

Please find herewith the near verbatim of part of the VOC meeting No.4 9th May 2017**Gi Heng Koo** <g.h.koo@dbssl.com>

14 August 2017 at 22:39

To: Edwin Rainbow <dbquorums@gmail.com>

Cc: Ricky Kong <Ricky.Kong@dbssl.com>, Debbie Lau <Debbie.Lau@dbssl.com>

Hi Edwin, Sorry for a delay. I attach below the fixed copy of No 4.

Reading through the draft minutes, it looks strange if we add the verbatim in the body. Could I have your suggestion how we should present it in a minutes. Thanks, GH

-----edwin.rainbow@gmail.com wrote: -----

To: Gi Heng Koo <g.h.koo@dbssl.com>

From: Edwin Rainbow

Sent by: edwin.rainbow@gmail.com

Date: 08/08/2017 02:14PM

Cc: Alice Li <alicefmli@yahoo.com.hk>, DEBBIE LAU <Debbie.Lau@dbssl.com>,

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KONG <Ricky.Kong@dbssl.com>

Subject: Fwd: Please find herewith the near verbatim of part of the VOC meeting No.4 9th May 2017

(See attached file: Extracted from Audio Recording of Hillgrove VOC meeting 9th May 2017-06-24.docx)

[Quoted text hidden]

2 attachments **Extracted from Audio Recording of Hillgrove VOC meeting 9th May 2017-06-24.docx**
166K **HG No 4 VOC Meeting Minutes (Eng - Draft 20170814).doc**
109K

(3)

c 229

DISCOVERY BAY HILLGROVE VILLAGE OWNERS' COMMITTEE

Minutes of Meeting No 4 2016-2017

held on 9 May 2017, 7:30 pm in Discovery Bay Office Centre

Present:

Mr Edwin Rainbow	(ER)	Chairperson
Ms Janice Fung	(JF)	Vice Chairperson
Mr Edmund Fan	(EF)	Member
Mr Edwin Tam	(ET)	Member
Mr John Antweiler	(JA)	Member
Mr Michael McGuire	(MM)	Member
Mr Martyn Keen	(MK)	Member
Ms Nikki Wepener	(NW)	Member
Mr G H Koo	(GH)	Manager – Estate, City Management (CM)

Absent with Apologies:

Ms Alice Li	(AL)	Member
Ms Cheng Mei Yu		Member
(represented by Mr Wilson Leung)	(CMY)	
Mr Chung Kwok Wah	(CKW)	Member
Fine Faith Limited	(FFL)	Member
Mr Ho Wai Ming	(HWM)	Member
Ms Kimberly Keng	(KK)	Member
Mr Lau Man Kit	(LMK)	Member
Ms Lo Yuk Shan Connie	(CL)	Member
Mr Nigel JH Reid	(NR)	Member

In Attendance

Nil

1. **Confirmation of Previous Meeting Minutes**

The draft minutes of Village Owners' Committee Meeting No 3 of 25 April circulated to Members.

ER welcomed Members attending the Meeting and suggested that the order of the resolutions as stated in the agenda would be swapped as to reflect the sequence of the discussion and consensus. Members agreed to the suggestion.

2. **"In view of DBSML's unexplained delay in collection of a long outstanding debt**

(4)

C 230

- Resolution agreeing to take Chairman's Claim for reimbursement of Out of Pocket expenses for a legal opinion to the Small Claims Court.
- CM pressured to take the legal action and make use the legal opinion
- CM argument for not reimbursing the Chairman.
- CM pressured for an explanation on inaction on the Long Outstanding debt.

(Near Verbatim)

MK why are the two junior CM staff not present [Debby, Ricky] ?

GH They usually attend the VOC meeting but for some particular topics the Estate Manager will be good enough and can be Secretary.

(referring back to the earlier resolution to audio record the meeting, the Chairman concluded that there was unanimous agreement from the committee to record).

ET arrived. The Chairman explained that a vote had agreed that members would independently record the meeting and ET was asked if he also agreed. ET confirmed agreement

ER This resolution [on recording] is only for tonight. Is there interest for doing this on a regular basis?

MK Yes, we should do it on a regular basis

GH. There are rules for members to record themselves, and it requires that all the members are consulted and consent.

MK

It should be the first item on the agenda going forward for every meeting.

G.H Agree. Standard item.

ER Now the second motion. The original that I sent to GH was very short, but I told you that I would amend it and I have amended it and it is now considerably longer. Did you receive it?

GH Yes.

ER I will read it anyway. It should be read into the minutes. It is really important.

JA It should be read into the minutes

ER

The Hillgrove VOC to reconfirm the following resolution which was audio recorded, but not recorded in published minutes from a VOC meeting on 23rd March 2016 but which was properly recorded in the minutes of the COC meeting on 11th May 2016 .

ER What it said in the COC minutes was :

The resolution:

the need to obtain legal opinion on the calculation of interest on overdue amounts receivable and their collection under the Discovery Bay Deed of Mutual Covenant, the DMC, for the collection of the current substantial debt due to Hillgrove Village should be against the brief drawn up and agreed by the Hillgrove VOC and sought from a legal firm selected by the Hillgrove VOC and paid for out of the Hillgrove Village reserve fund.

ER So we did get that through the COC, with almost identical wording to that. We also got it through our own VOC, but as a precaution I wanted to reiterate that this VOC wanted to take the funds out of our reserve fund. Just in case there is a problem down the road.

(5)

C 231

I can see a problem down the road. If there is a litigation, and it looks as though we may be heading that way, because I do not intend to pay 18,000 [HKD] without a fight.

(Summary)

ER had been under the impression that the Agenda was not published seven days before the VOC meeting and that this may affect the legitimacy of the resolution

GH Confirmed that the agenda was in fact issued on 29th April and this was clear by seven days so there was no problem with this VOC meeting.

(back to near verbatim)

ER To that part of the resolution I now add :

and legal opinion having now been obtained and the payment settled by the Hillgrove Chairman, the Chairman seeks the VOC's acknowledgement and support that he seeks redress at the Small Claims Court against the failure of DBSML to reimburse the 18,000 HKD expense incurred, as previously agreed by the Hillgrove VOC and the COC.

Summary

EF...Suggested that "Small Claims Court" be replaced by "at a Court". [This was agreed].

(NW arrived)

MK proposed the resolution, JA seconded.

The resolution was passed unanimously.

ER Asked GH as representative of CM to give feedback to the committee on the situation with respect to the long outstanding debt subject to the approval of the VOC:

(Near verbatim)

GH Up to this moment, OK, we will carry out the proceeding to recover the long outstanding debt no matter long or short so it depends on the amount. But for this case, like Hillgrove, with a long outstanding debt for 10 years we still recommend the legal proceeding to recover it, however the statement of claim will cover the interest on a simple basis, rather than compound, because internally the estate does not carry out the proceeding. We will refer the case to the Groups in-house counsel to do it and then we will fill in the figures, and then tell them the background and then they will draft the instruction to the appointed solicitors for the proceeding - basically this is the procedure.

So I can see in this case that the disagreement is about the calculation of the interest. We have no problem about the principal but if we fill in the interest figures with the compound [interest] basis the in-house department will say that we have to fill it in again.

EF. You do not have to fill in the amount by yourself. Why don't you pass it to your legal [people] and tell them that pursuant to the DMC and the legal opinion and let them calculate the sum for you? So you don't need to do this yourself. You don't need to give a specific instruction to your lawyer. They know better.

GH OK

(6)

C232

(Summary)

EF We have a Chairman who has generously funded, so far by himself, and has produced a decent report, legal report. Why don't you just pass that on to your lawyer. [omitted words not material]. You don't have to give them a figure. They will decide what to do. You do not have to tell them what to do.

(Near verbatim)

EF You do not have to give them what to do, otherwise you take that bit of liability on yourself.

ER This is precisely the point. If we did not do this, we are exposed. This VOC is exposed. Now, if you take that action [of charging simple interest], according to what I read in the DMC, you [DBSML] are exposed.

ER and EF You don't have to do it.

EF You just pass on the necessary records and legal opinion. If they [the legal team] do not agree they do not agree with that opinion they find another legal opinion to support whatever they believe. So it is not your role [GH] to decide. Provided they [in-house counsel] have been given the legal opinion on whether it is simple interest or compound interest. Leave it to the legal team to do it. It is not our problem Why to insist on whose interpretation is correct or wrong?

(Summary)

ER/MM Made the point that it is largely up to the debtor to argue if there is disagreement.

(Near verbatim)

EF You send the precise record for this particular person and you tell them you are the manager and show them your legal opinion for their reference. Is it compound or is it simple. They will tell you.

GH I understand. Good suggestion.

EF It is not our problem. Ask them [the legal team] if it is simple interest or compound interest? If they come back with specific advice then let us know. Save the money [on the legal opinion, it has already been spent. We have read it and it is quite clear. The legal opinion is quite thorough and supported by common law cases. That is very solid evidence

MM It is a very black and white case.

It is not your fault. It is not your problem. Why get another legal opinion. The money has been spent.

EF to GH . Why do I have to insist on whose interpretation is right or wrong?. You present the precise records of the outstanding to that particular person [the debtor] and say you are the property manager then show them the legal opinion for reference.

(omitted words - not material).

(Near verbatim)

7

C233

MM to GH . This has been going for so long and endless discussion about interest rates this must have obviously been presented to your [legal people]

EF [to GH] Another side point, if all the money is collected and all the damages recovered [it not your responsibility] you don't suffer anything. It is all damages. There will be no question of misconduct. We have extra funds. Nobody loses out.

(Near verbatim)

MK Ed [The Chairman] loses because he is not getting paid compound interest on his 18,000 HKD

EF. So it is important he is paid back quickly

GH "Sheung Sha" ?

Clear

MM My question is a bit historic. [to GH] It is a legal point. Up to this point what legal counsel have you had? What legal reference do you have. When and which solicitor told you it has to be [simple interest]. Or can you confirm that you legal, even if it is your in-house people, has confirmed that it cannot be compound interest? You would not, as a non-legal person, just decide it must be simple interest. There has to be a legal reference. I am just wondering when and which solicitor, on your side, actually told you that it has to be [simple interest]? It is just a matter of legal argument.

EF. It is part of your in-house lawyers duty because once you take it to court you have to instruct a proper firm.

ER You [CM] are fighting the debtor now.

EF Exactly

MM Can you confirm, even if it is your in-house people has confirmed that it has to be [simple interest]. There must be some opinions given. Has it been confirmed that it is simple interest? Is there an answer to that?

GH I cannot give you an answer this evening.

MM Have the lawyers seen this situation?

GH I understand your point. When DB developed 30 years ago when they started the operation of the DMC there should be some guidelines to ask the staff what rates or what action they have to follow to implement the DMC. For example for the accounts department on how to calculate the interest there should be some background or guidance for calculating the rates.

MK Yes but saying there should be background or guidance is like turning around and trying to set a precedent. The precedent does not need to be set here. It is in the DMC and we have it from the judgement, or what is the term I am looking for here? The legal opinion. The legal opinion says that the DMC says it is compound interest. Not simple interest. So it does not matter what happened 30 years ago it what is in the DMC and what the legal opinion says.

GH But Michael asked. What is the starting point? Some 30 years when we began to manage the DMC there should be some guidelines there should be....

MK if that is in the DMC 30 years ago then it not a case of So has the DMC changed in the last changed in the last 30 years?

GH No

MK Fine. So it does not matter if there is a guideline 30 years ago. So your argument does not really stand. You don't need to see what happened 30 years ago because 30 years ago it was already legal. So if there is no adjustment of DMC the there is no adjustment of whether it is simple interest or compound interest. It doesn't matter if 25 years ago you had this problem you dealt with it dealt one way or another. If you dealt with it 25 years ago in another case, and you charged simple interest, well you were wrong, because the DMC states it should be compound.

EF Also, it is not up to us, because we are not a party to those [contracts]

MK Correct .100% agree. All I am saying you can't turn around and say, it depends on what happened 30 years ago. The rules have not changed from 30 years ago , when DB started, until now. So it does not matter what happened 30 years ago because 30 years ago it was already legal. It does not matter who was here 30 years ago the rules have not changed So on that basis we are still on the same rules today. Do you agree [to GH]?

GH Yep!

MK So the DMC is still the same and the DMC says compound interest

GH No

MK Does it not?

EF (and other Members together challenged GH). You should not even be arguing that point

GH. Edmund is talking about other things How to put the figures to the legal department. The first question you raised about what figure I should fill in. OK. We just put the principal and then to make a copy of the supporting [documents] and [say] the owners are owed this amount of money – the law on interest comes afterward.

EF. You hand over the opinion to ask for the interest.

GH The question that Michael asked what is the base of reference we are to give why we have applied the simple interest all these years. No matter – 30 years we have had the DMC. For this case we have the legal advice telling you what interest it should be and for this case we apply it.

MM So you did have legal advice?

GH. I cannot say. OK? Because we just threw in the principal and then together with the simple interest.

MM Which legal advice?

GH The legal advice from Edwin ER. The advice sought by the Chairman]. This one [the legal opinion sought by the Chairman].

(9)

C235

MM. You have not had any separate legal advice so it is just someone telling you..

GH No I don't. At least I have not read this before. Because for these years the account department follow the simple interest to

MM. So you are boxing blind because you don't have any legal advice telling you what it should be...?

GH. I had not read this before because for these years DB accounts just followed the simple interest to ...

EF Again you have this piece of legal opinion. It matters that

MK What you have done in the past is irrelevant to this case if you have used simple interest when the DMC says you should have used compound interest.

ER It is certainly irrelevant [what has been done in the past] to this case but it is certainly relevant to what happens in DB.
Most bills are paid within 3 months. [the difference is insignificant]

EF How much would the figure be for the so called simple interest and the difference for compound interest?

ER I asked Nigel for that. He didn't [update it].

EF is it a very minor difference?

GH No the difference is substantial. Almost double.

EF The difference is substantial. So then that matters to us .

MM It does [matter to us] because if we do things the wrong way we are accountable.

ER That is what I fear.

MM They [the owners] can come after us and say we have sold them short.

EF If it was very marginal then forget about it.

GH. The difference is substantial.

MK Very substantial

EF So if it is substantial, our interest will be hugely effected.

MM We are putting ourselves on the line.

ER This is the point I am making. If we don't do anything we are exposed, if they [CM] don't do anything [about claiming compound interest], they are exposed.

ER I took legal advice on that, by the way, and the legal advice was to get a legal opinion.

MM No choice

10

C236

JA to GH. Could we have a standing item for all these meetings. First thing or second thing is we get a progress report on what is being done. This thing has been going on for years. I think the owners need to know, month by month, or how ever often we have meetings. What is being done? Who is on square one? Who is on square two? Who are we waiting for? What progress has been made? I would really like to say progress has been made. It seems like for ten years there has been no progress. I would like to say that progress has been made. It seems to me that for ten years no progress has been made, it has just been sitting there. So, could we just have it as an agenda item. Every meeting we have an update and a progress report.

GH An ageing report together with the follow up actions?

ER Well, just a progress report.

MK Item number two.

NW agreed.

MK Item 1 is that we are going to [audio] record the meeting

ER Item 2 is the minutes

MK and NW agreed [the Long Outstanding Debt] it will be item number 3

ER Item No1 is the minutes. [this is] Item number 3, until the thing is sorted.

GH So the ageing report can be put under the item Financial Status, so when we record the financial status?

ER No it does not have to be. We can have it as item number 3. It gives it importance.

JA So it is a standard item

ER It is for now. One day we may understand why you [CM] did not go after this money [To GH] you have not explained this. Can you explain it?

MM And that is not about interest it is a about taking some action.

ER Proper management

(Summary)

JA described how a bank would have acted in this situation)

(Near verbatim)

MM Speaking not as a lawyer but suggested that in this case there could be all sorts of damages applied.

JA This is a waste of time. We need to show progress and get it over with.

ER to GH. Before we leave that general area I guess you are adamant that you are not going to pay the 18,000?

MK (and NW). May I just ask why will you not pay ED his 18,000 back if the rules state if that the VOC Chairman, can, under certain circumstances claim that. Why will you not pay that?

GH Two things I should mention right before this meeting this is what happened in the past couple of months. Right?

First of all when we seek legal advice and CM suggested to go through the procurement procedure and for this amount may be less than 10,000, corrected to 100,000 [HKD] we have to invite five solicitors firms to quote and then we will choose

MK Sorry I have to butt in. Do the rules state that Ed has to do that? Do the rules allow Ed to claim for disbursements? It is very clear in the DMC that it states he can do that. It is nothing to do with your PO [procurement] procedures.

GH Make a claim for disbursements?

MK In the DMC it say that Ed [as Chairman] can do this. So why is CM turning around and saying this is not fact.

GH OK. In the DMC they use the term *out of pocket* money to repay owners for the reparation of the village

(11)

C237

MK But the VOC agreed that he could do this. The COC backed that up so it is only CM who actually work for the VOC, and the COC who are disagreeing with that.

ER CM halted the reimbursement or refused to reimburse at this stage. The COC didn't [say anything]

GH. No CM. Because we, refused to pay you back the money, we, CM, do not see it as *out of pocket* money. It is *procurement of services*. That is why we insist to follow the rules.

MK Does it say that in the DMC?

GH No

MK Or is that your interpretation?

GH Our interpretation. It is CM interpretation.

CM. So CM interpretation always takes precedence

MK Good. Thank you very much.

ER I have some good news. Last time I said I would take this matter to, at least get some advice from, the Home Affairs Department. I have not done it yet, but as it happens the Greens had another problem and they went to the HAD. They did not much help out of the BMO but does look as if they [HAD free legal advice] think that if there is a void in the DMC it our job [VOC] to decide the interpretation not theirs [CM]. So we can have a resolution that we deem this to be an out-of-pocket expense ?

MK We can do that

ER Not tonight.

MK We can do that at the next meeting.

ER It may not be worth waiting, but I will go to the HAD as well.

MK May as well confirm with them as well.

ER to GH. You might not have known that ? Did you know that the Chairman [of the Greens] went [to HAD]. I think he went with the [CM] manager.

GH The one thing I want to stress is the *procurement procedure*. We take reference from the BMO to do that. For example over 20% or over 200,000 per job we go through the full tender procedure there has to be 8 vendors. This is the reference. Of course DB DMC is quite an old one, and there is not much detail on the mechanism for procurement so what we rely on is the BMO . Also some detail procedure that we have agreed with the COC a long time ago.

ER Well, you will have to dig it out.

MK Especially considering the COC actually backed you [to ER], it does not matter what happened in the past. The COC has changed their mind.

ER to GH. Please find the basis and put all these arguments in writing. It does not stand up, in my opinion.

Put all the stuff you have told us in writing and anything else you have to support your argument.

GH Let me change the format a bit and let you have a more clear picture of how we do the procurement - 3 vendors, 5 vendors...

MK. There is a difference between procurement and out of pocket expenses. I spend a lot of money in my company and I go through procurement but I can do out of pocket expenses as well. Out pocket expenses is decided at a little table like this as this is in the rules. It does not say I have to put a small expense like this out to tender. If we waited to this, at the speed you guys work, we would be waiting for ever. It has taken us ten years to get this debt sorted and we are now talking about 18,000 dollars

(12)

C238

ER Let us not forget why we went outside. The reason we went outside was that FK Wong wanted to change the brief and he was changing it significantly and he was broadening it and it was becoming meaningless [in relation to the interest calculation]. Because we would not accept his [FK Wong's] changes, CM would not move forward. So, what else could I do to protect the interests of this VOC and the owners of this Hillgrove property. Because they [the owners] stand to lose money. This VOC stands to be challenged legally for giving away perhaps 200,000 HKD, which we have no right to give away.

GH You have mentioned this before

ER There are so many reasons why we had to do it this way. It is extremely unfair to talk in terms of the DMC being old. It is old but too bad, we have to live with it. It could be good, it could be bad, for both sides. We have to live with it.

MK For the record GH you have been nodding your head in agreement at everything that Ed has said so far.

Oh! Understand - not agree! "Tek lo"

MK Lets not wait too long for the next meeting.

JA With the progress report.

GH Sure. We do have internally a monthly progress report and we jot down the progress

MK I would like to see that outstanding progress report for the last five years. I do not believe we have seen any. If you are writing a report to your accounts department or are they writing a report. ...?

GH No They give me a figure and then I write the progress and send it back to the accounts department.

ER So what have you been writing all these years?

GH Up to this moment, at this stage it is *pending* until we sort out the interest calculation.

MK What have we been doing for the last fifteen years before this conversation started?

GH We did the MOC [Memorandum of Charge] already. We registered the case in the lands office

ER This was [many] years ago at a very low value, so it is meaningless.

MK So have we reregistered?

GH No

MK Why not?

(No answer from GH)

MK So the question we have for the progress report at the next meeting is . Why haven't we re-registered?

MM With an up to date amount.

JAand when it will be registered. How long does it take?

ER Preferably with a report that it has been done.