Petrie Christopher Harrisson v Jones Alan and Others
[2005] SGHC 49

Case Number : OS 1130/2004

Decision Date : 07 March 2005

Tribunal/Court : High Court

Coram : V K Rajah J

Counsel Name(s) : Alvin Yeo SC, Nishith K Shetty and Rajan Menon Smitha (Wong Partnership) for the plaintiff; Tan Kok Quan SC, Eddee Ng, Ang Wee Tiong and Ann Tay (Tan Kok Quan Partnership) for the defendants

Parties : Petrie Christopher Harrisson — Jones Alan; Khew Edwin; Glen Bryce; Graham Dare; David Haslam; Dr Kaizad Bomi Heerjee; Dr Wee Albert; Tan Roland; Nanette Sanford; Lum Nancy; Robert Wiener; The Tanglin Club

Unincorporated Associations and Trade Unions – Members' clubs – Meetings – Entitlement to vote on resolution – Resolution concerning substantial capital expenditure – Whether entitlement to vote an inalienable right – Whether the manner of voting curtailed the entitlement to vote

Unincorporated Associations and Trade Unions – Members' club – Meetings – Whether notice calling for meeting sufficient – Whether separate resolutions necessary for separate issues – Whether invalidity of one resolution rendered the other resolution void

Unincorporated Associations and Trade Unions – Members' clubs – Meetings – Whether substantive rights of members may be modified by majority at meeting

Words and Phrases – "Simple majority" – Whether resolutions approved by simple majority of members as stated in rules of club

7 March 2005 *Judgment reserved.*

V K Rajah J:

1 The Tanglin Club ("the Club") was founded almost 140 years ago with the object of providing social and recreational amenities for its members. It is a well-known club in Singapore enjoying a membership of about 5,500 composed of approximately 70 nationalities. The homepage of its website claims that it is a "home away from home … providing a *calm respite* from the hustle and bustle of city life" [emphasis added]. However, if recent events are anything to go by, it would appear that managing the Club has been anything but a placid or peaceful affair. In the last few years, members have regrettably resorted, with dismaying regularity, to litigation to settle their differences. These proceedings are a testament to the ongoing saga of floundering relationships within its membership. While it is crystal clear that many members have strong and intense views about the affairs and future of the Club, such views have once again lamentably evolved unduly into uncompromising and intractable stances, culminating in yet another instance of deadlock. That the members of a club of such standing are unable to resolve their differences sensibly and amicably is both unfortunate and disappointing.

The parties

2 The plaintiff is an ordinary member of the Club. The first 11 defendants are the current members of the General Committee ("GC") of the Club, for the period 2004/2005. The duty of a GC pursuant to r 5(ii) of the Tanglin Club Rules 2003 ("the Rules") is to organise and supervise the daily

activities and administration of the Club. It is the primary-decision making body in the Club, subject only to the scrutiny of members at a general meeting. A GC manages the Club on a yearly basis. Members of the GC are all volunteers while full-time employees of the Club implement the GC's decisions. The 12th defendant is the Club.

The factual matrix

3 In or about 2002, some members of the Club felt that an overhaul of the Club's existing facilities as well as the addition of new facilities would serve the Club's long-term interests. Pursuant to this objective, a Special General Meeting ("SGM") of the members was convened on 27 November 2002 ("November 2002 SGM") to sanction an upgrading plan.

4 At the November 2002 SGM, it was resolved that a design competition be held to draw up a "Master Plan" identifying facilities in need of upgrading as well as new facilities to be built for the enjoyment of members. The parameters of the design competition were determined by reference to a "Needs and Wish List" compiled pursuant to extensive feedback from members.

5 The members resolved, *inter alia*:

> 1(a) To proceed to the Design Competition (the Competition) for the Concept Master Plan and set up a Master Plan Committee (MPC) comprised [*sic*] and to carry out the functions as set out in Annex A, including the expenditure of up to $120,000 plus GST (if any) in fees, costs and competition awards; and
>
> (b) subject to members giving approval at a future General Meeting to the winning design derived from the Competition, to embark on the initial phase of the Master Plan at a total cost (including professional fees and other associated expenses) not exceeding $11 million, plus GST thereon (if any); which would include the kitchen renovations set out in Resolution 2 below.

6 Following the passing of these resolutions, the design competition was held. The winning design was adjudged to be that submitted by RSP Architects & Planners ("the winning design"). It was selected on or about 4 August 2003 and officially announced in the September 2003 edition of the Club's Magazine.

7 In the months that followed, the preceding GC ("2003/2004 GC") painstakingly fine-tuned the winning design. It expended considerable time and effort both in finalising the proposals as well as in updating and engaging the members in the proposed upgrading plans. This was done through, *inter alia*, newsletters, a suggestion book and feedback forms. Several sub-committees also convened meetings to gather feedback. All in all, it was an extensive exercise consuming much of the time and energy of the 2003/2004 GC as well as the Master Plan Committee ("MPC"), formed to co-ordinate efforts. The individuals forming these committees, all volunteers, spent countless hours in an attempt to realise a vision that they ardently viewed as essential to the Club's long-term interests. Dr Alex Ooi, then president of the Club, observed in a tone of cautious optimism in his message published in the January 2004 issue of the Club's in-house magazine:

> *It has been a long and tedious process to garner consensus, ensure transparency and hammer out details so that they are at most favour* [*sic*] *for the Club*. We never expected that we will meet everyone's expectations but please rest assured that it is not for want of trying to be able to. [emphasis added]

8 The proposed plans literally stirred up a hornet's nest. A number of members formed the view

that the 2003/2004 GC's proposals were plainly over the top. Some even insisted that the 2003/2004 GC return to the drawing board to formulate more modest proposals. Concerns were also voiced over the potential depletion of the Club's reserves. Battle lines were drawn. The 2003/2004 GC's resolve, however, was adamantine. It was decided to place the proposals before an SGM for 22 March 2004 ("March 2004 SGM") with a view to approving the modified Master Plan and ultimately sanctioning the development contemplated in Resolution 1(b) of the November 2002 SGM (see [5] above). The resolutions proposed by the 2003/2004 GC, purportedly passed during this March 2004 SGM, are at the heart of the present proceedings.

The March 2004 SGM

9 The actual voting on the resolutions tabled at the March 2004 SGM was effected through a secret ballot. This procedure was adopted with the consent of the members present though no formal resolution or motion was passed. Each attending member was handed a ballot slip. However, prior to the actual voting exercise, some members complained about the manner in which the resolutions had been posed in the ballot slips. Further, although the final version of the ballot slip had not been shown at the earlier feedback sessions, it appears that some shortcomings in the earlier versions had previously been raised. In particular, certain members had taken exception to the voting entitlement of members dissenting on the need for the proposed upgrading exercise in the first place. For ease of reference, I have annexed to this judgment a copy of the actual ballot slip employed during the March 2004 SGM.

10 It would be helpful at this juncture to examine the contents of the ballot slip. Resolution 1A proposed that the modified Master Plan be approved and adopted by the members as "the road map to update and upgrade the Club". Members who voted against Resolution 1A were expressly precluded from voting on any of the following three expenditure options provided in Resolution 1B ("the Options"). The Options were as follows:

(a) Members voting for Option 1 would be endorsing only Phase 1 of the upgrading works with costs capped at $11m ("Option 1").

(b) Votes cast for Option 2 approved the upgrading works for Phase 1 and Phase 2 with costs capped at $19m ("Option 2").

(c) Option 3 provided for the full upgrading works (Phases 1, 2 and 3) at an estimated cost of $23m ("Option 3").

11 The plaintiff asserts that members who did not wish to adopt the modified Master Plan as the "road map" for the Club's long-term upgrading works were effectively disenfranchised and improperly deprived of their entitlement to cast a vote on:

(a) the extent to which the upgrading works of the Club would be carried out (Phase 1, 2 or 3); and

(b) the amount of expenditure to be expended on the upgrading works.

12 Rule 38(ii) of the Rules ("r 38(ii)"), which is pertinent to this issue, expressly states that:

Every resolution shall be *decided by a simple majority* of the Members *present and voting at any meeting* at which such resolution is discussed, save where by these Rules any other majority is required. Such decision shall be binding on all Members. [emphasis added]

13 The plaintiff also unhappily complains that by permitting only members who voted in favour of Resolution 1A to subsequently vote on Resolution 1B (collectively "the Resolutions"), the requirement in the Rules that "every resolution shall be decided by a simple majority of the members present and voting" was nakedly transgressed; hence, the purported outcome of Resolution 1B was *ultra vires* r 38(ii). It bears reiterating that during the course of the meeting, some members had indeed raised this issue claiming that they would be disenfranchised if they voted "No" to Resolution 1A and were thereafter prohibited from voting on Resolution 1B. The chairman of the March 2004 SGM, Dr Alex Ooi, chose to disagree with such a view and proceeded with the voting exercise.

14 It is also noteworthy that a member had proposed a motion to postpone the vote to a later date in order to consider other avenues for resolving differences in views. However, the motion to adjourn the vote was defeated by 170 votes to 150 votes.

15 Out of the 410 members who cast votes at the March 2004 SGM:

(a) 179 members voted "No" to Resolution 1A (as a result of which they were not allowed to vote on Resolution 1B);

(b) 231 members voted "Yes" to Resolution 1A;

(c) From the 231 members who voted in favour of Resolution 1A and who were then permitted to cast a vote on Resolution 1B:

(i) 55 voted for Option 1 ($11m);

(ii) 82 voted for Option 2 ($19m);

(iii) 93 voted for Option 3 ($23m).

As it commanded the largest number of votes among the Options, Option 3 was then hailed by the chairman of the SGM as the prevailing outcome of the ballot. Assuming subsequently that it had indeed the mandate to implement Option 3, the 2003/2004 GC proceeded to implement it in due course. The first to 11th defendants in these proceedings ("the 2004/2005 GC") concurred in this view, when they assumed office, and continued with the implementation of Option 3.

16 The following computation reflects in percentages, the net result of the March 2004 SGM:

(a) 179 out of 410 present and voting were excluded from voting on Resolution 1B – that is, 43.6% of those present and voting did not even vote on any of the three capital expenditure options.

(b) The votes of the 93 members in favour of Option 3, representing only 22.7% of those present and entitled to vote, accounted for the resolution that was ultimately deemed to have been passed.

(c) The remaining members, *ie*, 77.3% of the members present, did not specifically vote for Option 3.

The issues

17 In initiating these proceedings, the plaintiff launched a root-and-branch attack on several

procedural and substantive aspects of the March 2004 SGM. The defendants in turn applied to convert these proceedings into a writ action. Responding to this, the plaintiff elected to pursue a single factually incontrovertible issue pertaining to the alleged voting irregularity at the March 2004 SGM. The defendants, quite properly, have not suggested that the plaintiff has failed to comply with the conciliation procedure prescribed by the Rules. I will therefore refrain from reprising the steps taken in that regard. In summary, the issues that have consequentially arisen are:

(a) Was the 2003/2004 GC correct in restricting the voting entitlement of the dissenting members apropos the extent of the expenditure to be incurred by the Club and/or was there a proper mandate ("the voting issue")?

(b) Are members like the plaintiff, who participated in the voting process, precluded from challenging the validity of the Resolutions ("the assent issue")?

(c) In the event Resolution 1B is held to be invalid, can Resolution 1A continue to stand alone ("the validity issue")?

The voting issue

18 The relationship between members of an unincorporated members' club is founded on contract; see also *McGuire (Graeme) v Rasmussen (John)* [1998] 3 SLR 180 at [13] *per* Lee Seiu Kin JC (as he then was):

> The terms of the contract in this, as in most cases of this kind, are contained in the constitution or rules. By joining the Club, a member agrees to bind himself vis-à-vis other members in accordance with the Tanglin Club Rules.

19 The whole of the contract between the members is invariably embodied in the club's rules (see J F Josling & Lionel Alexander, *Law of Clubs* (Longman, 6th Ed, 1987) at p 21):.

> In the case of an unincorporated members' club, *the rules constitute the whole contract of each member with all the other members, and as regards a given member, he is affected by and entitled to the benefit of the rules* as they exist at the time when he joins the club, as amended or modified by any alteration duly approved thereafter while he remains a member and up to the time when the relevant question arises. [emphasis added]

20 Generally speaking, it is trite law as well as practice that, in placing motions or resolutions for approval at a meeting, there ought to be separate motions or resolutions for separate issues (see W John Taggart, *Horsley's Meetings: Procedure, Law and Practice* (Butterworths, 3rd Ed, 1989) at para 624):

> There are some exceptions to the general rule that only one item is dealt with at a time.

21 These exceptions are characterised as omnibus motions, composite motions and parallel motions. (I use here the term "motion" interchangeably with "resolution.") As these terms are often employed as terms of art, it would be helpful to spell out how and when they are deployed (see *Horsley's Meetings* (*ibid*)):

> *Omnibus motion*: An "omnibus motion" is one which includes two or more proposals although they (or some of them) are not dependent on each other: it is a motion which, in fact, is more than one motion, each (or some) having an independent significance, and a distinct consequence if

carried. An example would be a single motion which embraces several proposed amendments to a company's articles of association or a body's rules, where the changes are not all connected or some may introduce fresh policy. Such a motion must be voted for or against in its entirety (subject, of course, to valid amendments where this is possible). Accordingly, where a voter agrees with some of the proposals but finds one or more unacceptable, a decision needs to be made as to whether to vote for the latter or against the former. Where such a motion is carried it is described as an omnibus resolution, which is a useful term as it indicated that it was passed in the light of the above circumstances.

Composite motion: The terms "composite motion" and "composite resolution" are sometimes useful as an alternative to "omnibus motion". However, it is accepted as useful for the term to be utilized to describe a multi-part motion (and resolution) which has been framed by a chairman or a drafting committee to incorporate the principal points of several motions of which notice has been received, where all of them deal with similar or closely related subject matter or all of them are directed to the same objective.

Parallel motions: When several, mutually exclusive proposals are to be considered by a meeting and only one is to be adopted, it is best to consider all the proposals as a single item of business. For example, imagine that a social club is holding a meeting to decide on a suitable Christmas Party activity. There could be three or four well researched proposals which members would like to consider. In these circumstances it would be clearly inappropriate to deal with each proposal as a separate motion. It is a very similar situation to voting for office bearers when three or four candidates offer themselves for election to a single position. The best way to deal with parallel motions is to allow the movers (and seconders) to speak to their proposals, then open the whole range of alternatives to discussion, then allowing each mover to have a right of reply and then take a vote using exhaustive or preferential voting. The chairman should explain this procedure at the beginning to avoid any confusion.

22 It has not been suggested by the defendants that the Resolutions can be characterised as parallel resolutions. Nor can the Resolutions be viewed as being either omnibus or composite resolutions.

23 The Resolutions are inextricably intertwined. Resolution 1A expressly refers to Resolution 1B. Resolution 1A addresses the entire critical issue of whether or not to redevelop the Club in accordance with the modified Master Plan as proposed by the 2003/2004 GC. Resolution 1B and the Options presented therein, on the other hand, only address and pertain to the extent of expenditure should redevelopment according to the modified Master Plan be implemented.

24 While both resolutions address the proposed redevelopment plans, it cannot be controverted that separate and distinct issues are raised by each of the Resolutions:

(a) Resolution 1A: Whether to proceed with redevelopment?

(b) Resolution 1B: *If* redevelopment is approved, how much capital expenditure is to be incurred?

25 The defendants strenuously assert that the manner of voting was purely a procedural issue that the March 2004 SGM legitimately sanctioned and/or ratified. They maintain that the right of vote of the dissenting members was neither fettered nor curtailed.

26 It would be useful to pause at this juncture to examine the relevant provisions in the Rules.

How do they address the issue of the expenditure of the Club's funds or reserves? In reviewing the Rules it is pertinent to bear in mind two fundamental principles. First, the relationship between the members and the Club is founded purely on contract. The Rules define the contractual relationship. Second, the reserves and funds of the Club constitute property that belongs to the members collectively and indivisibly. As a matter of general principle (see *Law of Clubs* ([19] *supra*) at p 6):

> Unless the rules otherwise provide, *the assets of a members' club belong to all the members* for the time being in equal shares, but not only have they no transmissible interest: the share of a member is not capable of being segregated or realised while the club continues, and it is only on a dissolution that an individual member can claim to have paid to him any part of the value of the assets. [emphasis added]

In so far as the Club is concerned, though trustees hold the assets, they should be viewed as merely holding such assets on behalf of all members.

27 The relevant provisions of the Rules dealing with the spending of money and capital expenditure provide as follows:

> 4(iii) The Committee shall, *subject to the provisions of Sub-Rule (v)* of this Rule, have the power to deal with the monies and moveable property of the Club at its discretion.
>
> …
>
> **Capital Expenditure Limit**
>
> 4(v) In any case where it is intended that the Club shall incur *capital expenditure or liability therefore in excess of $250,000/- in aggregate for any one project or in aggregate for items relating to the development, improvement or repair to a specific part, area or function of the Club, then such expenditure shall not be incurred unless approved by a simple majority of Members present and voting at a General Meeting* of which notice of intention to incur such expenditure has been given.
>
> [emphasis added]

28 It is incontrovertible that any aggregate capital expenditure in excess of $250,000 must be expressly sanctioned by members at a general meeting. It is also very significant that this particular provision is one of the few exceptions in the Rules where the discretion of the GC has been absolutely curtailed. The GC simply has no power to sanction an aggregate capital expenditure in excess of $250,000. Rule 4(v) of the Rules ("r 4(v)") emphasises the supremacy of the general meeting and underscores the importance of the vote on such *an* issue at a general meeting. It can be said this particular provision serves to accentuate the paramount principle applicable to members' clubs, according to *Law of Clubs* ([19] *supra*) at p 7, that:

> *[E]very member of a members' club has a voice in the disposal of club property*. Unless the consent of *all* the members is obtained, club property may *not* be alienated otherwise than as authorised by the rules … [emphasis added]

29 In essence, the real point for determination in these proceedings is whether the directive "if you vote NO to Resolution 1A above, please do not cast a vote for Resolution 1B and proceed directly to Resolution 2" runs counter to a member's apparent entitlement to vote on a resolution dealing with capital expenditure in excess of $250,000.

30 The right to vote is an important entitlement that cannot be arbitrarily alienated or curtailed. Indeed, the right can be rightly characterised as a property right. It has been authoritatively stated in *The Amalgamated Society of Engineers v Smith* (1913) 16 CLR 537, a leading analogous case dealing with the expulsion of a union member (*per* Barton Ag CJ at 553) that:

> The foundation of his action is property; for, *as a member, he is a participant in the property held by the society, and his right to vote is also property*. [emphasis added]

A Club member's right to vote is accordingly a contractual right that cannot be fettered or removed otherwise than in accordance with the Rules.

31 Special emphasis has been emphatically accorded in the Rules to the pre-eminent role of the general meeting when an aggregate capital expenditure in excess of $250,000 is proposed. Over and above that, the critical words appearing in r 4(v) stipulating that such expenditure "*shall not be incurred* unless approved by *a simple majority of members present and voting*" [emphasis added] can neither be lightly dismissed nor simply glossed over. In my view, this is precisely what the 2003/2004 GC had run foul of, aided by and illusively armoured with ingenuously drafted ballot papers where the voting entitlement was cavalierly treated as a procedural issue.

32 The defendants have also faintly argued that sub-r 2(ii) of the Rules ("r 2(ii)") confers on the GC the right to interpret the Rules and therefore "to make a determination as to how voting should proceed in respect of Resolutions 1A and 1B". With respect, this is incorrect. Firstly, as defendants' counsel has candidly conceded, the GC's views on legal issues may be reviewed by a court. Such decisions are not final in law and are justiciable. Secondly, and more importantly, r 2(ii) confers no such mandate to reinterpret and misapply the plain meaning of rr 4(v) and 38(ii). Rule 2(ii) is intended to have a limited effect applying generally to the application of the Rules in the day-to-day management of the Club. Clearly the voting requirements prescribed by r 4(v) should be construed literally. Approval by a simple majority of *all* members present at the meeting is an essential pre-requisite to the sanction of a substantial capital expenditure. The "simple majority" must necessarily refer to members who are both "present" and "voting". A simple majority means that there are a greater number of affirmative rather than negative votes in favour of a resolution (see [37] below). I cannot fathom how both GCs as well as the chairman of the March 2004 SGM could unflinchingly accept that a vote by 93 members in favour of Option 3, constituting no more than 22.7% of all those "present" and entitled to vote, could by any definition or yardstick amount to a simple majority. Such a construction, supported neither by the facts nor the Rules, appears even more remarkable when one considers that a vote by 93 members is insufficient to constitute even a simple majority of the 231 members voting affirmatively in favour of Resolution 1A, let alone a simple majority of all members present and voting. It is an outright travesty of the Rules to suggest some 22.7% of the members present at the March 2004 SGM constituted a "simple majority".

33 Yet another point serves to reinforce the view I take: r 38(ii) requires "[e]very resolution" to be decided by a simple majority of the members present and voting. The word "every" in this context evidently means "all" resolutions. The GC clearly failed to observe this requirement as well.

34 I accept the defendants' contention that a simple majority of those present and voting did indeed sanction Resolution 1A (see [15] above). The defendants cannot, however, credibly contend that the mere sanction for the implementation of the modified Master Plan in accordance with Resolution 1B is tantamount to an unequivocal or unconditional approval of all three or indeed any of the Options referred to therein. There is a gaping legal and factual chasm in this contention that the defendants have themselves created and are now unable to bridge (see N E Renton, *Guide for Meetings* (The Law Book Company Limited, 5th Ed, 1990) at para 4.38):

> When the various portions of a motion dealt with in parts have been adopted it may be desirable to consider the further question of whether the motion as a whole should also be adopted. *It does not follow that majority support for each of the parts automatically means majority support for the whole, as the "Yes" majority for each part may have come from different combinations of members and also as some people may appreciate the opportunity to change their minds in the light of subsequent debate*. The motion as a whole can be put to the vote thus, either at the discretion of the Chair or following a specific procedural motion to that effect. [emphasis added]

35 In short: Resolution 1A does not expressly sanction any *specific* capital expenditure. It merely sanctions the implementation of the modified Master Plan *subject* to a range of capital expenditure options presented in Resolution 1B, ranging from $11m to $23m. *All* members present at the SGM had a right to vote on the quantum of capital expenditure. The 179 members who voted against Resolution 1A were improperly and unduly prevented from casting a vote on the appropriate level of capital expenditure. This was a patent infraction of the Rules.

36 Given that the voting instruction was invalid, what then is the present standing of the relevant resolution(s) and the results thereof? In my view, once it has been determined that the voting entitlements had been improperly amputated, the outcome of Resolution 1B must necessarily be viewed as illegitimate *ab initio* and therefore of no legal consequence. As such, the two GCs never had, and indeed do not have, any mandate to incur capital expenditure for $23m in accordance with Option 3. This ineluctable conclusion arises from the simple application of the law of contract. The Rules have not been observed. There is no power for the GC to incur such capital expenditure. I am also fortified in my view by the incisive observations of the editors of *The Conduct of Meetings* (Jordans, 23rd Ed, 1994) at p 20:

> If the chairman improperly deprives a member of a right to which the member is legally entitled, *the validity of the proceedings may be afterwards impeached.* [emphasis added]

37 As briefly adverted to earlier (see [32] above), the defendants' reliance on the mandate for Option 3 purportedly sanctioned by the March 2004 SGM is flawed. The 93 votes in favour of Option 3 cannot constitute a *simple majority* of members *present and voting*. *Shackleton on the Law and Practice of Meetings* (Sweet & Maxwell, 9th Ed, 1997) at para 7-27 defines "simple majority" as a situation where "a motion is carried by the mere fact that more votes are cast for than against". I find the following illustration of this definition in an online encyclopaedia (at <http://en.wikipedia.org/wiki/Simple_majority> (accessed 3 March 2005)) illuminating:

> A **simple majority** is the most common requirement in voting for a measure to pass, especially in deliberative bodies and small organizations. It means that, of those who cast a vote for or against a proposition or candidate, more than half of the votes is necessary for election.
>
> As an example, let's consider three propositions: A, B, and C, that are proposed in a club of 100 members. In order for a proposition to be successful, a simple majority must agree to it. The results of the election are:
>
> - 20 votes for proposition A
> - 40 votes for proposition B
> - 10 votes for proposition C

§ 10 votes are blank

Since there are more votes for B than there are votes for both A and C combined, B has the simple majority, and so wins. Notice that the abstentions and non-voters do not affect a simple majority process, since they neither support nor oppose. They only affect an absolute majority.

In an election for president in the same club having candidates Jim, Bob, Sally, and Bridget, the results are as follows:

§ 20 votes for Jim

§ 20 votes for Bob

§ 40 votes for Sally

§ 2 votes for Bridget

In this election, no one has more votes than the combined votes of the opponents, so no one wins. In a case like this, most systems would either adopt a plurality rule or would have a second runoff election.

Tie votes do not meet simple majority and are classified as failures.

[emphasis added]

(see also *Black's Law Dictionary* (8th Ed, 2004) at p 975).

38 Even assuming *arguendo* that the dissenting members' voting rights were not fettered, it is incomprehensible how the defendants can boldly assert that a simple majority of votes had been procured. At best there was a plural majority or plurality of votes in favour of Option 3 contrary to the requirement in the Rules for a *simple majority*.

39 There is a final collateral point of some significance to consider: it also appears that in the notice calling for the March 2004 SGM ("the Notice"), the 2003/2004 GC did not specify how the voting was to be conducted. The Notice did not state that members who voted against Resolution 1A were precluded from voting for any of the options in Resolution 1B. Indeed the Notice appeared to suggest that each of the Resolutions and the Options therein would be the subject of a separate vote. It ought to be borne in mind that (see *The Conduct of Meetings* ([36] *supra*) at pp 9–10):

In preparing the agenda, care should be taken to include therein all the business to be transacted, with sufficient detail to enable members to grasp what it means.

An agenda should be clear and explicit, and in a summary form. It should enable the members to ascertain what matters will be discussed and, if circulated beforehand, give them an opportunity for forming some opinion as to the course which they will adopt at the meeting.

40 The point and purpose of placing all essential matters in a notice is to give fair notice to all members, so that they are in a position to decide whether to attend the meeting. Indeed the principle is that even amendments to resolutions referred to in a notice ought to be captured within the letter and spirit of that notice and an amendment, according to *The Conduct of Meetings* ([36] *supra*) at p 27:

> [m]ust come strictly within the scope of the notice convening the meeting.
>
> Amendments substantially altering the motion cannot usually be put without proper notice. 'How is it possible for the court to know how may shareholders abstained from attending the meeting, being satisfied that the arrangement, as it was proposed, was advantageous to them, and being quite content to exercise no voice about it?' Any amendment without notice which substantially alters the motion of which notice is required is out of order …

41 In any event, even if *all* members had notice of the precise voting mechanism that was ultimately employed, it seems to me that short of an express amendment to r 4(v) (see [27] above), the 2003/2004 GC was not at liberty to adopt such a course of action. The dissenting members' right to vote on the quantum of capital expenditure was not an inconsequential procedural right. It was an inalienable contractual right – a right of substance recognised in law as meriting protection. It is no answer for the defendants to diffidently suggest that the voting formulae had been discussed at "Q & A" sessions. First of all, only a few members attended these sessions. Secondly, I cannot see how discussions at "Q & A" sessions could legitimise, let alone sanction, voting fetters rendering illusive the very right to vote. To make such an argument is to refute it.

The assent issue

42 The defendants' argument on this issue is three-fold:

> (a) The majority of the members have the right to decide how the voting is to proceed at the meeting.
>
> (b) The "disenfranchised" members had themselves seen it fit to participate in the voting process and should therefore be deemed to have assented to the manner of voting.
>
> (c) Members in refusing to adjourn the SGM had accepted the voting modalities created by the ballot slip.

43 The defendants seek to build their legal edifice in relation to this contention by selectively relying on certain observations in the following legal authorities – the House of Lords decision in *Carruth v Imperial Chemical Industries, Limited* [1937] AC 707 ("*Carruth v ICI*"); *Kwan & Pun Co Ltd v Chan Lai Yee* [2002] 1325 HKCU 1 and *Abbatt v Treasury Solicitor* [1969] 3 All ER 1175. The principle relied on is itself uncontroversial, that is to say, that the majority of those present at a club or corporate meeting have an absolute right to regulate the procedure and/or conduct of that meeting. Lord Russell of Killowen accurately observed in *Carruth v ICI* at 761:

> There are many matters relating to the conduct of a meeting which lie entirely in the hands of those persons who are present and constitute the meeting. Thus it rests with the meeting to decide whether notices, resolutions, minutes, accounts, and such like shall be read to the meeting or be taken as read; whether representatives of the Press, or any other persons not qualified to be summoned to the meeting, shall be permitted to be present, or if present shall be permitted to remain; whether and when discussion shall be terminated and a vote taken; whether the meeting shall be adjourned. In all these matters, and they are only instances, the meeting decides, and if necessary a vote must be taken to ascertain the wishes of the majority. If no objection is taken by any constituent of the meeting, the meeting must be taken to be assenting to the course adopted.

This principle, however, is limited to encapsulating purely procedural issues. An entitlement to vote, in

contrast to the modality for voting, is not an inconsequential procedural issue. While the Club has several different classes of members, only ordinary and life members are entitled to vote in general meetings. This entitlement is a substantive contractual right on the basis of which a legitimate expectation to participate in the entirety of the voting exercise would have accrued to each and every ordinary and life member attending the March 2004 SGM.

44 There is, notwithstanding the defendants' enthusiastic submissions to the contrary, no legal authority for the startling proposition that the majority members at a meeting can vary contractual rights and/or voting entitlements. Indeed, this would be contrary to both reason and principle. It is axiomatic that the majority of members at such a meeting cannot modify, fetter or remove such contractual rights. It must be reiterated and emphasised (see [30] above) that the right to vote on this issue is not a superficial, gossamer-clad procedural right. It is a significant and real entitlement.

45 The second prong of this argument does not appear to be completely accurate, factually speaking. The verbatim transcript of the SGM indicates that some members did in fact emphatically and vehemently object to the voting. It is also inane to assert that a vote in favour of a secret ballot might legitimise this fettering of voting rights. There was no express motion to approve the actual modalities of the voting process over and above the exercise of a secret ballot. For completeness, I should add that even if there had been such a resolution or motion, it surely cannot be construed as removing or altering a right as inalienable as a voting right. The majority of members in favour of Resolution 1A and/or in favour of proceeding with the meeting should not, by a side wind, be allowed to curtail the voting entitlement of the dissenting members.

46 The third and final prong of this argument is entirely without merit. I note that the plaintiff himself had proposed an adjournment of the meeting to enable the GC to "redesign the voting paper so that it works in accordance to [*sic*] the Club's rules". The fact that this proposal did not pass muster with the other members is beside the point. Having mounted a root-and-branch protest about almost every aspect of the SGM – before, during and after it was held – it appears to me that the plaintiff has conducted himself throughout in an entirely consistent manner. The fact that he eventually participated in the voting, evidently under protest, is, legally speaking, irrelevant. Given that even a member who might have been absent at the SGM is entitled to take up cudgels over the constitutionality of the voting process, it eludes me how the defendants can even begin to argue that members who cared enough about adherence to the Rules, who duly attended the March 2004 SGM and who voted, are somehow proscribed from vindicating their rights as a consequence of some amorphous and dubious concept of tangential assent. The authorities I have been referred to certainly do not lend any scintilla of support to this rather extraordinary proposition. Both common sense and fair play militate against such a notion in this and other similar matrices. I am inclined to think that the defendants have mounted this argument more out of desperation than actual conviction.

The validity issue

47 I have determined that the outcome of Resolution 1B is of no effect as it runs counter to r 4(v). It is stated in *Guide for Meetings* ([34] *supra*) at para 4.45 that:

> If a resolution is found to be unworkable or unconstitutional, or if the desirability of the decision it records is no longer accepted, the resolution should be formally rescinded and not merely ignored. (Void motions do not really need rescission, although this is clearly tidier.) *Motions cannot, of course, override an organisation's Constitution; if they purport to do so, even if they have been passed unanimously, they are void to the extent of any inconsistency*, unless framed as proper constitutional amendments. [emphasis added]

In light of this, does Resolution 1A continue to have any force? The defendants seek to preserve Resolution 1A by contending that "at the very minimum, the members would have gone on to vote for Option 1 which was for the implementation of Phase 1 of the Master Plan at a cost of $11 million" and "this would have been so even if the alleged disenfranchised members had voted in respect of Resolution 1B". I disagree with this contention.

48 To illustrate my point of view: I cannot for instance see how it can properly be contended that those who voted for capital expenditure in accordance with Options 2 and 3 must be deemed to have voted for Option 1. Each of the Options was presented as a separate and distinct alternative, neither composite nor cumulative in nature. It is pure conjecture to suggest that those who voted for Option 2 or 3 would also willy-nilly have approved Option 1 as a matter of course. It can also be argued that among the members who voted for Options 2 and 3, there might have been members who took the view that there should be no half measures: either the modified Master Plan be implemented in its entirety or not at all. In the final analysis, there is simply no cogent evidence to indicate on what basis the members voted for each of the Options. Both the Resolutions and the Options must therefore be taken as they stand. A vote for Resolution 1A cannot conceivably, by way of extrapolation, be considered as also a vote for Option 1 or 2 or 3. Furthermore, it must be highlighted that not even one of these options could garner, in its own right, a simple majority of members present and voting. This, if anything, should serve to dispel once and for all any illusions or speculation regarding consensus or what the members might or might not have opted for.

49 I am therefore inclined to think that Resolutions 1A and 1B ought to be considered mutually as they are two sides of the same coin and, to that extent, inextricably linked. Interestingly, the defendants have paradoxically submitted in their written submissions that "Resolutions 1A and 1B were to be read as one resolution". In this context, it must be borne in mind that as a matter of general principle:

> If an ultra vires or invalid resolution is combined, as part of the same transaction, with a resolution otherwise valid, the whole transaction is void; but where the two resolutions are separate and distinct, the invalidity of one will not affect the validity of the other.

(see *Halsbury's Laws of England* vol 7(2) (4th Ed Reissue, 2004) at para 1162 and also *In re Imperial Bank of China, India and Japan* (1866) LR 1 Ch App 339 at 347 *per* Turner LJ). I also find the observations of Hodgson J in *Simon v HPM Industries Pty Ltd* (1989) 15 ACLR 427 at 439 instructive:

> [I]f a number of resolutions are set out in the notice of meeting as separate resolutions, and are passed separately at the meeting, the presumption will be that they are intended to operate independently of the passage or validity of the other resolutions: whereas if they are set out in the notice of meeting *as in effect* a single resolution, and are passed at the meeting as a single resolution, then the presumption will be that they were intended to operate only as a whole. [emphasis added]

50 In the circumstances, Resolution 1A, given its dependence on Resolution 1B, cannot stand. It has not just been orphaned; it was *in limine* ineffectual in light of the voting stricture imposed by the 2003/2004 GC on Resolution 1B. Should the defendants now desire to proceed with the modified Master Plan, they have to invoke the sanction of the members by way of a general meeting. It is hornbook law (see *Law of Clubs* ([19] *supra*) at p 18) that:

> Any unauthorised action, whether or not it involves assets, falls on analysis to be regarded as *not the action of the club at all,* but of the particular officers or members who participated in it. [emphasis added]

Concluding observations

51 Several members of the Club have expended much time and energy ventilating their grievances, often locking horns on multifarious issues in relation to the future of the Club. The two GCs displayed praiseworthy effort and boundless energy in attempting to bring to fruition what they have perceived to be in the Club's long-term interests. A strong undercurrent of volunteerism and commitment to the Club is also apparent among various members. I am, in particular, struck by the passionate plea made by Dr Alex Ooi in his preface to the Notice (see [39] above), where he entreated members thus:

> Why must we be subject to combative, often acrimonious, "turf-making" moves that have to deprive other interest groups? Why must we always have roadblocks of one sort or another that prevent us from moving on? A club is a melting pot of diverse interests that leadership must cater to and abject sectarianism and personal agenda recede in favour of.

52 It is manifestly clear from its statements and conduct that the 2003/2004 GC itself was in favour of implementing Option 3. Given the controversy and ruckus that the modified Master Plan had generated, it was not confident that a simple majority of all those present and voting would have been obtained for Option 2 or 3. It is germane to note that the first defendant in his affidavit evidence matter-of-factly states:

> Any Member who voted against the adoption of the modified Master Plan would naturally not have been inclined to vote in favour of the Master Plan proceeding to its third phase. *That member would very likely have voted for the Master Plan to proceed only to the first phase*. [emphasis added]

This is revealing. It does appears that the 2003/2004 GC, in its desire to press on with the modified Master Plan, adopted the strategy that "structuring" the ballot slip afforded the best prospect for securing Option 3 (or at worst Option 2). In seeking to realise what it considered to be in the Club's best interests, it took the view that the ends justified the "means" adopted. This was a misguided approach. Indeed, an uncharitable observer might even be inclined to suggest that the means, which included the secret ballot strategy, was an attempt to "gerrymander" the voting outcome. Though I have considerable empathy for the 2003/2004 GC, given its unstinting efforts in pursuing its vision for the Club, I cannot help but observe that in its verve and enthusiasm, it lost sight of the wood for the trees. In the ultimate analysis, the means employed simply cannot justify the ends it pursued.

53 The Rules are the paramount constitutional document governing the relationship of members in the Club. A GC cannot choose to ignore or disregard the Rules and their underlying tenets. The voting entitlements prescribed by the Rules constitute the very foundation and essence of the processes designed to bind the members and protect the Club. Drafting sophistry should never be employed to obviate explicit voting requirements. A GC cannot arrogate to itself the right to decide what is in the Club's long-term interests in so far as substantial capital expenditure requirements are concerned. The contractual right of a member to vote on a resolution calling for substantial capital expenditure must be respected without resorting to adroit drafting techniques in structuring ballot papers. For better or worse, a GC and the members of the Club are bound by the Rules which they must observe and respect both in letter and spirit. In attempting to procure a sympathetic rather than a simple majority of those present and voting, in the instant scenario, the Rules were violated by the 2003/2004 GC and the chairman of the March 2004 SGM. The proposition that 22.7% of the members, who voted in favour of Option 3, represented the will of the simple majority of members present at the March 2004 SGM offends logic and collides with reason.

54 I must reiterate that I have not concluded that either of the GCs have acted either in bad faith or have been actuated by improper motives. There is no question in my mind that both the 2003/2004 GC and the defendants have always acted in what they genuinely perceived to be in the Club's interests. They do however seem to be somewhat misguided on the legitimacy of the voting issue. In light of the patent breach of rr 4(v) and 38(ii), I have no alternative but to determine that Resolutions 1A and 1B are invalid and of no effect.

55 There are no winners or losers in these proceedings. The real casualty, aggrieved and besieged by what seems to be constant confrontation, is the Club. Hopefully, members will now be persuaded to calmly and sensibly take stock of the current entanglement so that the promise and purpose of the Club to provide "*calm respite*" can and will be fulfilled. To lance the festering boil of regular and relentless recrimination, members have to act collectively and with immediacy to reconcile their differences. If not, there is a grave danger that The Tanglin Club, blessed though it may be with a long distinguished heritage, could earn itself the epithet of "The *Tangling* Club".

56 I will reserve the issue of costs pending counsel's submissions. As the plaintiff had raised a number of procedural issues which he has now abandoned in order to secure a summary hearing, the normal order of costs to follow the event may have to be somewhat modified to take into account costs thrown away.

Judgment for the plaintiff.

[Editorial Note: To view the annex to this judgment, please click on the link to the PDF above]