

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 16

Tribunal Appeal No 21 of 2021

Between

1. Cheng Hiap Choon
2. Muthu Jagannath
3. Peter Chen Keng Or

... Applicants

And

Management Corporation
Strata Title Plan No 3001

... Respondent

FOUNDATIONS OF DECISION

[Land — Strata titles — Management council]

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Cheng Hiap Choon and others
v
Management Corporation Strata Title Plan No 3001

[2022] SGHC 16

General Division of the High Court — Tribunal Appeal No 21 of 2021
Andre Maniam J
29 November 2021

25 January 2022

Andre Maniam J:

Introduction

1 The 2021 council elections of “The Warren” development were hotly contested, with the applicant subsidiary proprietors (“SPs”) applying to a Strata Titles Board (“STB”) thereafter to invalidate the elections.

2 One of their contentions was that the collective nomination of nine individual SPs, on a single nomination form, was invalid. The STB considered it unnecessary to decide that point, and dismissed the application on other grounds. Dissatisfied, the applicants appealed to the court.

3 On appeal, I decided that the collective nomination of the nine individual SPs was valid. The applicants accepted that that was fatal to their appeal, which was accordingly dismissed.

4 As the issue about nomination for council elections is of general application, these are my grounds of decision.

The framework under the BMSMA

5 Section 53 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) (“BMSMA”) contains various stipulations about the council of a management corporation.

6 Section 53(1) of the BMSMA provides that the council of a management corporation shall consist of no more than 14 *natural* persons.

7 Section 53(2) of the BMSMA provides that where a management corporation has not more than three SPs, its council “shall consist of each subsidiary proprietor (if any) who is a natural person or the subsidiary proprietor’s nominee, together with the nominee of each subsidiary proprietor (if any) which is a company”.

8 Section 53(6) of the BMSMA addresses eligibility for election:

(6) A person shall not be eligible for election as a member of the council of a management corporation unless he is an individual of at least 21 years of age and who —

- (a) is a subsidiary proprietor of a lot;
- (b) is nominated for election by a subsidiary proprietor of a lot which is a company; or
- (c) is not a subsidiary proprietor but is a member of the immediate family of a subsidiary proprietor and is nominated for election by that subsidiary proprietor.

9 This eligibility is subject to disqualifying factors in s 53(7) of the BMSMA relating to payments being in arrears.

10 Section 53(8) of the BMSMA lists further disqualifying factors:

(8) Notwithstanding subsection (6) and without prejudice to subsection (7), the following persons shall also not be eligible for election as a member of the council:

(a) an individual who is a joint subsidiary proprietor of a lot with another subsidiary proprietor, if that other subsidiary proprietor is also a candidate at that election or has nominated another person for that election; and

(b) an individual who is nominated for election by a subsidiary proprietor who owns 2 or more lots, if that subsidiary proprietor together with any of his nominees —

(i) nominated at the same election; or

(ii) elected or appointed to the council at the same or other election,

or such of his nominees, exceed the threshold number for that subsidiary proprietor determined in accordance with subsection (12).

11 Section 53(8)(b) is to be read with s 53(12) of the BMSMA:

(12) For the purposes of determining the eligibility of any subsidiary proprietor's nominee for election as a member of a council under subsection (8)(b), the threshold number for that subsidiary proprietor shall be —

(a) the number of council members that is proportional to the subsidiary proprietor's share value, ignoring any fraction; or

(b) 49% of the number of council members determined under subsection (1), ignoring any fraction,

whichever number is lower.

The applicants' contentions

12 The applicants argued that the collective nomination of the nine individual SPs was *impliedly* prohibited by s 53(8)(b) read with s 53(12) of the BMSMA. The applicants relied on an implied prohibition, because there was no express prohibition in s 53 of the BMSMA. Indeed, under s 53(6)(a) of the BMSMA, each of the nine SPs was eligible for election, and none of the disqualifying factors in s 53(7) or s 53(8) of the BMSMA applied.

13 Section 53(8)(b) of the BMSMA concerns nominations by “a subsidiary proprietor who owns 2 or more lots” (“multiple-lot SP”). Together with the nominees of a multiple-lot SP already in council, that SP’s nominees for election must not exceed the threshold number under s 53(12) of the BMSMA, *ie*, the number of council members proportional to that SP’s share value, or 49% of the number of council members, whichever number is lower.

14 For instance, if a multiple-lot SP owned 1/3 of the lots in a development, and had no nominees already in council, he could nominate up to 1/3 of the number of council members; but if he owned 2/3 of the lots, he could only nominate up to 49% of the number of council members. This struck a balance between allowing a multiple-lot SP to nominate candidates proportionate to his share value, whilst preventing such an SP’s nominees from amounting to a majority in council.

15 In “The Warren” development, however, each SP only owned one lot in the development, and the multiple-lot SP provisions in s 53(8)(b) read with s 53(12) of the BMSMA would not apply.

16 The applicants argued, nevertheless, that if multiple-lot SPs were subject to a limit on nominations, SPs who own only one lot (“single-lot SPs”) must likewise be subject to some limit on nominations. Specifically, the applicants contended that each single-lot SP could only nominate one person.

17 The applicants relied on the Building and Construction Authority’s publication, *Strata Living in Singapore: A General Guide* (2005) (“*SLS Guide*”), which states at page 12:¹

¹ Record of proceedings (“RP”) 60.

Ownership of one lot entitles you to nominate one person for election. If you own two or more lots, you are entitled to nominate more persons for election, in proportion with your share value but not more than 49% of the total number of council seats. [emphasis added]

18 That commentary is premised on a single-lot SP being entitled to nominate only one candidate in respect of his lot (which I term the “one lot, one candidate” principle).

19 Does that, however, mean that if several SPs are collectively nominated for election, none of them can run? My conclusion on this is summarised at [38] below.

Findings

The “one lot, one candidate” principle.

20 I accepted that the “one lot, one candidate” principle underpins what a single-lot SP is entitled to do. But I did not arrive at this position by applying the multiple-lot SP provisions (s 53(8)(b) and s 53(12) of the BMSMA), which do not apply to single-lot SPs. I based it instead on s 53(6) and s 53(8)(a) of the BMSMA, and the legislative history of s 53 of the BMSMA.

21 Section 53(6) of the BMSMA indicates that an individual single-lot SP can either run himself (s 53(6)(a) of the BMSMA), or he can nominate a member of his immediate family (s 53(6)(c) of the BMSMA), but he cannot do both. Similarly, a corporate single-lot SP can nominate an individual to run (under s 53(6)(b) of the BMSMA). I did not accept that an individual single-lot SP can nominate *several* immediate family members; or that a corporate single-lot SP can nominate *several* corporate representatives. I read s 53(6) of the BMSMA as allowing an individual single-lot SP to run himself, or to nominate *a* member of his immediate family, *ie*, to nominate one candidate in respect of

his lot. Likewise, a corporate single-lot SP may nominate *an* individual to run, *ie*, one individual. Historically, s 57(7) of the Land Titles (Strata) Act (Cap 158, 1985 Rev Ed) in force from 1 December 1987 (“December 1987 LT(S)A”) restricted even multiple-lot SPs to either running or nominating an individual candidate, *ie*, that SP could only nominate *one* candidate in respect of *all* his lots. The principle then was not “one lot, one candidate”, it was “one SP, one candidate”.

22 That restrictive position in relation to multiple-lot SPs was relaxed on 1 April 2005, when the BMSMA came into force with s 53(8)(b) and s 53(12) of the BMSMA allowing a multiple-lot SP to run himself and also nominate others, or make several nominations, subject to the limits in s 53(12) of the BMSMA.

23 None of this, however, directly addresses the issue of whether a collective nomination of individual SPs is valid.

24 The genesis of s 53 of the BMSMA, was the First Schedule read with s 30(4) of the Land Titles (Strata) Act (Cap 158, 1985 Rev Ed) in force from 30 March 1987 (“March 1987 LT(S)A”). Paragraph 3(1) of that First Schedule simply said that a council would consist of between 3 and 14 SPs. Nothing was said about nominations, and there were no specific provisions in relation to joint SPs (like s 53(8)(a) of the BMSMA), or multiple-lot SPs (like s 53(8)(b) and s 53(12) of the BMSMA).

25 On 1 December 1987, eligibility criteria were introduced (similar to s 53(6) of the BMSMA) by s 57(5) of the December 1987 LT(S)A:

(5) A person shall not be eligible for election as a member of the council unless he is —

- (a) an individual who is a subsidiary proprietor;
- (b) an individual who is nominated for election by a subsidiary proprietor who is a company; or
- (c) a member of the immediate family of a subsidiary proprietor who is nominated for election by that subsidiary proprietor who is not a candidate for election.

26 Of the three categories of eligibility under s 53(6) of the BMSMA (and its predecessor s 57(5) of the December 1987 LT(S)A), an SP’s eligibility for election under s 53(6)(a) of the BMSMA is not defined with reference to “nomination”, unlike the other two categories: an individual *nominated* by a corporate SP (s 53(6)(b) of the BMSMA), and the immediate family of an SP *nominated* by that SP (s 53(6)(c) of the BMSMA). An SP’s eligibility for election is derived from *his own status as an SP, ie*, his ownership of a lot, rather than from *being nominated by someone* who has the right to nominate him. That was the position since the First Schedule of the March 1987 LT(S)A, when the council simply comprised SPs (and nothing was said about nominations), through to s 53 of the BMSMA.

27 It is also instructive to consider s 53(8)(a) of the BMSMA (and its predecessor s 57(6) of the December 1987 LT(S)A) about joint SPs (previously termed “co-subsiary proprietors”): one joint SP could run for election, but only if the other joint SP was not also running and had not nominated another person. This too embodies the “one lot, one candidate” principle.

28 I thus accepted that, in the case of a single-lot SP, ownership of that one lot only confers an entitlement to nominate one candidate *in respect of that lot*:

- (a) an individual SP can either run himself, or nominate an immediate family member to run; and

(b) a corporate SP can nominate an individual to run.

29 This, however, still begs the question of whether a collective nomination of several SPs is valid, for each of them owns a lot, and as such is individually eligible to run for election.

The collective nomination of SPs

30 As I noted above (at [26]), an individual SP's eligibility for election does not derive from him being nominated (by himself, or by another); it derives from him being an SP, *ie*, his ownership of a lot.

31 Here, all nine nominees were themselves individual SPs. Each of them was eligible for election under s 53(6)(a) of the BMSMA, and moreover none of the disqualifying factors in s 53(7) or s 53(8) of the BMSMA applied. Their names, unit numbers, and signatures (signifying their consent to run) appeared on a single form, with a tenth SP as proposer, and an eleventh SP as seconder.²

32 I viewed the *collective* nomination as an exercise of each of the nine SPs' *individual* right to run for election, and to nominate himself for that purpose. In making that nomination, the proposer and seconder were agents of the nine nominated SPs. The proposer and seconder were not exercising any individual rights of theirs to make several nominations; instead, each of the nine SPs was exercising his own right to run, and to nominate himself. The nine nominated SPs were not nominees in respect of the proposer's or seconder's lots: they were nominees in respect of their respective lots. Indeed, the proposer and seconder could still have put themselves forward for election, if they had wished to do so.

² The nomination form is at RP 54.

33 In the present case the proposer and seconder were themselves SPs, but this was not strictly necessary: in principle, an SP running for election could appoint a non-SP as an agent to nominate him. So, for instance, if he had given a non-SP a power of attorney for that purpose, his attorney could make that nomination.

34 The correct question to ask was not: “can a single-lot SP nominate several persons for election?” It was: “can each of several individual SPs nominate himself for election, through a collective nomination of them all?” The answer to that is: “yes”.

35 An individual SP’s eligibility for election (under s 53(6)(a) of the BMSMA) lies at the heart of s 53 of the BMSMA. However, the applicants’ argument focused on *nomination* rather than on *eligibility* for election. On their argument, if each of the nine SPs had nominated himself, that would be fine; so too, if each of the nine SPs nominated another of the nine (such that each SP made just one nomination). The applicants’ narrow point was that the nine SPs (each of whom was eligible for election under s 53(6)(a) of the BMSMA) could not be collectively nominated, and if that happened then all nine would be ineligible to run because their *nominations* were *invalid*. That went against the core concept of an SP being eligible for election by virtue of his status as an SP: the *implied* prohibition contended for, would override the *express* provision in s 53(6)(a) of the BMSMA that an SP is eligible for election.

36 I thus could not read into s 53(8)(b) and s 53(12) of the BMSMA any implied prohibition against the collective nomination of individual SPs, when each of them was eligible for election. A collective nomination of individual SPs does not go against the letter, or the spirit, of the legislation.

Conclusion

37 For the above reasons, I found that the collective nomination of the nine SPs was valid.

38 The commentary in the *SLS Guide* which says, “[o]wnership of one lot entitles you to nominate one person for election” should be understood as follows:

(a) An individual single-lot SP may run himself (s 53(6)(a) of the BMSMA), or he may nominate an immediate family member to run (s 53(6)(c) of the BMSMA).

(b) A corporate single-lot SP may nominate an individual to run (s 53(6)(b) of the BMSMA).

(c) If a single lot is jointly owned, any one of the joint SPs who is an individual may run, or another person (whether an individual SP’s immediate family member under s 53(6)(c) of the BMSMA, or a corporate SP’s representative under s 53(6)(b) of the BMSMA) may be nominated in respect of that lot (s 53(8)(a) of the BMSMA).

(d) If several individual SPs are collectively nominated, each of them is exercising his individual right to run, and to nominate himself in respect of his lot – and that is valid.

39 I thus dismissed the appeal against the STB's decision.

Andre Maniam
Judge of the High Court

Wong En Hui Charis (Covenant Chambers LLC) for the applicant;
Teh Ee-Von (Infinitus Law Corporation) for the respondent.
