 3(d), 3(e), 8 and 9 were out of order, These motions were as follows: [note: 2]

1. That the following matters be determined only by the management corporation in a general meeting:

   …

   b. appointment of legal representatives;

   …

   e. appointment of any contractors or consultants or professional which costs or fees exceed $500 in total.

…

3. That the following past resolutions, passed at the 26th and/or 27th Annual General Meetings be revoked:

   a. The ratification of the Upgrading Work Expenses of about S$530,000 or any other sum;

   b. The adoption of all Financial Reports ended 30 June in years 2009, 2010, 2011 and 2012 and the interim Financial Report from 1 July 2012 to 31 July 2012[;]

   …

   d. That the Management and Sinking Fund Contribution be increased to S$24.00 and $19.50 per share value per month respectively;

   e. That there be no restriction placed on the 28th Council.

…

8. That the following late payment interest charges levied from October 2011 to March 2013 on the following Subsidiary Proprietors be revoked and credited to the Accounts of the following Subsidiary Proprietors:

   (a) Block 53 #02-01/02, Fu Loong Lithographer Pte Ltd – $3,913.91

   (b) Block 53 #03-01, In-Lite Enterprise (S) Pte Ltd – $1,681.35

   (c) Block 53 #03-02/04, Caldecott Direct Marketing (Pte) Ltd – $2,018.19

   (d) Block 53 #03-03, Poh Kim Video Pte Ltd – $1,681.35

(e) Block 53 #04-01, CKT Thomas Pte Ltd – $1,681.35

(f) Block 53 #04-02/04, Hock Guan Cheong Builder Pte Ltd – $2,232.33

(g) Block 53 #04-03, LCE Electrical Engineering Pte Ltd – $1,681.35

(h) Block 53 #05-02/04, KDT Holdings Pte Ltd – $2,751.32

…

9. That the applications by the subsidiary proprietors for the subdivision of the following lots at Block 53 be approved:

(a) Block 53 5th floor: #05-02/04

Job No. 1303 – Drawing No. URA-101 of 7 Mar 2013

(b) Block 53 3rd & 4th floor: #03-02/04, #04-02/04

Job No. 1033 – Drawing No. URA-101 of 7 Mar 2013

(c) Block 53 3rd a& 4th floor: #03-01, #03-03, #04-01, #04-03

Job No. 1302 – Drawing No. URA-101 of 7 Mar 2013

(d) Block 53 2nd floor: #02-01/02

Job No. 1301 – Drawing No. URA-101 of 7 Mar 2013

and that the Managing Agent be duly authorised to sign the Consent Letters to URA [the Urban Redevelopment Authority] and all other relevant documents, forms, approvals required by the authority or statutory bodies.

12 In addition, the Appellants applied for the following orders:

(a) that the 1st Respondent or any other chairperson subsequently elected be restrained from ruling the same or similar motions out of order should they be put forth for consideration by the general body of subsidiary proprietors at an EGM or AGM;

(b) that the rejection of the Contested Votes on Motion 2 by the 1st Respondent at the 5 June 2013 EGM on the basis that the voters concerned were in a conflict of interest be invalidated; and

(c) that the 1st Respondent or any other chairperson subsequently elected be restrained from rejecting votes by subsidiary proprietors who were entitled to vote under the provisions of the BMSMA.

13 We should point out at this juncture that although the opening words of Motion 3 referred to "the 26th and/or 27th Annual General Meetings" (see [11] above), the Appellants clarified in the proceedings below that this was an error and that they meant to refer instead to "the 27th and/or

28th AGM" (see the GD at [47]). According to the Appellants, this error affected Motions 3(d) and 3(e) in particular, which deal with resolutions purportedly passed at the 28th AGM. These two motions are not, however, the subject of the present appeal; and in so far as Motions 3(a) and 3(b) are concerned, they relate only to past resolutions passed at the 27th AGM. This error in the opening words of Motion 3 is therefore immaterial for the purposes of this appeal.

The decision below

14 The Judge, after hearing the parties on 15 August 2013, granted the Appellants' application to invalidate the 1st Respondent's rulings only with respect to Motions 1(b) and 1(e), subject to the proviso that any future and/or intended amendments to the said motions should not touch on the legal representatives already appointed by the 2nd Respondent to defend itself in Suit 311/2012. The rest of the Appellants' prayers were dismissed. The Judge's decision on the 1st Respondent's rulings was as follows:

(a) In respect of Motions 1(b) and 1(e) – the 1st Respondent's ruling that these motions were unenforceable was invalidated as it was inconsistent with s 59 of the BMSMA, which gave subsidiary proprietors the right to reserve certain matters to be determined only by them in a general meeting.

(b) In respect of Motion 3(a) – although the 1st Respondent's reasons for ruling Motion 3(a) out of order were not correct, his ruling was nonetheless validated for the simple reason that this motion purported to revoke a past resolution passed at the 27th AGM to ratify upgrading work expenses when no such resolution had been passed.

(c) In respect of Motion 3(b) – the 1st Respondent was justified in ruling Motion 3(b) out of order for being improper and unenforceable, given his legitimate concern that there would be no replacement set of audited accounts if the adoption of the audited financial reports for the specified years ("the Disputed Financial Reports") was revoked. The Appellants had also not provided any valid explanation for wanting to revoke the adoption of those financial reports.

(d) In respect of Motion 8 – the 1st Respondent's ruling that this motion, which sought the refund of certain late payment interest charges, was out of order for being in conflict with the BMSMA was validated. Once interest charges had been paid, they became part of the management fund and could not be disbursed otherwise than for the purposes stated in s 38(3) of the BMSMA.

(e) In respect of Motion 9 – the 1st Respondent's ruling that Motion 9 was out of order for being unenforceable was validated, given that the motion was to approve an application for subdivision of lots by *ordinary* resolution, whereas the proposed subdivision would likely require a 90% resolution according to an architect's report dated 25 May 2013 obtained by the 1st Respondent.

We note in passing that in the GD, the Judge did not set out his reasons for refusing to invalidate the 1st Respondent's rulings on Motions 3(d) and 3(e) as the Appellants did not appeal against his decision on these two motions.

15 With regard to the 1st Respondent's rejection of the Contested Votes on Motion 2 at the 5 June 2013 EGM on the basis of conflict of interest, the Judge held that although there was no express provision in the BMSMA granting the chairperson of a general meeting of a management corporation the power to reject for any reason votes from a subsidiary proprietor who was *prima facie*

entitled to vote, it might be proper for the chairperson to do so in certain exceptional circumstances. In the present case, the 1st Respondent was correct to reject the Contested Votes on Motion 2 because to allow the Appellants to immediately terminate the appointment of the 2nd Respondent's counsel in proceedings wherein the Appellants' interests were adverse to those of the 2nd Respondent would effectively deny the 2nd Respondent its right to be heard in Suit 311/2012. The Judge therefore validated the 1st Respondent's decision to reject the aforesaid votes.

16 The Judge also dismissed a number of procedural arguments raised by the Respondents. First, the Judge dismissed the 1st Respondent's argument that the Appellants should have brought the matter in the first instance before a STB instead of the High Court. The Judge held that the Appellants were entitled to bring their application before him in the absence of a provision expressly ousting the court's jurisdiction or granting STBs exclusive jurisdiction over strata management disputes. Second, the Judge dismissed the 2nd Respondent's argument that the Appellants were not the proper plaintiffs to make the application. He pointed out that the Appellants were seeking to invalidate rulings by the 1st Respondent which affected them personally, and in respect of which they were therefore entitled to apply to a STB for a determination under the BMSMA.

The present appeal

17 This appeal is against the following parts of the Judge's decision:

(a) that the 1st Respondent's rulings with respect to Motions 3(a), 3(b), 8 and 9 are validated;

(b) that the 1st Respondent's rejection of the Contested Votes on Motion 2 on the basis that the voters concerned were in a conflict of interest is validated; and

(c) that the Appellants are not to table any future and/or intended amendments to Motions 1(b) and 1(e) that touch on the legal representatives already appointed by the 2nd Respondent to defend itself in Suit 311/2012.

18 Before us, the Appellants also applied via Summons No 6634 of 2013 ("SUM 6634/2013") for liberty to adduce additional evidence in the form of a report by C&C Chartered Architects dated 7 October 2013. This report stated that the Urban Redevelopment Authority ("URA") required only a consent letter from the 2nd Respondent, as management corporation of the Development, for the proposed subdivision of lots that was the subject of Motion 9. The purpose of adducing this report was to challenge the Judge's finding in relation to Motion 9 that the 1st Respondent had a reasonable basis to rule this motion out of order because the proposed subdivision of lots would likely require a 90% resolution. We will therefore deal with SUM 6634/2013 when we discuss the 1st Respondent's ruling on Motion 9.

The issues to be determined

19 In this appeal, there are three issues which arise for our decision:

(a) Were the 1st Respondent's rulings at the 5 June 2013 EGM that Motions 3(a), 3(b), 8 and 9 were out of order valid?

(b) Was the 1st Respondent's rejection of the Contested Votes on Motion 2 at the 5 June 2013 EGM on the basis of conflict of interest valid?

(c) Did the Judge err in holding that the Appellants are not to propose any future and/or intended amendments to Motions 1(b) and 1(e) that touch on the lawyers already appointed by the 2nd Respondent to defend itself in Suit 311/2012?

20 At this juncture, we note that although the 1st Respondent and the 2nd Respondent (collectively, "the Respondents"), in their respective cases for this appeal, raised similar arguments that a STB was a more appropriate forum than the High Court for the present dispute, this argument had already been considered and rejected by the Judge, and neither of the Respondents filed a cross-appeal against the Judge's decision. We therefore decline to revisit the Judge's decision that the Appellants were entitled to bring their application before the High Court without having to first bring it before a STB.

Validity of the 1st Respondent's rulings that Motions 3(a), 3(b), 8 and 9 were out of order

21 At the outset, it is useful to outline the relevant statutory provisions in the BMSMA governing the conduct and chairing of general meetings of management corporations. Paragraph 6 of the First Schedule of the BMSMA ("the First Schedule") provides that the chairperson of a management corporation shall preside at any general meeting of the management corporation at which he is present; if he is absent from the meeting, then the persons present and entitled to vote at that meeting may elect one of their number to preside at that meeting, and that person shall, while he is so presiding, be deemed to be the chairperson of the management corporation. The chairperson at a general meeting of a management corporation has the power to rule motions out of order in certain circumstances pursuant to para 4 of the First Schedule, which states:

Motions out of order

4. At a general meeting of a management corporation or subsidiary management corporation, its chairperson may rule that a motion submitted at the meeting is out of order if he considers that the motion, if carried, would conflict with this Act or the by-laws or would otherwise be unlawful or unenforceable.

Standard of review of a chairperson's ruling that a motion is out of order

22 Before we delve into the validity of the 1st Respondent's rulings as chairperson that Motions 3(a), 3(b), 8 and 9 were out of order, it is necessary to clarify whether or not such rulings are reviewable by the courts, and if so, what is the applicable standard of review.

23 There were a number of views before us on this issue. In the proceedings below, the Judge was of the opinion that the phrase "if he considers" in para 4 of the First Schedule conferred on the chairperson of a general meeting of a management corporation the discretion to decide whether a motion would conflict with the BMSMA or the by-laws of the particular strata development concerned, or otherwise be unlawful or unenforceable. The Judge therefore held that the burden was on the Appellants to show that the chairperson's decision to rule motions out of order was made without rational basis or was made in bad faith. On appeal, the Appellants' case was that the burden should be on the chairperson of a general meeting of a management corporation to show that he had acted properly because his duty was fiduciary in nature. The Appellants further submitted that a chairperson's discretion to rule motions out of order should only be exercised in a justified and rational manner.

24 As for the 1st Respondent, he agreed with the Judge that para 4 of the First Schedule gave the chairperson of a general meeting of a management corporation the discretion to rule motions out of

order, and that the burden was on the Appellants to show that this discretion was improperly exercised. [note: 3] The 1st Respondent further submitted that the chairperson's discretion to rule motions out of order was to be exercised in accordance with s 61(1) of the BMSMA, which states as follows:

> **Duty and liability of council members and officers**
>
> **61.**—(1) A member of a council shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.
>
> …

25 Unlike the 1st Respondent, the 2nd Respondent was of the view that the chairperson of a general meeting of a management corporation did not necessarily owe the same duties of a fiduciary which he would owe in his capacity as a member of the management corporation's council under s 61 of the BMSMA. Instead, the 2nd Respondent submitted, the standard of review of the conduct of a chairperson under the BMSMA should be limited to considering whether he had acted *bona fide* and for the proper purpose of carrying out his functions under the First Schedule, following the Australian position at common law. The 2nd Respondent agreed, however, with the 1st Respondent's (as well as the Judge's) stance that the burden of proving that the 1st Respondent's rulings were invalid remained on the Appellants.

26 We agree with the 2nd Respondent that the duty imposed by s 61(1) of the BMSMA to act honestly and with reasonable diligence applies to a member of a management corporation's council in the exercise of his powers and the discharge of his duties *as a council member*; it does not necessarily apply to a council member acting as the chairperson of a general meeting of the management corporation. This point is reinforced by the fact that the chairperson presiding at a general meeting of a management corporation need not be a council member at all. As mentioned above, pursuant to para 6 of the First Schedule, if the chairperson of a management corporation is absent from a general meeting, those present at the meeting and entitled to vote may elect one of their number to preside at the meeting, and that person shall, while he is so presiding, be deemed to be the chairperson of the management corporation. Therefore, the chairperson of a management corporation acts as the chairperson of a general meeting of the management corporation not because to do so is part of the function of his office; rather, he acts as the chairperson of a general meeting of the management corporation as *persona designata* (see *McKerlie v Drillsearch Energy Ltd* [2009] NSWSC 488 at [37]).

27 In a similar vein, there is no authority for the proposition that the role of the chairperson of a general meeting of a management corporation is fiduciary in nature. It is true that the duty of a member of a management corporation's council is fiduciary in nature and analogous to that of a company director (see *Re Steel and Others and the Conveyancing (Strata Titles) Act 1961* (1968) 88 WN (Pt 1) (NSW) 467 at 470). However, the duties of the chairperson of a general meeting of a management corporation are not necessarily a mirror of the duties of the chairperson *qua* council member.

28 It is useful to have regard to the common law on the reviewability of decisions made by chairpersons of general meetings of companies, there being a dearth of case law dealing with this issue in relation to management corporations or similar entities in other jurisdictions. In many ways, a management corporation is similar in character to a company incorporated under the Companies Act (Cap 50, 2006 Rev Ed). It is a body corporate with a common seal, as well as specified powers, authorities, duties and functions; it also has a legal existence separate from that of its members (see

s 24 of the BMSMA as well as *Management Corporation Strata Title Plan No 586 v Menezes Ignatius Augustine* [1992] 1 SLR(R) 201 at [15]). A management corporation has thus been referred to as an unlimited liability company (see *Management Corporation Strata Title Plan No 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 ("*De Beers*") at [9]). We are therefore of the view that the common law principles applicable to decisions or rulings made by chairpersons of general meetings of companies are highly instructive when dealing with decisions or rulings made by chairpersons of general meetings of management corporations.

29 The English position is that the chairperson of a general meeting of a company does not have an unlimited discretion as to the manner in which he may exercise his powers; instead, he must exercise his powers for the purpose of ascertaining the sense of the meeting upon any resolution properly coming before that meeting (see *The Second Consolidated Trust Ltd v Ceylon Amalgamated Tea & Rubber Estates Ltd and Others* [1943] 2 All ER 567).

30 The leading English decision is *Byng v London Life Association Ltd and Another* [1990] Ch 170 ("*Byng*"), where the English Court of Appeal held that the decision of the chairman of a general meeting of a company to adjourn the meeting was invalid on the ground that he had failed to take into account relevant factors. In *Byng*, notice of an EGM of a company, to be held at a certain time and place, was given. On the day of the meeting, the venue proved inadequate to accommodate all those members wishing to be present. The chairman of the meeting then purported to close and adjourn the meeting to a later time that day, despite indications from a number of members that they would not be able to attend. At the adjourned meeting, a resolution was passed. The plaintiff brought an application seeking declarations that the purported meetings and the resolution were invalid. The court held that the chairman had the residual common law power to adjourn the meeting so as to give all persons entitled to vote a reasonable opportunity of voting, but found that he had not validly exercised this power since he had failed to appreciate the fact that the adjournment would preclude certain members from taking part in the meeting. The test adopted by Sir Nicolas Browne-Wilkinson VC at 189 was as follows:

> … The chairman's decision will not be declared invalid unless on the facts which he knew or ought to have known he failed to take into account all the relevant factors, took into account irrelevant factors or reached a conclusion which no reasonable chairman, properly directing himself as to his duties, could have reached, i.e. the test is the same as that applicable on judicial review in accordance with the principles of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223. …

31 Similarly, Woolf LJ stated in *Byng* at 194 that:

> In deciding whether [the chairman's] decision to adjourn the meeting was lawful, the approach of the court is no different from that which it regularly adopts when reviewing the exercise of discretion by a public body under a statutory power. … While the source of [the chairman's] power is different from that of a person performing a public function, the well established principles which determine whether there has been a proper exercise of discretion by a public body apply to the exercise by [the chairman] of his powers. In particular he must have regard to the nature of the power which he is exercising and use the power for the purpose for which it was given.

32 It appears that the Singapore courts have not yet had occasion to consider or apply the decision in *Byng*. However, *Byng* has been applied by the Malaysian Court of Appeal in *Datuk Johari Abdul Ghani & Ors v QSR Brands Bhd & Ors* [2007] 4 MLJ 19, a case concerning the decision of the chairman of a general meeting of a public listed company to adjourn the meeting.

33 The Australian courts, on the other hand, seem to have adopted the test of whether the ruling or determination of the chairperson of a general meeting of a company was made in bad faith or involved an error of law. In *Link Agricultural Pty Ltd v Shanahan and Others* [1999] 1 VR 466 ("*Link Agricultural*"), the Court of Appeal of Victoria considered the validity of a ruling by the chairman of an AGM of a company not to permit a shareholder to lodge his proxy-holder card. It was held that the validity of the chairman's ruling depended on whether it was made in good faith and for the purpose of facilitating the voting and the counting of votes upon the relevant resolutions in order that the will of the majority of members, eligible to vote and voting, should be reliably ascertained (see *Link Agricultural* at [40]).

34 Similarly, in *Australian Olives Ltd v Livadaras and Others* (2008) 172 FCR 34 ("*Livadaras*"), the Federal Court of Australia held that the decision of the chairperson of a meeting of a body corporate would be amenable to supervisory review by the courts if the decision was made in bad faith or if the chairperson, acting in good faith, made an error of law (at [70]). Applying this test, the court held that the decision of the chairperson of a meeting of members of a managed investment scheme registered under the Corporations Act 2001 (Cth) to exclude certain votes under that Act was valid. It should be noted that while the English decision of *Byng* was discussed in *Link Agricultural* and *Livadaras*, neither case expressly endorsed the approach taken in *Byng* (see *Link Agricultural* at [42] and *Livadaras* at [71]–[72]).

35 The Australian position was recently restated by the Federal Court of Australia in *C&C Fisher Pty Ltd and Another v Livadaras and Others* (2010) 265 ALR 301 ("*C&C Fisher*"), a case dealing with a similar ruling made at a similar meeting by the same chairperson as in the prior case of *Livadaras*. In *C&C Fisher*, Reeves J reiterated that the decision of the chairperson of a meeting of a body corporate could only be reviewed for bad faith or error of law, and clarified that there was no separate obligation on the part of the chairperson to act on reasonable grounds (see *C&C Fisher* at [70]–[73]). Reeves J stated that *Byng* was not good authority in Australia in so far as it applied, by analogy, the principles governing the judicial review of administrative action to the review of decisions by the chairperson of a meeting of a body corporate (see *C&C Fisher* at [78]).

36 In our view, however, there is in substance no inconsistency between the approach in *Byng* and the Australian position. As observed by Greenwood J in *Livadaras* at [71], *Byng* can be interpreted as applying an error of law test. That is, the chairman of a general meeting of a body corporate would commit an error of law if he: (a) fails to take into account all the relevant factors; and/or (b) takes into account irrelevant factors; and/or (c) reaches a conclusion which no reasonable chairman, properly directing himself as to his duties, could have reached. On a closer examination of the decision in *C&C Fisher*, it appears that the only substantive objection to the application of principles of judicial review to decisions made by the chairperson of a general meeting of a body corporate was that these principles were not expressly adopted in *Link Agricultural* and *Livadaras* (see *C&C Fisher* at [75]). The other two objections were in fact premised on the assumption that the analogy of judicial review of administrative decision-making was apt, and related to the constraint of refraining from reviewing findings of fact or the merits of administrative action and the fact that the approach towards *Wednesbury* unreasonableness in England differed from that in Australia (see *C&C Fisher* at [76]–[77]).

37 We are therefore of the view that applying *Byng*, the well-established principles in judicial review of administrative action should also apply to the exercise by the chairperson of a general meeting of a management corporation of his power to rule motions out of order at the general meeting. This is so even though a management corporation, like a company, is not a public body (see *De Beers* at [9]). Apart from acting in good faith when exercising this power, the chairperson presiding over a general meeting of a management corporation should exercise this power in

accordance with the law and the proper purposes of the power.

38 The purpose of the power of the chairperson of a general meeting of a management corporation (or other similar body corporate) to rule a motion out of order appears to be that a motion which is in conflict with the constitution, rules, standing orders, or any other statutory or other legally binding provisions that regulate the activity of the management corporation is *ultra vires* and will be held to be invalid from the beginning (see A D Lang, *Horseley*'s *Meetings: Procedure, Law and Practice* (LexisNexis, 6th Ed, 2010) at para 10.6). The wider duty of the chairperson of a general meeting of a body corporate is to preserve order in the meeting and to regulate the proceedings so as to give all persons entitled to vote a reasonable opportunity of voting (see *R v D'Oyly* (1840) 113 ER 763 at 771). Therefore, in *Wishart* v *Henneberry* (1962) 3 FLR 171 at 173, it was held that the chairman of a meeting of a body corporate could not rule out of order a motion which was within the competence of the meeting when all the conditions incidental to the submission of the matter to the meeting had been observed. A ruling by the chairperson of a meeting of a body corporate which, although made honestly, is plainly wrong in law and operates to deprive a member of his voting rights is *ultra vires* and should be set aside (see *ANZ Nominees Limited v Allied Resources Corporation Limited & Ors* (1984) 2 ACLC 783 at 789).

Whether the 1st Respondent's rulings that Motions 3(a), 3(b), 8 and 9 were out of order should be validated

39 Applying the principles above, we will now consider the 1st Respondent's rulings on Motions 3(a), 3(b), 8 and 9 in turn.

Motions 3(a) and 3(b)

40 Motion 3(a) was a motion to revoke a past resolution passed at the 27th AGM for "the ratification of the Upgrading Work Expenses of about S$530,000 or any other sum", [note: 4] while Motion 3(b) was a motion to revoke a past resolution passed at the same AGM for the adoption of the Disputed Financial Reports (as defined at [14(c)] above). As mentioned at [14] above, the Judge validated the 1st Respondent's decision to rule both of these motions out of order.

41 On appeal, the position taken by the parties on Motions 3(a) and 3(b) was rather unusual. The Appellants said that they initially filed an appeal regarding these motions because they thought that the Judge did not invalidate the 1st Respondent's decision on these motions because he agreed with the 1st Respondent's reasons. However, according to the Appellants, the Judge subsequently clarified in the GD that he had not invalidated the 1st Respondent's decision on these motions only because: (a) there was actually no resolution passed at the 27th AGM to ratify any previous upgrading work expenses; (b) the approval and adoption of the Disputed Financial Reports at the 27th AGM did not amount to a ratification of past upgrading work expenses; and (c) the adoption of the said financial reports did not prejudice the Appellants' rights in Suit 311/2012. [note: 5] The Appellants therefore sought clarification from this court as to their interpretation of the Judge's decision on this point. Before us, counsel for the 1st Respondent, Mr Edwin Lee, also asked this court to clarify that the Judge's decision did not stand for the blanket proposition that a ratification of accounts could never amount to a ratification of the individual expenditure items in those accounts.

42 In the light of the pending proceedings in Suit 311/2012, we will grant the clarification sought by the 1st Respondent. Whether or not a ratification of audited financial reports or audited accounts amounts to a ratification of the individual expenditure items in those reports or accounts depends on the facts and circumstances of the particular case and cannot be reduced to a blanket proposition of law. It therefore remains open to the trial judge in Suit 311/2012 to make a finding on this issue, if

necessary, based on the relevant evidence and arguments in that case.

Motion 8

43 Motion 8 was a motion to revoke late payment interest charges levied on eight subsidiary proprietors from October 2011 to March 2013 and to credit the interest charged to these subsidiary proprietors' accounts. The Judge validated the 1st Respondent's ruling on Motion 8 because he agreed with the 1st Respondent's view that the late payment interest charges could not be refunded as they had already become part of the management fund pursuant to s 40(7) of the BMSMA, and therefore could not be withdrawn pursuant to s 38(3) of the BMSMA, which did not provide for a refund of late payment interest charges (see the GD at [58]).

44 The 1st Respondent's ruling on Motion 8 involved a decision on a question of law, namely, whether late payment interest charges, once paid, could be disbursed by a management corporation under the BMSMA. The relevant statutory provisions are as follows. Sections 40(6)(*b*) and 40(7) deal with contributions by subsidiary proprietors and the interest chargeable when such contributions are not paid on time:

> **Contributions by subsidiary proprietors**
>
> **40.**—
>
> …
>
> (6) Any contribution levied under this section or section 41 —
>
> …
>
> (*b*) if not paid within 30 days when it becomes due and payable, shall bear interest at the rate determined by the management corporation and such interest shall accrue from the expiry of 30 days after the date when the contribution becomes due and payable unless the management corporation determines in a general meeting (either generally or in a particular case) that any unpaid contribution shall bear no interest; …
>
> …
>
> (7) Any interest paid under subsection (6) shall form part of the fund to which the contribution belongs.
>
> …

45 Section 38(3) of the BMSMA deals with the limited situations in which a management corporation may disburse moneys from its management fund:

> **Management funds and sinking funds**
>
> **38.**—
>
> …
>
> (3) A management corporation shall not disburse any moneys from its management fund otherwise than for the purpose of —

(*a*) meeting its liabilities referred to in section 39(1);

(*b*) carrying out its powers, authorities, duties or functions under this Act; or

(*c*) transferring moneys therein not required to meet the liabilities of the management fund to the sinking fund.

…

46 Pursuant to s 40(7) of the BMSMA, any interest charges on contributions that are overdue ("late contributions") would form part of the fund to which the contributions belong, and would therefore be subject to the limitations imposed by s 38(3) of the BMSMA (if the fund concerned is the management fund). However, s 38(3) also contains a catch-all provision – *viz*, s 38(3)(*b*) – which allows a management corporation to disburse moneys from its management fund for the purpose of "carrying out its powers, authorities, duties or functions" under the BMSMA. The question is therefore whether a management corporation has the power, authority, duty or function under the BMSMA to grant a refund of late payment interest charges to a subsidiary proprietor.

47 In our view, s 40(6)(*b*) of the BMSMA does confer upon a management corporation the power or authority to retrospectively determine in a general meeting that any late contribution should bear no interest, even though that contribution and the associated late payment interest charges are subsequently paid and are no longer outstanding by the time of the general meeting. Section 40(6)(*b*) of the BMSMA itself is silent on when contributions should be determined to be "unpaid" and whether the provision applies to late payment interest charges on late contributions that are subsequently paid. However, a purposive interpretation of this provision entails that a management corporation does have the power or authority to refund late payment interest charges that have been paid into the management fund. The statutory framework of the BMSMA provides for the establishment and maintenance of management funds and sinking funds by a management corporation, which is given various powers to determine and levy contributions on subsidiary proprietors (see ss 38–43 of the BMSMA). These powers are important because a management corporation does not have any share capital and a good cash flow is vital for the performance of its functions (see Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012) ("*Teo Keang Sood*") at p 489). In the light of this framework, there is no rational basis for allowing a management corporation to waive late payment interest charges in cases where a subsidiary proprietor has refused to make any payment of late contributions and the associated late payment interest charges at all, and at the same time preclude the management corporation from refunding late payment interest charges to subsidiary proprietors who have paid such interest charges. Such an interpretation of s 40(6)(*b*) of the BMSMA would effectively operate as a disincentive for subsidiary proprietors to make timely payment of interest charges on late contributions because they would thereby be precluded from contesting the interest charges at a general meeting.

48 As a matter of law, late payment interest charges that have been paid by a subsidiary proprietor into the management fund can be refunded and disbursed to the subsidiary proprietor, provided the management corporation has so determined in a general meeting pursuant to s 40(6)(*b*) of the BMSMA. We therefore hold that the 1st Respondent's ruling that Motion 8 was out of order for being in conflict with the BMSMA involved an error of law and should be set aside.

Motion 9

49 Motion 9 was a motion to approve an application for the subdivision of lots by certain subsidiary

proprietors. At the 5 June 2013 EGM, the 1st Respondent ruled Motion 9 out of order for the following reasons: [note: 6]

Reasons for Decision (9)

- Council has concerns over the more intensive usage, because of the subdivided units, there will have to be more post boxes, more mailers will … have to be sent out, there will be increased costs of running the MCST.

- For prudence, the opinion of an architect was sought. The architect has provided the report and has highlighted that the proposed subdivision will impact and affect the common property.

- As such, a 90% resolution will be required. This also appears to be the requirement by the URA[.]

50 The Judge noted that the architect's report obtained by the 1st Respondent did state that URA would likely request for a 90% resolution before granting permission for the proposed subdivision, and that the Appellants had not tendered any evidence to contradict the architect's views. The Judge therefore validated the 1st Respondent's ruling on Motion 9 because he was satisfied that the 1st Respondent had a reasonable basis to rule that Motion 9 was out of order for being unenforceable, given that the proposed subdivision would likely require a 90% resolution whereas Motion 9 sought to approve the proposed subdivision by ordinary resolution only.

51 As mentioned above, the Appellants applied via SUM 6634/2013 to adduce additional evidence pertaining to Motion 9 in the form of a report by C&C Chartered Architects dated 7 October 2013. This application is dismissed for the simple reason that the report is not relevant to the issues to be determined in the present appeal. The report was obtained on 7 October 2013, which was only after the hearing before the Judge. It was not available to and was not considered by the 1st Respondent prior to or at the 5 June 2013 EGM. It is therefore not relevant to the validity of the 1st Respondent's ruling at the 5 June 2013 EGM that Motion 9 was out of order for being unenforceable.

52 The main issue apropos Motion 9 is whether a 90% resolution would indeed be required under the BMSMA for the proposed subdivision of lots. This is a question of law.

53 It appears that the BMSMA does not in fact require a 90% resolution to be passed for the subdivision of lots, even if the subdivision affects the common property. The relevant section of the BMSMA that deals with changes made to the common property is s 34(4), which reads as follows:

Dispositions and additions to, etc., common property

34.— …

…

(4) A management corporation may approve the subdivision of a lot or the amalgamation of 2 or more lots resulting in the creation of any additional or new common property.

…

54 Significantly, s 34(4) of the BMSMA only states that a management corporation "may approve"

the subdivision of a lot and does not state that such approval has to be by a particular type of resolution. This is in contrast to other provisions in the BMSMA which expressly state that a management corporation may only approve certain actions by a particular type of resolution (see, *eg*, s 33(1), which stipulates that exclusive use by-laws have to be passed by ordinary resolution or special resolution or 90% resolution, depending on the period of time for which exclusive use is sought to be conferred; see also s 34(1) of the BMSMA, which stipulates that dispositions of common property have to be authorised by way of a 90% resolution).

55 It is also pertinent to note that s 34(4) of the BMSMA corresponds to s 12(2) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("the LTSA"), which reads:

> **Plan of redevelopment**
>
> **12.**—
>
> …
>
> (2) Where the subdivision of a lot or the amalgamation of 2 or more lots results in the creation of any additional or new common property, the subsidiary proprietor shall obtain the approval of the management corporation before lodging the strata title application for redevelopment with the Registrar.
>
> …

There is similarly no requirement in s 12(2) of the LTSA that a 90% resolution (or any type of resolution, for that matter) is required for the subdivision of a lot that results in the creation of any additional or new common property.

56 A possible reason why the architect's report obtained by the 1st Respondent might have (mistakenly) stated that a 90% resolution would likely be required for the proposed subdivision of lots under Motion 9 could be that the architect was under the impression that the proposed subdivision was likely to increase the floor area of the land and building comprised in the Development, in which case a 90% resolution would indeed be required under s 37 of the BMSMA. As highlighted by the Appellants, [note: 7] this misconception can be inferred from the document titled "Declaration letter to be submitted to URA", [note: 8] which was submitted by the 1st Respondent's solicitors at the hearing before the Judge as the basis for the architect's view that a 90% resolution would likely be required. The relevant parts of s 37 of the BMSMA read as follows:

> **Improvements and additions to lots**
>
> **37.**—(1) Except pursuant to an authority granted under subsection (2), no subsidiary proprietor of a lot that is comprised in a strata title plan shall effect any ***improvement in or upon his lot*** for his benefit ***which increases or is likely to increase the floor area of the land and building comprised in the strata title plan*** .
>
> (2) A management corporation may, at the request of a subsidiary proprietor of any lot comprised in its strata title plan and upon such terms as it considers appropriate, *by 90% resolution*, authorise the subsidiary proprietor to effect any ***improvement in or upon his lot*** referred to in subsection (1).
>
> …

[emphasis added in italics and bold italics]

57 In the present case, Motion 9 clearly related to the *subdivision* of lots, and not the *improvement* of lots that *increased or was likely to increase the floor area of the land and building in the Development*. The 1st Respondent's ruling that Motion 9 was out of order for being in conflict with the BMSMA because it called for an ordinary resolution and not a 90% resolution is therefore wrong in law and should be invalidated.

Validity of the 1st Respondent's rejection of the Contested Votes on the basis of conflict of interest

58 We turn now to the validity of the 1st Respondent's decision to reject the Contested Votes on Motion 2 at the 5 June 2013 EGM on the basis of conflict of interest. The first issue here is whether the chairperson of a general meeting of a management corporation has the power to reject votes from a subsidiary proprietor who is *prima facie* entitled to vote.

59 On appeal, the Appellants submitted that the 1st Respondent had no power under the BMSMA to deny a subsidiary proprietor the right to vote if that subsidiary proprietor was *prima facie* entitled to vote, and that even if the 1st Respondent had such a power, he had not exercised it *bona fide*. They further argued that they should not have been denied their voting rights since it was not their interests but the 1st Respondent's interests which were adverse to those of the 2nd Respondent in Suit 311/2012, wherein the Appellants were seeking restitution from the 2nd Respondent's former chairperson, MWC, for the benefit of the 2nd Respondent. In contrast, the Respondents agreed with the Judge's decision that the 1st Respondent was entitled to reject the Contested Votes on Motion 2 on the basis that the 2nd Respondent might otherwise be deprived of its legal representation and its right to be heard in Suit 311/2012.

60 The requirements pertaining to the entitlement to vote are laid out in para 2(1) of the First Schedule, which provides that in the case of a management corporation, a person shall be entitled to vote in respect of a lot if: (a) he is the subsidiary proprietor or mortgagee in possession or receiver of that lot as shown on the strata roll; and (b) he has paid to the management corporation all contributions and any other moneys levied or recoverable by the management corporation under the BMSMA. It imposes no other conditions for a subsidiary proprietor (or a mortgagee in possession or a receiver, as the case may be) to be entitled to vote at a general meeting of the management corporation.

61 The Judge seemed to be of the opinion that although there was no express provision granting the chairperson of a general meeting of a management corporation the power to reject votes for reasons other than those given in para 2(1) of the First Schedule, such a power could be *implied* by the wording of s 104(1)(*a*) of the BMSMA, which reads as follows:

> **Order where voting rights denied or due notice of item of business not given**
>
> **104.**—(1) Where, pursuant to an application by a person under this section, a Board is satisfied that a particular resolution would not have been passed at a general meeting of a management corporation or subsidiary management corporation but for the fact that the applicant —
>
> (*a*) was *improperly* denied a vote on the motion for the resolution; or
>
> …

the Board may order that the resolution be treated as a nullity on and from the date of the order.

…

[emphasis added]

62 The Judge held that the use of the word "improperly" in s 104(1)(*a*) of the BMSMA suggested that a subsidiary proprietor might be *properly* denied a vote on grounds other than those stated in para 2(1) of the First Schedule, such as a breach of the rules of natural justice.

63 With respect, we are of the view that the wording of s 104(1)(*a*) of the BMSMA does not afford a strong enough foundation for implying such a far-reaching power on the part of the chairperson of a general meeting of a management corporation to exclude votes of subsidiary proprietors who are otherwise entitled to vote. Perhaps, an equally (if not more) reasonable interpretation of this provision is that a subsidiary proprietor can only be properly denied a vote on the ground that he has not fulfilled one or both of the requirements in para 2(1) of the First Schedule. Therefore, the chairperson of a general meeting of a management corporation does not have the power under the BMSMA to reject votes from a subsidiary proprietor who has satisfied the requirements in para 2(1) of the First Schedule.

64 In any case, even if the chairperson of a general meeting of a management corporation has such a power, the exercise of that power (assuming it exists) by the 1st Respondent at the 5 June 2013 EGM was not justified in the circumstances of this case. It is incontrovertible that any party to legal proceedings is entitled to be represented, and that a management corporation, as a body corporate, can only carry on court proceedings through a solicitor. However, the Judge's conclusion that to allow the Appellants to vote on Motion 2 to terminate the appointment of the 2nd Respondent's counsel in Suit 311/2012 would "occasion a serious breach of the rules of natural justice" (see the GD at [64]) appears to ignore the reality that the 2nd Respondent is a body corporate without a mind of its own (see s 24(1)(*b*) of the BMSMA). It is an artificially created legal entity which may only act or make a decision: (a) through its members in a general meeting; (b) through its council or executive committee members; or (c) by appointing and delegating to a managing agent or administrator the power to make decisions (see *Teo Keang Sood* at p 387). The Appellants and the 2nd Respondent cannot be considered as wholly separate entities because the 2nd Respondent in fact comprises the subsidiary proprietors of the lots in the Development, *including* the Appellants (see s 24(1)(*a*) of the BMSMA).

65 It is therefore difficult to see how a breach of the rules of natural justice would be occasioned if the 2nd Respondent itself validly determines in a general meeting that its lawyers in Suit 311/2012 should be discharged. In fact, on the 1st Respondent's own argument of conflict of interest, none of the subsidiary proprietors of the lots in the Development should have been allowed to vote on Motion 2 since the subsidiary proprietors who did not belong to the Appellants' Camp were from the Mok Camp and were thereby also in a position of conflict of interest, given their association with MWC, the defendant in Suit 311/2012.

66 Accordingly, we hold that the 1st Respondent's rejection of the Contested Votes on Motion 2 at the 5 June 2013 EGM on the basis of conflict of interest was not valid.

Whether the Judge erred in holding that the Appellants were not to propose any future and/or intended amendments to Motions 1(b) and 1(e) that touched on the lawyers already appointed by the 2nd Respondent in Suit 311/2012

67 It follows from the above observations on the nature of a management corporation (at [64] above) that the Judge's direction that the Appellants were not to propose any future and/or intended amendments to Motions 1(b) and 1(e) that touched on the lawyers already appointed by the 2nd Respondent to defend itself in Suit 311/2012 should be set aside. The subsidiary proprietors of the lots in a strata development are entitled to control the management corporation by voting in a general meeting; this right to vote should not be taken away from them even if it means that the management corporation may not have legal representation in a suit to which it is a party.

Conclusion

68 To recapitulate, we allow this appeal as follows: (a) the 1st Respondent's rulings with respect to Motions 8 and 9 are invalidated; (b) the 1st Respondent's rejection of the Contested Votes on Motion 2 on the basis of conflict of interest is invalidated; and (c) the Judge's direction that the Appellants are not to table any future and/or intended amendments to Motions 1(b) and 1(e) that touch on the lawyers already appointed by the 2nd Respondent to defend itself in Suit 311/2012 is set aside. With respect to Motions 3(a) and 3(b), we grant the clarification sought that the Judge's decision does not stand for the blanket proposition that a ratification of audited financial reports or audited accounts can never amount to a ratification of the individual expenditure items in those reports or accounts.

69 On the issue of costs, in the proceedings below, the Judge ordered the Appellants to pay costs and disbursements to the 1st Respondent fixed at $11,000 and to the 2nd Respondent fixed at $3,000. The Judge also ordered the Appellants to pay costs to the Respondents at $400 each in relation to a reply affidavit that was filed without leave and subsequently withdrawn by the Appellants.

70 In our view, as the Appellants have substantively succeeded in this appeal, they should be entitled to costs here and below. We therefore set aside the Judge's order that the Appellants pay costs and disbursements to the 1st Respondent fixed at $11,000 and to the 2nd Respondent fixed at $3,000. For the avoidance of doubt, we will not disturb the Judge's order that the Appellants pay costs to the Respondents at $400 each in relation to the reply affidavit which was filed without leave and then withdrawn by the Appellants. As for the present costs order, we note that the Appellants have asked that the 1st Respondent bear the costs of this appeal and the proceedings below. In our view, this makes sense because any costs ordered against the 2nd Respondent would come out of the funds of the 2nd Respondent, to which the Appellants themselves have to contribute. We therefore order costs here and below to be borne by the 1st Respondent, and to be taxed if not agreed. The usual consequential orders will apply.

[note: 1] Appellants' Core Bundle ("ACB") vol 2 at p 39.

[note: 2] ACB vol 2 at pp 39–40.

[note: 3] 1st Respondent's Case at paras 53 and 59.

[note: 4] ACB vol 2 at p 39.

[note: 5] Appellants' Case at para 57.

[note: 6] ACB vol 2 at p 150.

[note: 7] Appellants' Case at para 84.

[note: 8] ACB vol 2 at p 168.