

DALAM MAHKAMAH TINGGI MALAYA AT KUALA LUMPUR

BAHAGIAN SIVIL

SAMAN PEMULA NO. S7-24-2106-2008

**Dalam perkara seksyen-seksyen 39(4),
39(5), 44(7) dan 51 Akta Hakmilik Strata
1985 (Akta 318)**

Dan

**Dalam perkara Perbadanan Pengurusan
Ocean View Resort**

ANTARA

- 1. MANIAM A/L MUTHU**
- 2. BONIFAC LOBO A/L ROBERT V. LOBO**
- 3. CHIA KUIN GOO****PLAINTIFF**

DAN

- 1. KAMALA RANGITHAN**
- 2. DAVID RABINDRAN A/L S.MARTIN**
- 3. YAP ENG HOCK**
- 4. PERBADANAN PENGURUSAN
OCEAN VIEW RESORT** **DEFENDANT**

GROUND OF JUDGMENT

This is the Plaintiffs' application to:

- a) set aside and stay the execution of paragraphs 7 and 8 of the Order dated 25.11.2008 by the Court;
- b) 1st, 2nd and 3rd Plaintiffs be allowed to convene the 5th AGM of Perbadanan Pengurusan Ocean View Resort (OVR) within 6 months from the date of the order herein;
- c) Perbadanan Pengurusan Ocean View Resort be added as the 4th Plaintiff pursuant to 0.15 r.6(2)(b);
- d) Plaintiffs be allowed to add the following persons as 4th Defendants until the 11th Defendants:
 - (i) 4th Defendant: TUAN HAJI MOHD. RATHI ISHAK
 - (ii) 5th Defendant: TAN TECK CHAI PAUL
 - (iii) 6th Defendant : ZAITON BINTI ABO. GHANI
 - (iv) 7th Defendant : WILLIAM KOH CHUI SHING
 - (v) 8th Defendant : JULIE TAN TECK CHOO
 - (vi) 9th Defendant : TAN KOK LIANG
 - (vii) 10th Defendant : GNANATHURAI N. NAGARAJAH
 - (viii) 11th Defendant: : LIM HOCK CHUAN
- e) that the 2nd Defendant until the 11th Defendants (after adding-in the new list) be ordered to refund the sum Of RM14,836.00 with interest and costs.

BACKGROUND FACTS

By an Order dated 25/11/2018 ("the said Order"), this Court made inter alia orders that:

- (1) the purported 5th Annual General Meeting of the 4th Defendants held on 21 September 2008 ("the illegal Meeting") was null and void;
- (2) all resolutions and/or decisions purportedly carried or taken during the said Meeting, including the election of the Management Council for Year 2008/2009, were null and void;
- (3) all resolutions and decisions taken or passed by the said Management Council after the impugned Meeting, if any, are null and void;
- (4) that the Plaintiffs be empowered to carry on as Management Council pending the election of a fresh Management Council at a reconstituted 5th Annual General Meeting;
- (5) That 2 of the Plaintiffs and 2 of the persons purportedly elected as Council Members at the illegal Meeting be appointed Administrators pursuant to s. 51 of the Strata Titles Act, 1985;
- (6) The Administrators be directed to convene afresh the 5th Annual General Meeting of the 3rd Defendants within sixty (60) days from 25/11/2008.
- (7) that there be liberty to apply.

Since the granting of the said Order, the Plaintiffs were not able to comply with the terms of the said Order due to the actions of the 2nd Defendant, the 3rd Defendant, Tuan Haji Mohd Rathi Ishak, Tan Teck Chai Paul, Zaiton Binti Abd. Ghani, William Koh Chui Shing, Julie Tan Teck Choo, Tan Kok Liang, Gnanathurai a/l Nagarajah and Lim Hock Chuan, all of whom were purportedly elected during the Illegal Meeting (“the illegal ‘ Council Members”).

By way of a letter dated 26/11/2008, the Plaintiffs' Solicitors had notified the illegal Council Members that they were to appoint 2 persons as co Administrators in compliance with the terms of the said Order.

Subsequently, by a letter dated 27/11/2008, Haji Mohd Rathi Ishak and the 3rd Defendant were nominated.

However, despite this, the Plaintiff alleged that the illegal Council Members have acted against the Plaintiffs and have taken various steps to prevent the complying of the said Court Order.

From the affidavits filed and the submissions of both parties, I am of the view that after the said order was handed down it is clear that the said Order is unworkable due to:

- a) The Plaintiffs were not able to comply with the said Court Order. The 5th AGM of OVR could not be convened within 60 days as directed by the Court. The intention of the Court when making the said Order was for the parties to work together in re-convening the 5th AGM. However the co-Administrators which were appointed by in pursuant of the said Order, have not been

giving the required co-operation to the Plaintiffs to convene the 5th AGM of OVR.

- b) Despite the said Order, the illegal Council refused to hand over their duties and the co administrators had refused to meet the Plaintiffs. The illegal Council members and the Co-administrators failed to attend the handover meeting. There is evidence that Tuan Haji Rathi Ishak did not want to attend the meeting and did not want to be the council member anymore. In the emails sent by the 3rd Defendant, the 3rd Defendant had avoided attending the handover meeting.
- c) The illegal council members refused to effect a hand over of duties, continues to assert their office and perform their duties as the purported council members on the day when the said Order was handed down on 26.11.2008 They were still at OVR's office carrying out their duties as council members. Despite being aware of the terms of the said Order, they continues to use OVR's letterhead to give administrative directives to staffs of OVR. They changed the locks to OVR's office and refused to hand over the keys to the Plaintiffs which resulted in the Plaintiffs having to break and changes the locks to OVR's office.
- d) The illegal Council members had appointed NBK Consultants to provide Financial and management Services to OVR. The plaintiff alleged that NBK Consultants is linked to the previous service providers i.e Mohd Zaki & Partners against whom OVR have a pending civil action.

Thus it is clear that paragraphs (7) and (8) of the said Order are not workable as until the hearing of the application herein, the 5th AGM of OVR had not been convened.

With the present circumstances and to give effect to the said Order for the reconvening of the 5th AGM of OVR, it is necessary that the said Order be varied.

Moreover prayers (6) and (7) of the Originating Summons where the said Order was premised upon, were pleaded in the alternative, where both the prayers were handed down by the court. Prayer (7) prayed for either the Plaintiffs or an Administrator be appointed but the court appointed a co-Administrator which was never sought by the Plaintiffs. Despite that the Plaintiffs have shown that they have tried their best to comply with the said Order but to no avail due to reasons stated above.

The said Order consists of the words “that there be liberty to apply” which means that parties are at liberty to apply to the court when the workings of the actual terms of the said Order encounters problems due to the unclear terms in the Order when faced with the actual situation on the ground. (Refer to ***Public Bank Bhd v Chan Tak Kow*** [1988] 3 MLJ 330).

Therefore the Plaintiffs being the outgoing council members of OVR for the year 2007/2008 is in a position to reconvene the 5th Annual General Meeting.

The reliefs sought by the Plaintiffs in paragraph (e), (f) (g) and (h) are consequential to the reliefs sought in paragraph (3) and (5) of the said Order dated 25.11.2008 which declare null and void:

- (i) The Council elected at the illegal meeting;
- (ii) All resolutions and decisions of the illegal Council.

Consequently, all expenditure authorized by the illegal Council is recoverable by OVR. The illegal Council have admitted in writing that they are liable to make repayments to OVR (Refr to Exhibit MM-18 in Enclosure 20). Therefore, to facilitate recovery of these monies by OVR, the subsequent following orders is necessary i.e.:

- i) OVR (proposed 4th Defendant) needs to be named as a Plaintiff pursuant to 0 15 r 6(2) RHC 1980;
- ii) All illegal Council Members from whom monies are sought need to be named as Defendants;
- iii) An order for repayment by the illegal Council Members (who will be the 4th until the 11th Defendants) to repay to the proposed 4th Defendant (OVR) the sum of RM 14, 836.00.

Based on the above reasons, I allowed the application for Enclosure12 for the prayers in paragraph (a), (b), (c), (d), (e), (f), (g), (h). Costs is to be borne by the 1st, 2nd and 3rd Defendants.

t.t. Datin Zabariah Mohd Yusof

Tarikh : 5.6.2009

Bagi pihak Plaintiff : Encik Clemet Lopez

Tetuan Lopez & Partners

Bagi pihak Defendan : Encik Ganesh Perumal

Tetuan Ganesh & Co