

Tan Joy Hon and Others v Sassoon Samuel Bernard and Others
[2007] SGHC 191

Case Number : OS 829/2007
Decision Date : 06 November 2007
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Aqbal Singh and Josephine Chong (UniLegal LLC) for the plaintiffs; Harry Elias SC (Harry Elias Partnership) with Toh Wei Yi and Christopher Yong (Legal21 LLC) for the first to eighth defendants; Muthu Arusu and Tay Yong Seng (Allen & Gledhill LLP) for the ninth defendant
Parties : Tan Joy Hon; Tan Joey Thiam; Tan Juee Choo; Liew Sin Fat; Tham Kok Hoi; Yap Siew Bee; Gan Soon Bee; Peck Cheng Chiang @ Peh Seng Thong; Pauline Gan Poh Lian; Thow Nan Yien; Sugianto Adisuwiryo; Cheh Khee; Tham Poh Khin; Lai Yoon Fong Cecilia; Tan Lau Huah; Chua To Dey; Low Eng Cheng; Ng Lay Hoon; Ho Yap Siong; Chu See Yong @ Tan Tat Fong; Sri Soelajah — Sassoon Samuel Bernard; Chong Kok Boon; Andrew Ong Lay Teng; Chong Yan Chin; Tham Kim Ying @ Tam Kim Ying; Tan Sin Yin; Tay Chong Beng; Mah Kai Leong; Bukit Panjang Plaza Pte Ltd

Land – Strata titles – Collective sales – Group of owners alleging collective sale agreement lapsing before sale committee entered into supplemental sale and purchase agreement – Whether collective sale agreement valid only for fixed term – Whether sale committee having authority to enter into supplemental agreement

Land – Strata titles – Collective sales – Obligation on sale committee as vendors to use best efforts to obtain order from Strata Titles Board

Land – Strata titles – Collective sales – Owners attempting to withdraw consent to collective sale agreement in rising property market – Owners failing to appear before Strata Titles Board but applying to court before Board granted any order – Whether owners acting in bad faith

6 November 2007

Lai Siu Chiu J

Introduction

1 The abovenamed 21 plaintiffs (collectively referred to as “the plaintiffs”) are some of the subsidiary proprietors of a block of flats (consisting of 47 units) known as Phoenix Court (“Phoenix Court”) situated at No. 70, St Thomas Walk, Singapore 238139. The first to eighth defendants are also subsidiary proprietors of Phoenix Court and were/are members of the sale committee of Phoenix Court that was formed to effect an en-bloc sale of Phoenix Court. (Henceforth, the first to eighth defendants will be referred to collectively as “the defendants” or where it is appropriate in the context as “the sale committee”).

2 Save for the co-owners of unit #07-70 viz Yip Ho Thong and Ng Swee Leng (“the dissenting owners”), all the other subsidiary proprietors of Phoenix Court (“the consenting owners”) entered into a Collective Sale Agreement dated 16 April 2006 (“CSA”) to sell Phoenix Court. Pursuant to the CSA, the ninth defendant Bukit Panjang Plaza Pte Ltd (“BPP”) purchased Phoenix Court for \$88.1m under a conditional Sale and Purchase Agreement dated 27 October 2006 (“the SPA”) signed by the defendants on behalf of the consenting subsidiary proprietors. Pursuant to cl 4(i) of the SPA, BPP paid

the requisite 5% deposit sum amounting to \$4.405m to the consenting owners. The terms of the SPA were subsequently varied by a Supplemental Agreement dated 25 April 2007 ("the Supplemental Agreement"). The sale of Phoenix Court to BPP was approved by the Strata Tittles Board ("the STB") on 26 June 2007 after a two-day hearing, despite objections from the dissenting owners.

3 On 4 June 2007, the plaintiffs applied by Originating Summons 829 of 2007 ("the OS") for the following main prayers:

- (a) a declaration that by virtue of the true interpretation and meaning of cl 13 of the CSA, the CSA had determined on 16 April 2007;
- (b) a declaration that the defendants did not have any authority under the CSA to enter into the Supplemental Agreement;
- (c) a declaration that the purported Supplemental Agreement was null and void and of no effect and/or was not binding on the plaintiffs;
- (d) an Order that the defendants pay to the plaintiffs damages to be assessed.

4 The OS was filed before but heard after, the hearing before the STB. I dismissed the OS and the plaintiffs have now filed a notice of appeal (in Civil Appeal No. 101 of 2007) against my decision.

The affidavits

5 In the affidavit filed on 1 June 2007 in support of the OS, the eighth plaintiff Peck Cheng Chiang ("Peck") referred to cl 13.1 of the CSA ([32] below) and asserted that the agreement had automatically terminated on 16 April 2007, one year after its execution. Consequently, the defendants had no authority to enter into the Supplemental Agreement, the document was null and void and it did not bind the plaintiffs.

6 The first defendant Samuel Bernard Sassoon ("Sassoon") filed an affidavit on the defendants' behalf to oppose the OS. Sassoon's affidavit set out the chronology of events leading up to the OS, starting with:

- (i) a survey conducted after the Annual General Meeting in December 2005 which results determined that more than 60% of the subsidiary proprietors were interested in a collective sale at a price of \$1.65m per unit;
- (ii) the appointment of the sale committee (pursuant to approval from subsidiary proprietors at an extraordinary general meeting ("EOGM") called by the Management Corporation on 26 February 2006);
- (iii) and ending with the application to the STB.

7 Although the dissenting owners did not sign the CSA, Sassoon revealed that they had participated in the December 2005 survey indicating their willingness to sell their unit at not less than \$1.8m.

8 In February 2006, a sale committee was appointed for Phoenix Court followed by the appointment of a marketing agent ("Dennis Wee Realty") and a firm of solicitors ("LLC") to prepare the CSA and other documentation.

9 Sassoon deposed that by July 2006, subsidiary proprietors owning units exceeding 80% of the share values of Phoenix Court had signed the CSA.

10 Between April and July 2006, three members resigned from while Sassoon was appointed to, the sale committee (on 26 September 2006) of which he also became the chairman.

11 In or about September and October 2006, the sale committee received two offers of \$88m each for Phoenix Court, with the later offer coming from BPP. (I should add that \$88m was the reserve price under the CSA). BPP subsequently revised its offer to \$88.1m. Based on \$88.1m, the subsidiary proprietors of Phoenix Court (including the dissenting owners) would receive at least \$1.8m in sale proceeds for each unit, in accordance with the apportionment set out in Appendix 1 of the CSA. The sale committee decided to accept BPP's offer not only because it was higher than the reserve price and first offers of \$88m but also because BPP offered more favourable terms than those offered by its competitor and it was a subsidiary of a public company. (A subsequent valuation carried out by Savills gave an open market value of \$87.5m (for redevelopment purposes) for Phoenix Court as of 6 December 2006).

12 Consequently, the sale committee executed the SPA with BPP on 27 October 2006. At an EOGM convened by the sale committee on 19 November 2006, the CSA as well as the SPA were unanimously approved and accepted by all subsidiary proprietors who attended. One of the dissenting owners also attended the EOGM but did not object to the SPA, although he did not sign the CSA.

13 When the SPA was signed, the subsidiary proprietors of six units (excluding the dissenting owners) viz #04-72, #04-76, #13-70, #13-72, #13-74 and #13-76 ("the six units") of Phoenix Court had not signed the CSA. The sale committee was advised by its lawyers that it was necessary to make an application to the STB ("the application") under s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") for an order to approve the collective sale and the SPA ("the order") since 100% consensus was not obtained from the subsidiary proprietors.

14 However, the sale committee did not immediately thereafter make the application to the STB for the order. At the request of Dennis Wee Realty, the application was held back to give the former more time to persuade the six units and the dissenting owners to sign the CSA, in the hope of dispensing with the need for the order from the STB. By late December 2006, the six units had signed the CSA.

15 In January 2007, when it became evident that the dissenting owners would not sign the CSA, the sale committee instructed LLC to make the application. Accordingly, the application for the order was filed with the STB on 17 January 2007 on behalf of the consenting owners by Sassoon, the second and the fourth defendants.

16 The dissenting owners filed an Objection with the STB on 5 February 2007. Although the Objection was filed out of time and despite protests by the sale committee to the same, the STB granted the dissenting owners leave to amend and file their Objection out of time. This was followed by a notice from STB to the sale committee to attend a mediation meeting on 25 April 2007. On 13 April 2007, the sale committee received a notice from the solicitors of BPP reserving the rights of the latter.

17 Under cl 3(i) of the SPA ([33] below), the consenting owners had a six months timeframe to obtain the order from the STB failing which the SPA would terminate on 27 April 2007. Concerned that the SPA would expire before the STB order was obtained, the defendants requested the STB on 13 April 2007 to put forward the mediation meeting, alternatively, to convert the mediation meeting to a

full hearing on the application; both requests were rejected.

18 The sale committee then received a letter dated 18 April 2007 from BPP, reiterating that the subsidiary proprietors were obliged to use their best endeavours to perform the SPA failing which BPP was entitled to its remedies under the SPA.

19 The sale committee sought and received legal advice that in order to satisfy the requirement of using its best endeavours under the SPA and to avoid breaching the contract in the event the STB order was not obtained by 27 April 2007, the defendants should extend the period of validity of the SPA while continuing their efforts to obtain the order from the STB.

20 The sale committee then called for and held an urgent meeting of all signatories to the CSA on 22 April 2007. The meeting approved and directed the sale committee to enter into a supplemental agreement with BPP to extend the validity of the SPA. I should point out that more than 50% but less than 80% of the attendees voted in favour of the extension to the SPA. In the exercise of its discretion, the sale committee decided to extend the SPA. Consequently, the defendants executed the Supplemental Agreement with BPP on 25 April 2007. Under cl 1.1 thereof, the subsidiary proprietors were given two months' extension until 27 June 2007 in which to obtain the STB order.

21 At the mediation meeting on 25 April 2007, the STB ordered the hearing of the application to take place on 7 and 8 June 2007, despite a request from the dissenting owners for a postponement. The dissenting owners' new solicitors (their fourth change of solicitors by that stage) wrote on 29 May 2007 to the STB asking for the hearing of the application to be postponed as they had just been instructed. Concerned that the order from the STB would not be obtained by the extended deadline of 27 June 2007 (under the Supplemental Agreement), the first and third defendants sought an appointment with the Deputy President of the STB on 30 May 2007 asking that the dissenting owners' application be rejected; the request was rejected.

22 The sale committee then made a similar written request to the STB on 30 May and 1 June 2007. On 4 June 2007, the Deputy President convened a hearing of LLLC and the solicitors of the dissenting owners and ordered that hearing of the application be brought forward to 21 June 2007.

23 On 30 May 2007, 14 subsidiary proprietors who had signed the CSA (including the plaintiffs) wrote to the sale committee through their present solicitors giving notice of their intention to apply to court for the prayers set out in [3] above. The letter concluded with the ultimatum that if the sale committee did not confirm it had no objections to the plaintiffs' intended application by Friday 1 June 2007, the latter's solicitors would proceed as intended. The sale committee in turn forwarded the aforesaid letter to all signatories of the CSA. The plaintiffs filed the OS on 4 June 2007.

24 Unbeknownst to the sale committee, the fifth, eighth and twenty-first plaintiffs had written to the dissenting owners and to the STB on 10 April 2007 in the exact same terms as follows:

I...owner of No. 70 St Thomas Walk #..., Phoenix Court. Singapore 238139 hereby acknowledge receipt of the Amended Objection filed by Mdm. Ng Swee Lang and Mr. Yip Hoi Thong regarding the proposed collective sale of Phoenix Court to Bukit Panjang Plaza Pte Ltd for S\$88,100,000.

After perusing the said Amended Objection, I am of the view that the objections raised are valid and I support your application in objecting to the collective sale of Phoenix Court.

On this note, I will wish to withdraw my consent to the collective sale and to treat the sale and purchase agreement dated 27th day of October 2006 ("the Agreement") as terminated after 6

months from the date of the Agreement (clause 3(i) of the Agreement”).

25 By a letter dated 14 June 2007 addressed to the defendants’ solicitors, the solicitors for the dissenting owners gave notice that their clients would seek indemnity costs should the plaintiffs succeed in the OS (which chances of success the dissenting owners’ solicitors rated as “a very high likelihood”), if the sale committee persisted in proceeding with the application (to the STB).

26 A director of BPP one Teo Ho Beng (“Teo”) filed an affidavit to oppose the OS. Teo’s affidavit exhibited copies of the letters dated 10 April 2007 written by the fifth, eighth and twenty-first plaintiffs in [24] above. Teo’s affidavit focussed on interpretation of various clauses in the CSA as well as in the SPA. As such, I shall deal with the arguments he raised through BPP’s counsel in my decision below. However, three paragraphs in Teo’s affidavit were very pertinent to my decision to dismiss the OS. After referring to the three plaintiffs’ common letter dated 10 April 2007 in [24] above, Teo deposed as follows:

31 On the face of it, these appear to be coordinated acts by the 5th, 8th and 21st plaintiffs acting in tandem with the subsidiary proprietor of Unit #07-70 to try and to [*sic*] scuttle the Consenting Vendors’ pending STB application.

32 BPP apprehends that such actions (and for that matter, the present proceedings) are in fact motivated by the rising prices in the property market since the SPA was entered into. Property prices continue to rise.

33 BPP has received a letter dated 25 May 2007 from a “very worried owner of Phoenix Court” advising it of machinations by a third party, acting in concert with a group of subsidiary proprietors of units in Phoenix Court, with a view to preventing the completion of the SPA. An offer of \$2 million per unit was apparently being put forward together with an undertaking to indemnify the subsidiary proprietors who are prepared to take up the offer.

The letter from “the worried owner” dated 25 May 2007 was exhibited in Teo’s affidavit but redacted to delete the identity of the person(s) who had approached “the worried owner” (who was a signatory of the CSA).

27 It would be equally unnecessary to address the reply affidavit filed by Peck to the affidavits of Sassoon and Teo as the same was short on facts and long on arguments, which arguments should more properly have been canvassed by the plaintiffs’ solicitors, not the plaintiffs themselves.

28 However, it is interesting to note that in answer to Teo’s allegation on the plaintiffs’ alleged motives in bringing the OS, Peck only had this to say in the following paragraphs:

38 Much has been said in Teo’s 1st Affidavit impugning the motives of the Plaintiffs in bringing this action. Much has also been said both in Teo’s 1st Affidavit as well as Sassoon’s 1st Affidavit as to whether there was an obligation to extend the Sale and Purchase Agreement on the part of the Owners.

...

41 The motive of the Plaintiffs in commencing these proceedings is to enforce their rights. It does not behove the 9th Defendant to cast the Plaintiffs’ simple attempt to enforce their rights as “machinations” (see paragraph 69 of Teo’s 1st Affidavit) or to describe these proceedings as “an

abuse of process" (see paragraph 67 of Teo's 1st Affidavit).

29 The plaintiffs' professed motive of enforcing their rights was patently untrue as will become evident later in my decision. I further noted that Peck made no attempt to deny the specific allegation set out in para 33 of Teo's affidavit or the existence and effect of the letter dated 25 May 2007 referred to earlier in [26]. When I dismissed the OS, I had commented to counsel for the plaintiffs that their clients' application reeked of bad faith. My observation will be borne out below.

The submissions

30 As the parties' arguments and my decision turned very much on the terms and conditions in both the CSA and the SPA, it would be appropriate at this juncture to set out the relevant clauses of both agreements, starting with the CSA.

31 Clause 2.5 of the CSA states:

Subject to the terms and conditions of this Agreement, the Owners agree that the Sale Committee shall have the full authority and discretion to deal all matters relating to the Collective Sale including but not limited to the following matters and each of the Owners shall render their fullest co-operation and use their best endeavours to assist the Sale Committee in the discharge of their duties at all times:-

2.5.1 to co-ordinate liaise correspond with and give instructions to the Property Consultants, the Solicitors, and/or any other third parties, on all matters relating to the Collective Sale or to give effect to the terms of this Agreement or the Contract;

2.5.2 to furnish the Property Consultants and the Solicitors with all such information and documents necessary for effecting the Collective Sale and the Contract;

2.5.3 to convene and conduct meetings of the registered proprietors of the Units where the same are required or necessary to achieve the Collective Sale or any of the purposes in this Agreement or the Contract;

2.5.4 to determine the Sale Price which shall in any event be not less than the Reserve Price;

2.5.5 to negotiate with any intending purchaser and to approve the terms of Contract and any other documents relating to the Collective Sale and to amend any term of the Contract and the related documents (but subject always to the limits as set out in Clause 4);

2.5.6 to do any act or omit to do any act or to negotiate any matter on behalf of the Owners that may be advised by the Solicitors and/or the Property Consultants as necessary expedient or incidental to the Collective Sale, this Agreement or the Contract;

2.5.7 to enter into the Contract with the Purchaser or to authorise the Solicitors or the Property Consultants to accept the offer by the purchaser;

2.5.8 to extend the appointment of the Property Consultants as provided herein or to appoint another Property Consultants as the case may be on terms similar to the terms of appointment herein;

2.5.9 to approve the completion account of the Collective Sale;

2.5.10 to carry out such acts and to make such applications as may be required under the Act or any other relevant legislations to facilitate the collective Sale or to give effect to the terms of this Agreement or the Contract in this respect to instruct solicitors accordingly;

2.5.11 to commence and carry on any action or other proceeding of any kind in any Court in Singapore against any Owner in respect of any breach of his obligations under this Agreement or the Contract and in this respect to instruct solicitor accordingly;

2.5.12 upon a breach of the Contract by the purchaser to exercise any rights and remedies and take such other action available to the Owners under the Contract as the sale Committee may deem fit and for the purpose, to instruct the Solicitors accordingly;

2.5.13 to sign on behalf of the Owners such documents to authorise the purchaser to apply to the competent authority for planning approval for redevelopment of the Property; and

2.5.14 generally to do all acts deeds matters and things which the Sale Committee shall in good faith and in accordance with the spirit and intent of this Agreement deem necessary or proper for the implementation of the terms and conditions of this Agreement, the Collective Sale and the Contract.

32 Clause 13 of the CSA states:

PERIOD OF VALIDITY OF THIS AGREEMENT

This Agreement shall remain effective and binding on each of the Owners from the date of the Owner's execution of this Agreement and shall determine on any of the following events:-

13.1 upon the expiry of twelve (12) months from the date of this Agreement: or

13.2 if no Contract is entered into twelve (12) months from the date of this Agreement or

13.3 where a Contract is entered into:-

(a) on the performance of all Owners' obligations under the Contract and this Agreement
or

(b) if the Contract is rescinded by either the Owners or the purchaser :-

(i) remedies of the Owners and the purchaser against each other have been resolved fully and finally: or

(ii) all rights and remedies of both the Owners and purchaser as against each other are exhausted: or

(iii) where no further appeal is available or made to the court having jurisdiction.

33 Clause 3 of the SPA states:

If applicable, the sale and purchase shall be subject to the Vendors obtaining an order from the Strata Titles Board (hereinafter called "the STB") under the Land Titles (Strata) Act approving the collective sale of all units in the Property (hereinafter called "the STB Order"). If the STB

Order is not obtained:

- (i) within six (6) months after the date of this Agreement, or
- (ii) if an appeal against such STB Order is filed, within nine (9) months after the date of this Agreement

this Agreement shall be terminated and in such event all amounts paid by the Purchaser under this Agreement towards the Sale Price shall forthwith be refunded to the Purchaser without interest or deduction and thereafter neither party hereto shall have any right or claim whatsoever against the other for damages, costs, compensation or otherwise. In the event that all the registered subsidiary proprietors of the 47 Units holding 100% share value consent to the sale herein and the STB Order is not required, this clause shall not be applicable.

The plaintiffs' arguments

34 Mr Aqbal Singh, counsel for the plaintiffs relied on cl 13.1 of the CSA for his argument that the SPA was null and void and so too was the Supplemental Agreement. Taking a strict and literal interpretation of the document, he argued that as the CSA was dated 16 April 2006, it expired on 16 April 2007. Therefore the defendants had no authority to represent the subsidiary proprietors when they entered into the Supplemental Agreement on 25 April 2007. BPP should have dealt with each consenting subsidiary proprietor individually in relation to the Supplemental Agreement. (However, according to counsel for BPP, the plaintiffs never once wrote or approached BPP to say that was what they wanted).

35 Claiming that the only issue in the OS related to the question of agency and not the substantive rights under the SPA, Mr Singh referred to s 44 of the Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) ("the CLPA") for his argument that the sale committee's powers were only for a fixed term under cl 13.1. Without the protection of s 44 of the CLPA, the execution of the SPA by the sale committee would have been unauthorised. Mr Singh then extended his argument on cl 13.1 of the CSA to say that it overrode cl 13.3. He added that both the sale committee and BPP were estopped from denying the fixed term effect of cl 13.1 of the CSA.

36 Finally, Mr Singh argued, there were no express provisions in cl 3 of the SPA requiring the sale committee to use its "best" endeavours to obtain the order from the STB. At best, there was only an implied obligation to use "reasonable" endeavours to obtain the order from the STB. In that regard, he submitted that the sale committee had indeed used "reasonable" endeavours to obtain the order which was again subject to cl 13.1 of the CSA and the one year rule. However, the order from STB was only obtained on 26 June 2007 and therefore it was out of time.

BPP's main arguments

37 Counsel for BPP, Mr Muthu Arusu, disagreed with the plaintiff's interpretation of cl 3 of the CSA on the issue of the extent of the obligation on the consenting owners to obtain the order from STB.

38 Mr Arusu pointed out that contrary to the plaintiffs' submission that cl 3 of the CSA only required reasonable endeavours to be made by the vendors to obtain STB's approval for the CSA, *Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd & Anor* [1998] 2 SLR 83 and *Group Eksklusive Pte Ltd v Diethelm Singapore Pte Ltd* [2003] SGHC 247 stood for the proposition that the vendors were required to use their best efforts to procure STB's approval to the collective sale.

39 As for cl 13 of the CSA ([32] above) BPP submitted that termination of the CSA hinged upon the occurrence of any of the circumstances set out in the sub-clauses:

- (a) under cl 13.1, where there were no identified buyers or ongoing negotiations or where owners holding less than 80% share values had consented to the collective sale. This was also consistent with s 1A of the Schedule to the Act;
- (b) under cl 13.2, where negotiations had been initiated but no sale and purchase contract had been entered into; and
- (c) under cl 13.3, where a sale and purchase contract had been entered into.

40 Mr Arusu pointed out that unlike cll 13.1 and 13.2, cl 13.3 noticeably did not have a twelve months' timeframe. Consequently, he submitted, the contracting parties' intention was clearly to impose a twelve months' deadline only in situations where there was no contract, to prevent a collective sale agreement from continuing indefinitely, and to accord with s 1A of the Schedule to the Act which states:

For purposes of this Schedule:

- (a) the permitted time in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in s 84A(1), 84D(2) or 84E(3) means a period:
 - (i) starting from the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and
 - (ii) ending not more than 12 months after the date the first subsidiary proprietor or proprietor or his duly appointed attorney as the case may be, signs the collective sale agreement; and
- (b) the collective sale agreement shall be regarded as executed notwithstanding that it is executed on separate copies thereof at different times.

41 Clause 13.3 must therefore be given a purposive interpretation. Counsel reinforced his arguments by referring to cl 4.1.5 of the CSA which set out the completion date for the CSA as follows:

- (a) twelve (12) weeks from the date of the award of tender (if Collective Sale is by way of tender) or the date of exercise of the option to purchase or the date of the sale and purchase agreement (if the Collective Sale is by way of private treaty); or
- (b) twelve (12) weeks from the date of the Strata Titles Board's approval to the Collective Sale;

whichever is later.

42 Once the order was granted by the STB, the completion date would be twelve weeks from the approval date, regardless of whether the completion date went beyond 16 April 2007. Mr Arusu submitted that accepting the plaintiffs' submission that the CSA terminated on 16 April 2007 would be wholly inconsistent with cl 4.1.5.

43 He added that the plaintiffs were estopped from claiming that the sale committee was not authorised to enter into the Supplemental Agreement as none of them objected at the EOGM of 1 November 2006 ([12] above) when the CSA and the SPA were unanimously approved and accepted even though they were aware that the termination date of the SPA of 27 April 2007 was post 16 April 2007, that being the expiry of the CSA (according to the plaintiffs' interpretation).

The defendants' submissions

44 I shall not refer to the defendants' arguments that were similar to those canvassed by BPP. There was however a new point raised on their behalf by their instructed counsel Mr Harry Elias. Mr Elias described the Supplemental Agreement as a compromise by the parties. At law therefore, it was not open to the plaintiffs as part of the consenting owners to seek to renege on the compromise embodied in the Supplemental Agreement, relying on extracts from Foskett's *The Law and Practice of Compromise* (5th edition, 2002).

45 Mr Elias also submitted that any dispute between the plaintiffs and the defendants *inter se, vis a vis* the CSA, could not affect BPP's rights as a third party purchaser under the SPA. Moreover at no time did the plaintiffs inform BPP that they had terminated the authority given to the sale committee and/or to the solicitors for the consenting owners. Consequently, the plaintiffs were estopped from denying the authority of both the sale committee and LLLC.

The decision

46 In dismissing the OS, I had accepted the submissions presented by BPP and the defendants but rejected the arguments of the plaintiffs which were completely misconceived. I shall elaborate on my decision.

47 First, the plaintiffs' argument that cl 13.1 applied was untenable on a plain and literal reading of cl 13 of the CSA ([32] above). It would be noted therefrom that cll 13.1, 13.2 and 13.3 were to be read disjunctively, because of the word "or" linking all three sub-clauses and not conjunctively as Mr Singh sought to argue. Clauses 13.1 and 13.2 had no application at all because the sale committee had entered into a contract to sell to BPP. Hence cl 13.3 would be the applicable provision. It was only commonsensical that where a sale and purchase agreement had been entered into, the sale committee's authority cannot abruptly terminate upon the expiry of twelve months after the signing of the CSA (as the plaintiffs sought to argue) but must continue until the agreement had been fully performed or, if rescinded, until the rights and remedies under the agreement had been fully exhausted, as set out in cl 13.3(a) and (b) respectively.

48 Section 44 of the CLPA had no application whatsoever. Phoenix Court being a block of 47 units of flats registered in the subsidiary strata land-register, it came under the regime of the Act whereas the CLPA applied to common law land registered under the Registry of Deeds.

49 As was pointed out by the defendants in their submissions, the CSA is not a power of attorney. Indeed, it cannot be as a power of attorney must be in the form of a deed and executed under seal. In any case, there was no necessity to look at other or any legislation for the sale committee's authority to act for the subsidiary proprietors of Phoenix Court. This is evident from cl 2.1 which states:-

The Owners hereby appoint the Sale Committee as the Owners' agent to negotiate and finalise the Collective Sale.

The sale committee's wide-reaching powers were then specifically spelt out in cl 2.5 of the CSA ([31] above) including, the authority to determine the sale price (under cl 2.5.4), to negotiate with any intending purchaser (under cl 2.5.5) and to enter into the CSA with BPP (under cl 2.5.7).

50 I turn to the plaintiffs' next argument. Their contention that the sale committee had no authority to enter into the Supplemental Agreement with BPP was also fallacious. The wording of cl 2.5.10 ([31] above) that the sale committee could "carry out such acts...to facilitate the collective Sale or to give effect to the terms of [the CSA] or the [SPA]" must obviously include the authority to execute the Supplemental Agreement, which purpose was to give effect to cl 3(i) of the SPA *viz* to obtain the order from the STB. Clause 2.5.14 ([31] above) would similarly give the sale committee the power to enter into the Supplemental Agreement as it would be "in accordance with the spirit and intent of [the CSA]... necessary ... for the implementation of the terms and conditions of the [CSA], the Collective Sale and the [SPA]".

51 Contrary to the plaintiffs' contention, the law puts on the sale committee as the vendor, an obligation to use its best endeavours to obtain the order from the STB. In this regard, I need only refer to one passage from the case cited by the defendants *viz Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd & Anor* ([38] above). Judith Prakash J had said (at [61]):

It is established law that where a contractual provision provides that performance by one party is subject to the consent of a third party, the first party cannot say that having asked for such consent thereafter the matter is completely out of his hands so that if the consent is not forthcoming, he is released from further performance. Rather, as the Court of Appeal put it in this case, to avail himself of the right to rescind, such party has a duty to show that he has taken all reasonable steps to obtain the consent of the third party or that it was useless for him to pursue the matter with the third party after the initial withholding of consent because it would have been quite impossible for him to obtain the consent of the third party.

52 I rejected the plaintiffs' argument that s 6 of the Civil Law Act (Cap 43, 1999 Rev Ed) ("the CLA") had to be and was not complied with, by the sale committee. The section states:

Contracts which must be evidenced in writing

No action shall be brought against –

(d) any person upon any contract for the sale or other disposition of immoveable property, or any interest in such property;

unless the promise or agreement upon which such action is brought, or, some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him.

53 As with the plaintiffs' submission on s 44 of the CLPA, I could not see the relevance of s 6 of the CLA. The plaintiffs' argument on this provision was tied to its submission on s 44 of the CLPA. According to Peck's reply affidavit (para 14), the CSA contained a power of attorney for the sale committee to deal with the subsidiary proprietors' interest in land without which the sale committee would have run foul of s 6 of the CLA. I accepted the defendants' submission that nothing in s 6 requires a written power of attorney to be in place before a contract for the sale of property is enforceable. All that s 6 of the CLA requires is an agreement or note or memorandum in writing for contracts pertaining to land and which we have in the CSA.

54 What was obviously overlooked by the plaintiffs was that cl 2.5 ([31] above) also put an obligation on them as part of the consenting owners to "render their fullest co-operation and use their best endeavours to assist the sale committee in the discharge of their duties at all times". Yet, without the knowledge of the defendants (until discovered by BPP subsequently), the fifth, eighth and twenty-first plaintiffs had attempted to derail the collective sale by their letters of support to the STB and to the dissenting owners ([24] above) which were written *before* the expiry date of the CSA. This was the factor that prompted my comment to the plaintiffs' counsel ([29] above) that the OS reeked of bad faith.

55 In attempting to set aside the CSA and the Supplemental Agreement, the plaintiffs had also breached the covenants and undertakings in cl 7 of the CSA. The relevant sub-clause states:

Every Owner agrees as follows:

(p) not to do anything whether by an act or omission that may prevent or otherwise be detrimental to the Collective Sale or the fulfillment of any of the purpose under this [CSA] or the [SPA].

56 My conclusion that the plaintiffs had an ulterior motive was reinforced by another factor. I had pointed out to their counsel that the plaintiffs well knew they were bound by the CSA and that was why they did not appear before the STB to object to the application for the order – they knew they had no right to dissent. So they came before the court instead. What was even more damning was the plaintiffs' act of filing the OS on 4 June 2007, before the STB granted the order. Any doubts I may have had that the plaintiffs were not acting in cahoots with the dissenting owners (as their counsel contended) were dispelled by such conduct.

57 It was crystal clear that the plaintiffs' filing of the OS was a desperate attempt to scuttle the collective sale to the ninth defendant because (and here I quote from para 32 of Teo's affidavit) they were "in fact motivated by the rising prices in the property market since the SPA was entered into. Property prices continue to rise" ([26] above).

58 Even worse, the plaintiffs indiscriminately sued BPP when the company was not a party to the CSA and was in the position of a *bona fide* purchaser for value without notice (if indeed there was anything wrong with the CSA). Neither were the plaintiffs a party to the SPA. What then was the basis for their action against BPP?

59 Under cl 10.7 of the CSA the consenting owners (including the plaintiffs) were obliged to indemnify the sale committee jointly and severally against all losses, damages and expenses whatsoever legal or otherwise which the sale committee may sustain, suffer or incur as a consequence of acting in accordance with the provisions of the CSA. It was because of the frivolity of the plaintiffs' claim that I ordered indemnity costs against them in favour of all nine defendants.

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