

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 17

Originating Summons No 1014 of 2016

In the matter of Section 84(1) of the Land Titles Strata Act (Cap 158)

And

In the matter of the Development known as Shunfu Ville (Strata Title Plan No 3676) comprised in land lot 17609L of Mukim 18

Between

(1) Woo Hon Wai

Authorised Representative appointed under Section 84A(2) of the Land Titles (Strata) Act (Cap 158) by the Collective Sale Committee of the Development known as Shunfu Ville (Strata Title Plan No 3676) comprised in land lot 17609L of Mukim 18

(2) Lee Chia Pheng Anthony

Authorised Representative appointed under Section 84A(2) of the Land Titles (Strata) Act (Cap 158) by the Collective Sale Committee of the Development known as Shunfu Ville (Strata Title Plan No 3676) comprised in land lot 17609L of Mukim 18

(3) Tan Tiong Soon Stephen

Authorised Representative appointed under Section 84A(2) of the Land Titles (Strata) Act (Cap 158) by the Collective Sale Committee of the Development known as Shunfu Ville (Strata Title Plan No 3676) comprised in land lot 17609L of Mukim 18

... *Plaintiffs*

And

- (1) Ramachandran Jayakumar
- (2) Chan Kum Lin
- (3) Chow Yeui Fong
- (4) Simon Mahendran S/O
Pakkirisamy
- (5) Elizabeth Joseph

... *Defendants*

GROUND OF DECISION

[Land] — [Strata titles] — [Collective Sales]

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Woo Hon Wai and others
v
Ramachandran Jayakumar and others

[2017] SGHC 17

High Court — Originating Summons 1014 of 2016
Aedit Abdullah JC
23 December 2016; 4 January 2017

2 February 2017

Aedit Abdullah JC:

Introduction

1 Shunfu Ville (“Property”) is a housing development in the central region of the island, nestled between Shunfu Road and Marymount Road, abutting Bishan town. It consists of 358 units.¹ Built in the 1980s, it was originally a development under the care of the Housing and Urban Development Corporation Pte Ltd.² In 2013, the Property was privatised, with a Management Corporation taking over the responsibilities for its maintenance and upkeep from the Housing and Development Board and the relevant Town Council.³

¹ Plaintiffs’ Submissions dated 19 December 2016 at paras 1-2.

² Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 6; Plaintiffs’ Submissions dated 19 December 2016 at paras 1-2.

³ Plaintiffs’ Submissions dated 19 December 2016 at para 2.

2 In that same year, efforts got underway for a collective sale of the Property.⁴ After failing twice to get a buyer by public tender at a reserve price of \$688 million,⁵ the Property was contracted to be sold by private treaty at a sale price of \$638 million in May 2016.⁶ Objections were taken to the sale, leading to the present application. Having heard the parties, I allowed the application for the sale of the Property over the objections of the Defendants. The Defendants have since appealed. As the completion date for the sale is scheduled in April 2017,⁷ the Plaintiffs have sought to have the appeal heard on an expedited basis; that is the subject of a separate application before a judge of the Court of Appeal.

Background

3 In November 2013, a collective sale committee (“Sale Committee”) was formed to act on behalf of the subsidiary proprietors in relation to a proposed collective sale of the Property.⁸ The Sale Committee was constituted pursuant to the Collective Sale Agreement (“Sale Agreement”), which was signed by the first subsidiary proprietor on 12 July 2014.⁹ This is a material date because it affects the relevant statutory timelines which were disputed before me.

4 Several clauses of the Sale Agreement are relevant to this application. First, the Sale Agreement specified that the sale of the Property should be at a

⁴ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 8.

⁵ Joint Affidavit of the Plaintiffs dated 6 October 2016 at paras 17 and 22.

⁶ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 23.

⁷ Joint Affidavit of the Plaintiffs dated 27 January 2017 in CA/SUM 15/2017 at para 20.

⁸ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 8.

⁹ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 12.

reserve price of \$668 million, which could be revised upwards by the Sale Committee:¹⁰

6.4(a) The TOTAL SALE PRICE shall not be less than Singapore Dollars Six Hundred and Sixty Eight Million (S\$668,000,000.00) (hereinafter called the “RESERVE PRICE”). Provided Always that the SALE COMMITTEE may, in its absolute discretion and having duly considered any input from the PROPERTY CONSULTANTS, be entitled to increase the RESERVE PRICE (the “NEW RESERVE PRICE”) as set out in this clause whether prior to, on or after the MAJORITY DATE, and in such event, the CONSENTING OWNERS who have executed this Agreement shall be deemed to have agreed to the NEW RESERVE PRICE without having to enter into any fresh agreement in supplement to this Agreement.

5 The Sale Agreement also contained a variation clause in relation to downward revisions of the reserve price:¹¹

6.12.1 Notwithstanding anything to the contrary in this Agreement, and in the event that the RESERVE PRICE or any of the SALE TERMS herein cannot be attained, the SALE COMMITTEE may in its absolute discretion direct the SOLICITORS to draw up a supplemental agreement to this Agreement (hereinafter called the “SJA”) whereby each of the CONSENTING OWNERS shall be at liberty to agree [by way of entering into the SJA] with any one or more of the CONSENTING OWNERS and as well as with any one or more of the OWNERS who have not executed this Agreement, to sell ALL UNITS and common property in the DEVELOPMENT by way of COLLECTIVE SALE at a price less than the RESERVE PRICE, and/or upon terms which do not comply with the SALE TERMS, and the signing of the SJA by any of the CONSENTING OWNERS will not constitute a breach of this Agreement.

Provided Always that the SJA shall only be valid and binding if it is drawn up by the SOLICITORS with the SALE COMMITTEE’S approval and OWNERS with not less than eighty per cent (80%) of the TOTAL SHARE VALUE and not less than eighty percent (80%) of the TOTAL STRATA AREA in the DEVELOPMENT must have executed the SJA (hereinafter called “NEW CONSENTING OWNERS”).

¹⁰ Joint Affidavit of the Plaintiffs dated 6 October 2016 at exhibit CSC-2, p 23.

¹¹ Joint Affidavit of the Plaintiffs dated 6 October 2016 at exhibit CSC-2, pp 24-25.

6 The Sale Agreement thus contemplated downward variation of the reserve price by way of supplemental agreement consented to by subsidiary proprietors holding at least 80% of the total share value and total strata area of the Property. Notably, the requisite threshold of consents required for the supplemental agreement matched the statutory threshold for collective sale agreements prescribed in s 84A(1) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) (“LTSA”) that are necessary before an application can be made to the Strata Titles Board (“STB”) or the High Court for approval of a proposed collective sale. The Sale Agreement further provided that subsidiary proprietors who had consented to the original reserve price but not the variation would be discharged from their obligations under the Sale Agreement:¹²

6.12.2 Upon the SJA being entered into by the last of the NEW CONSENTING OWNERS who make up the minimum majority of owners having at least eighty per cent (80%) of the TOTAL SHARE VALUE and having at least eighty per cent (80%) of the TOTAL STRATA AREA in the DEVELOPMENT, the CONSENTING OWNERS who have not signed the SJA will forthwith be discharged from all their obligations under this Agreement, and likewise the CONSENTING OWNERS who have executed the SJA will forthwith be discharged from any obligations under this Agreement which they may otherwise owe to the CONSENTING OWNERS who have not signed the SJA.

7 As mentioned, the first signature to the Sale Agreement was obtained on 12 July 2014. Consent of the requisite majority of subsidiary proprietors to the Sale Agreement, as prescribed by s 84A(1) of the LTSA, was thereafter obtained in July 2015.¹³

¹² Joint Affidavit of the Plaintiffs dated 6 October 2016 at exhibit CSC-2, p 25.

¹³ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 15.

8 Meanwhile, pursuant to a resolution dated 18 May 2015, the Sale Committee increased the reserve price of the Property from \$668 million to \$688 million.¹⁴ The first public tender was launched on 3 September 2015 at this reserve price of \$688 million, but failed to attract any bidder by the time it closed in October 2015.¹⁵ A letter of expression of interest was, however, given by a developer with an indicative price of \$628 million.¹⁶ This led to two supplemental agreements being signed. By the first supplemental agreement to the Sale Agreement (“1st SA”), entered into sometime between the end of 2015 and early 2016, the reserve price was revised downwards to \$628 million.¹⁷ Thereafter, on 4 January 2016, the Sale Committee resolved to raise the reserve price to \$638 million, and obtained a supplemental agreement to the 1st SA providing for the same (“2nd SA”).¹⁸ Clause 3 of the 1st SA provided that, if the Sale Committee resolves to increase the reserve price, the subsidiary proprietors who have already signed the 1st SA “shall be deemed to have agreed to such increased RESERVE PRICE without having to sign any further document”. This 2nd SA, which provided for the reserve price of \$638 million, obtained the requisite 80% support on 12 May 2016.¹⁹

9 In the meantime, a second public tender at a reserve price of \$688 million was held between January 2016 and March 2016, again without locating any bidder.²⁰ Private negotiations thereafter commenced between the Sale Committee and Qingjian Realty (“Developer”) as to the sale of the

¹⁴ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 13 and exhibit CSC-10.

¹⁵ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 17.

¹⁶ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 14.

¹⁷ Joint Affidavit of the Plaintiffs dated 6 October 2016 at paras 20-21.

¹⁸ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 21.

¹⁹ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 23.

²⁰ Joint Affidavit of the Plaintiffs dated 6 October 2016 at paras 22-23.

Property. Eventually, on 19 May 2016, a conditional sale and purchase agreement (“SPA”) was signed between the Developer and the Sale Committee (on behalf of the subsidiary proprietors) for the sale of the Property at \$638 million.²¹ Thereafter, an application was filed with the STB for approval of sale under the SPA on 8 July 2016.²²

10 Objections were lodged by 5 of the subsidiary proprietors with the STB in relation to the proposed sale of the Property on 19 July 2016.²³ After a failed mediation attempt,²⁴ the STB issued a Stop Order pursuant to s 84A of the LTSA on 20 September 2016,²⁵ leading to the present application by the Plaintiffs, who seek the Court’s approval of the proposed sale of the Property under the SPA as authorised representatives of the subsidiary proprietors.²⁶

11 By the time of the hearing before me, the 2nd and 3rd Defendants have dropped out of the application.²⁷ Of the remaining 3 defendants, the 5th Defendant’s objection was in respect only of the quantum she was to receive for the sale of her unit, as a settlement agreement had been reached between her and the Plaintiffs.²⁸ Therefore, only the 1st and 4th Defendants remain substantively opposed to the proposed sale of the Property.

²¹ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 26.

²² Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 37.

²³ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 38.

²⁴ Joint Affidavit of the Plaintiffs dated 6 October 2016 at paras 41-42.

²⁵ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 42.

²⁶ Joint Affidavit of the Plaintiffs dated 6 October 2016 at para 1, exhibit CSC-2 at cl 3.5.

²⁷ Plaintiffs’ Submissions dated 19 December 2016 at para 5.

²⁸ Plaintiffs’ Submissions dated 19 December 2016 at para 76.

12 Although this is an application by the Plaintiffs, I state the Defendants' objections before outlining the Plaintiffs' responses for clarity and flow.

1st Defendant's Case

13 The 1st Defendant, who did not appear to object to a sale as such, argued primarily that the Plaintiffs were not entitled to make this application as they did not meet the statutory threshold of consents under s 84A of the LTSA. In particular, he argued that the only valid consents were those under the original Sale Agreement, which related to a collective sale of the Property at the price of \$688 million and not the actual sale price of \$638 million. Subsequent variations to the reserve price by the 1st SA and 2nd SA were invalid as the consents to these supplemental agreements were not obtained within 12 months of the time of the first signature to the Sale Agreement, which the 1st Defendant argued was the relevant statutory timeline mandated by s 84A read with the First Schedule of the LTSA. Since the date of the first signature to the Sale Agreement was 12 July 2014, the Sale Committee should have obtained the requisite consents to *all* the documents – the Sale Agreement, the 1st SA, and the 2nd SA – before 11 July 2015 for the present proposed sale to be valid. Relying on *Tan Siew Lian v Lee Khek Ern Ken* [2008] 3 SLR(R) 941, the 1st Defendant submitted that the Sale Committee should have started the collective sale process *de novo* if it wanted to propose a sale of the Property at a price other than that reflected in the Sale Agreement of \$688 million.

14 Additionally, the 1st Defendant submitted that there were fatal procedural irregularities in the Sale Committee's obtaining the requisite approval for the sale of the Property at \$638 million. First, there was procedural unfairness and prejudice when the consents for collective sale at

one price were automatically deemed as consents for sale at another price. Second, there was doubt about some of the consents that were obtained. Third, the Sale Committee also failed to follow the best price-discovery process, which he argued was mandated by s84A read with the Third Schedule of the LTSA, as it did not launch a public tender at the price of \$638 million before negotiating a private treaty sale at the same price. Fourth, the negotiation process for the sale was improper as the Sale Committee avoided price competition by negotiating with the Developer on an exclusive basis, and commenced negotiations before obtaining the requisite statutory approval, contrary to Court of Appeal's holding in *N K Rajarh v Tan Eng Chuan* [2014] 1 SLR 694 ("*N K Rajarh*").

15 Further, the 1st Defendant argued that the Sale Committee did not negotiate the sale in good faith and that the Court should accordingly, under s 84A(9) of the LTSA, decline to grant the Plaintiffs' application. This was because, amongst others, the Sale Committee failed to launch a public tender at the price of \$638 million before negotiating for a private treaty sale at that same price, relied on "doubtful consents" to satisfy the requisite statutory threshold for collective sale, and engaged in pressurising tactics to secure the consent of vulnerable subsidiary proprietors. It was also alleged that the Plaintiffs tried to mislead this Court by falsely declaring that the requisite consents for the 2nd SA had been obtained on 11 July 2015 when the correct date was 12 May 2016. Notably, it was argued that some members of the Sale Committee had undisclosed conflicts of interest with the subsidiary proprietors as a whole as those members were not owner-occupiers and desired the sale only for investment purposes. The 1st Defendant also relied on the Court of Appeal decision in *Ng Eng Ghee v Mamata Kapildev Dave* [2009] 3 SLR(R) 109 ("*Horizon Towers*") to argue that the Sale Committee and its agents

breached their duty of even-handedness by failing to look after the interests of the objecting subsidiary proprietors.

4th Defendant's Case

16 The 4th Defendant argued that there was undue influence, harassment, and abuse of power by the Sale Committee over vulnerable subsidiary proprietors. The Plaintiffs were also allegedly biased in favour of selling the Property, to the extent that they were willing to disregard the safeguards in the LTSA protecting objecting subsidiary proprietors who do not wish to sell their homes. Taking these facts into consideration, the Plaintiffs acted in bad faith in the collective sale process, contrary to s 84A(9) of the LTSA.

17 The 4th Defendant's affidavit also referred to the particular needs of his child, who has special needs and who has grown familiar with their existing residence and does not adapt easily to change. He further stated that would be difficult for him to obtain a similar unit that is suitable for his family in the neighbourhood of the Property with the proceeds of sale as matters stand.

18 The 4th Defendant also joined the arguments of the 1st Defendant.

5th Defendant's Case

19 The 5th Defendant did not present arguments before me, having reached a settlement agreement with the Plaintiffs on 16 September 2016 ("Settlement Agreement"), pursuant to which the Sale Committee consented to an increase in the sale proceeds for her unit by \$27,000 if the present application succeeded and the Court determined that it would be just and equitable to order such an increase under s 84A(7A) of the LTSA.

20 In her affidavit, the 5th Defendant stated that the proposed sale would cause her a financial loss as, amongst others, she had purchased her unit at a premium, and in 2013 and 2014 expended a considerable sum renovating it as it was in a bad state.

Plaintiffs' Case

21 The Plaintiffs first referred to the policy reasons stated in Parliament and elucidated in case law for the current statutory regime governing collective sales. In this regard, the policy need to facilitate redevelopment of old buildings is balanced against various safeguards, including the requirements of requisite consent and transparent process. The Plaintiffs argued that a purposive interpretation that facilitates the process of effecting a collective sale should be taken of the various provisions of the LTSA.

22 The Plaintiffs then stated that a main motivating factor for the consenting subsidiary proprietors was to relieve themselves of the escalating costs of maintaining the aging Property. According to a circular disseminated by the Management Corporation in April 2016, about \$5.6 million was required to rectify the various structural issues plaguing the Property. In the meantime, the Property's operating budget has been in deficit since 2014.²⁹ Further, as many of the subsidiary proprietors were in their 70s, they consented to a collective sale as they desired to liquidate their interest in the Property to fund their own costs of living and because those who lived in maisonettes found it hard to walk up the staircases in their units.³⁰

²⁹ Joint Reply Affidavit of the Plaintiffs dated 2 December 2016 at paras 13-16.

³⁰ Joint Reply Affidavit of the Plaintiffs dated 2 December 2016 at paras 11-12.

23 In relation to the 1st Defendant's argument that the requisite approval under s84A of the LTSA had not been obtained, the Plaintiffs unsurprisingly argued that they had done so validly and within the prescribed timelines of the LTSA. Citing *Chang Mei Wah Selena v Wiener Robert Lorenz* [2008] 4 SLR(R) 385 ("*Chang Mei Wah*"), the Plaintiffs submitted that there were two distinct time period requirements under the LTSA: for the first part, requisite approval must be obtained for the collective sale agreement within 12 months from the date of the first signature, such that there is a valid sale agreement which will allow the tender process to start; and then there would be an additional 12 month period during which the application to the STB for sale of the property must be made. Accordingly, in the present case, because the first signature to the Sale Agreement was obtained on 12 July 2014, the requisite approval for that agreement under s 84A(1) of the LTSA must be obtained by 11 July 2015 and the application to the STB must be made by 10 July 2016. To this end, the 2nd SA (which provided for the reserve price of \$638 million) achieved the requisite approval on 12 May 2016. The Plaintiffs argued such approval was obtained within the timelines stipulated by the LTSA because variations of the original collective sale agreement need only be made within the time given for application to the STB, i.e. 10 July 2016, and not the earlier date of 11 July 2015. In this regard, the Plaintiffs relied on *Chang Mei Wah*, which accepted the validity of a variation agreement and the continued operation of the original collective sale agreement. While there may be contrary observations in *Goh Teh Lee v Lim Li Pheng Maria* [2010] 1 SLR 1041 ("*Goh Teh Lee (HC)*"), the relevant agreements there were argued to be distinguishable from those in our present case.

24 The Plaintiffs accepted the requirement laid out in *N K Rajarh* that a collective sale committee should not act with undue haste and can only

commence the sale process after the requisite statutory threshold under s 84A(1) of the LTSA has been met, but argued that in the present case there was no breach of this requirement. This was because marketing only commenced after the required majority was reached in the original Sale Agreement. The variations changing the reserve price were made as stipulated in this original agreement, and the safeguard for the subsidiary proprietors remained since a requisite majority approval of the sale at the new reserve prices was still required. Furthermore, an EOGM was held to explain this, as well as the differing legal views on whether the requisite approval of the variations could consist of different signatories from those that had approved the original Sale Agreement.

25 In relation to the requirement of good faith, the Plaintiffs submitted that the Sale Committee acted properly and with full transparency throughout the collective sale process. The motivating factors for the sale were genuine (see [22] above) and not as the Defendants alleged. Further, the Sale Committee and its agents were responsive to the feedback from, and prompt in keeping updated, all the subsidiary proprietors, including those who disagreed with the collective sale. They also properly advised all the subsidiary proprietors of the various agreements entered into and their rights thereunder. The Plaintiffs highlighted that the final sale price of the Property was higher than its valuation and the sale prices of other comparable estates in Singapore.

26 In relation to the 4th Defendant's objection that the sale would cause hardship to his family, the Plaintiffs expressed sympathy with his circumstances but submitted that, contrary to the 4th Defendant's allegation that the sale was motivated by greed, many of the consenting subsidiary proprietors simply could not afford to continue living at the Property given its

escalating costs of maintenance. In any event, the legal requirements for the collective sale have been complied with.

27 In relation to the 5th Defendant, the Plaintiffs noted the Settlement Agreement that had been entered into between the parties. Substantively, the Plaintiffs did not take issue with the 5th Defendant's claim for financial loss.

The Decision

28 I found that the application was properly made and complied with the requirements of the LTSA and the relevant case law. In particular, the 2nd SA, which provided for the reserve price of \$638 million, was validly executed such that the requisite statutory majority under s 84A(1) of the LTSA for the sale of the Property at \$638 million was also satisfied within the relevant statutory timelines. The LTSA only requires that the requisite consent for the original collective sale agreement be obtained within 12 months of the date of the first signature to that agreement. Variation of that agreement can permissibly take place in the run up to the application to the STB, which is given an additional 12 months. There is in effect a 24 month period for the collective sale process as a whole to be played out. Accordingly, there was in the present case compliance with the provisions of the LTSA in respect of the statutory timelines and thresholds.

29 I also found that there was no breach of the duty of good faith on the part of the Sale Committee and/or its agents. The evidence brought by the Defendants was not sufficient to support their various allegations of bad faith and collateral purpose. Other allegations by the Defendants, such as those of bias, pressure, and false statutory declarations, were also dismissed.

30 As for the 5th Defendant, I concluded that an order for increased payment out of the sale proceeds would be just and expedient in the circumstances.

An Overview of the Statutory Process for Collective Sale

31 The LTSA lays out in Part VA as well as the First, Second and Third Schedule, a regime governing collective sales. The policy objectives and tensions underlying this regime were examined in *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR 597. It suffices to note here that the aim of the regime is to facilitate urban renewal by allowing redevelopment, while introducing procedural safeguards to protect the interest of minority owners who disagree with the collective sale of the relevant property. To this end, there must be compliance with the provisions of the LTSA, both as to any express stipulations as well as to the processes prescribed.

32 The collective sale of the strata developments is specifically governed by s 84A of the LTSA. Of relevance to our case is s 84A(1) of the LTSA, which prescribes the threshold of consents by the subsidiary proprietors needed for a collective sale to be effected:

84A.—(1) An application for an order for the sale of all the lots and common property in a strata title plan may be made by —

(a) [...]; or

(b) the subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots (excluding the area of any accessory lot) as shown in the subsidiary strata certificates of title where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building (not being any common property) comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of

Statutory Completion for any building (not being any common property) comprised in the strata title plan, whichever is the later,

who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

33 In effect, under s 84A(1) of the LTSA, subsidiary proprietors with not less than 80% of the share value as well as total area of all the lots of a property older than 10 years, as measured from the date of issue of the temporary occupation permit, may apply for an order of sale. Section 84A(2A)(a) clarifies that such an application for approval of sale is to be made in the first instance to the STB. However, if a stop order is issued by the STB under s 84A(6A) of the LTSA, an application in respect of the same sale may then be made to the High Court. A stop order will be made under s 84A(6A) if objections to the sale have been received (and not withdrawn), and the mandatory mediation fails to achieve a resolution of the dispute. Section 84A(7) of the LTSA obliges the High Court to approve the sale, unless the Court is satisfied that an objector will incur a financial loss, or that the proceeds of sale received by any objector (who is a subsidiary proprietor, mortgagee or chargee of a unit) is insufficient to redeem any mortgage or charge in respect of that unit. Two additional conditions are imposed under s 84A(9) of the LTSA. Firstly, no order will be made if the Court is satisfied that the transaction is not in good faith, taking into account only the sale price, the method of distribution of proceeds, and the relationship between the purchaser and any of the subsidiary proprietors. Secondly, no order is to be made also if the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the property that is to be sold. The Court

may also order the sale proceeds for any objector to be increased under s 84A(7A) of the LTSA, but this requires the consent of the collective sale committee.

34 The LTSA also prescribes timelines, which are the primary focus of the arguments in this case. The relevant parts of para 1 and 2 of the First Schedule to the LTSA state:

1. Before making an application to a [Strata Titles] Board, the subsidiary proprietors referred to in section 84A(1) or 84FA(2) or the proprietors of flats referred to in section 84D(2) or 84E(3), as the case may be, shall —

(a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —

(i) in the case of an application under section 84A or 84FA, all the lots and common property in a strata title plan; or

[...]

2.—(1) For the 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 section 84A(1), 84D(2), 84E(3) or 84FA(2), 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

[...]

35 In summary, the First Schedule lays down two requirements in relation to timelines for the collective sale process:

(a) A collective sale agreement must be executed by the requisite majority of subsidiary proprietors “within the permitted time”, which is

defined in para 2 as 12 months starting from the date the first signature is appended to the agreement (“First Time Period”).

(b) The collective sale agreement must be also executed “in no case more than 12 months before the date the application is made”. Thus, the application for approval of sale to the STB must be made within 12 months of the day that the requisite consent for the collective sale agreement is obtained, i.e. within 12 months following the end of the First Time Period (“Second Time Period”).

36 In this regard, I accept and follow the interpretation adopted in *Chang Mei Wah*, which accords with the plain words of the First Schedule. In that case, an argument was made that an application to the STB must be made within 12 months of the date of first signature to the collective sale agreement. That was rejected by the Court, which explained (at [28]) the two timelines contained in the First Schedule of the LTSA as follows:

The 12-month periods in paras 1(a) and 1A [which is the present para 2] may overlap but do not refer to a single period. They operate independently so that the general scheme allows the [collective sale committee] 12 months from the first signature to the last signature to obtain the requisite 80% majority. If they do so within this “permitted time” the majority may then make an application to the [STB] for its approval for sale provided that the [collective sale agreement] had not been executed more than 12 months earlier by the requisite number of owners from the date the application was made. In the present case, the first signature was appended on the [collective sale agreement] on 18 February 2006. The last (having passed the 80% mark) was appended on 23 June 2006. The [collective sale agreement] in this regard has satisfied the requirement of para [2]. The Application was made to the [STB] on 3 May 2007 and was within the 12 month requirement under para 1(a), that is to say that the Application was made before 22 June 2007, 12 months after the requisite majority has obtained [sic].

37 This was also the interpretation adopted by the High Court in *Goh Teh Lee (HC)* (at [37]). Nothing in the Parliamentary debates cited before me suggested a different reading of the First Schedule.

38 Having set out the basic timelines underlying the collective sale process, I proceed to examine the issues in dispute between the Defendants and the Sale Committee, which can be consolidated as follows:

- (a) When any variation to the Sale Agreement had to be executed;
and
- (b) Whether any lack of bona fides on the part of the Sale Committee and/or its agents was shown.

These two issues will be taken in turn.

Statutory timelines for variation

39 The first issue relates to the timelines within which variations of the original collective sale agreement must be executed.

40 In our present case, the Defendants did not take issue with the variation of the Sale Agreement in principle. Indeed, the LTSA does not expressly deal with the issue of what variations may be permitted to the original collective sale agreement executed in compliance with s 84A(1). In line with party autonomy and freedom of the contract, the inclination of the Court would be to recognise and accept such variations subject only to the need to ensure fairness within the parameters of the LTSA. This will be examined further below (at [46]-[51])

41 However, the LTSA, as explained above (at [34]-[37]), does prescribe time limits for variations through the First Schedule. The 1st Defendant argued that any variation of the original collective sale agreement must be executed within the First Time Limit. This proposition, he argued, flows from the language of the LTSA. The Plaintiffs argued otherwise, contending that such variation may be made at any point within the Second Time Period.

42 I agree with the Plaintiffs that a variation to a collective sale agreement can be made within the Second Time Period, that is, within 12 months after the execution of the collective sale agreement. It is not necessary to require that such variation occur within the First Time Period, as that time period is imposed chiefly to ensure that a collective sale agreement for a strata development is agreed upon within a reasonable time, and that the process does not drag on interminably to the detriment of the subsidiary proprietors. Once the collective sale agreement has been executed, there is no reason to impose any timeline on its variation, save only the timeline to apply to the STB for approval of the sale, which presumably is to ensure that the prior consent given by a subsidiary proprietor is not rendered stale.

43 Further, the fact that the variation has to be approved does not mean that proper execution of the underlying collective sale agreement did not take place. Variation builds upon and is dependent on an original agreement having been validly executed. Without that original agreement, there would be nothing to vary. As the variation and execution of the collective sale agreement are separate matters, the natural conclusion would be that any timeline that applies to the latter, would not necessarily apply to the former.

44 It is possible, of course, for the legislature to impose a single timeline for the execution and variation of the collective sale agreement, but nothing of

the sort was done here, and there was nothing in the policy and the intent of the LTSA generally, s 84A, or the First Schedule that would displace the natural inference and limit variations only to the First Time Period. As I have earlier explained (at [34]-[37]), all that paras 1(a) and 2(1)(a) of the First Schedule require is that the collective sale agreement be executed within 12 months of its first signature (i.e. the First Time Period), and thereafter, the application to the STB be made within an additional 12 months from the date that the collective sale agreement is successfully executed (i.e. the Second Time Period). The two time periods are consecutive and do not overlap. The entire collective sale process, from the first signature to the application to the STB, is therefore envisioned to take a maximum of 24 months in total. In my view, the statutory scheme for timelines is entirely consistent with variations being validly executed in the Second Time Period.

45 I am aware that in *Goh Teh Lee (HC)*, the High Court found that the supplemental agreement executed in that case constituted a fresh agreement for collective sale. As the Court stated:

35 The plaintiff contended that the application to the [STB], which was made on 16 April 2008 for a collective sale order, was out of time. In his view, the application had to be made within 12 months after the first owner appended his signature to the first CSA, that is, by 28 December 2007. This view was erroneous for two reasons.

36 First, where an earlier CSA had failed to achieve its intended purpose, *ie*, to sell the land to a purchaser, the proprietors of the land could not be precluded from making a new agreement with a lower reserve price. Hence, the supplemental agreement constituted a fresh agreement. Therefore, time for the purpose of para 1A(a) of the Schedule should be reckoned from the date the first signature was appended to the supplemental agreement.

However, from the recital of the facts in that case, there was nothing to indicate the existence of a variation clause of the type employed here, and the case is thus not authority against the approach I have adopted.

Limits on variation

46 Recognizing the possibility of variation serves a legitimate purpose in allowing modification of initial terms of the collective sale agreement to meet changing conditions. The interests of the objecting subsidiary proprietors will also not be harmed by any variation so long as that variation does not diminish the protections stipulated by the LTSA, which include the prescribed time limit for the original execution, as well as the requirements of good faith.

47 I would note, however, that there may be limits as to what can be varied or amended, and what details may be specified in the variation. The ability to vary does not mean that there is *carte blanche* for matters to be left vague or indefinite, and postponed for specification later. Valid variations must also accord with the spirit of the LTSA. It would behove those relying on contractual variation clauses in collective sale agreements to ensure that there is compliance with the spirit as well as the letter of the legislative framework. In the present case, I do not see anything that would raise concerns; in particular, I note that the contractually-stipulated approval threshold for variation in our present case matches the statutory threshold for the execution of the collective sale agreement under s 84A(1) of the LTSA.

48 Additionally, the collective sale agreement as well as variations contemplated by it would be subject to general contract law. Terms may thus be implied as a matter of business efficacy and necessity. While the 1st Defendant's affidavit referred to implied terms, this point was not pursued in

argument. In any event, given that the variation clause relied on by the Plaintiffs was an express term, it is hard to see what could be implied that would limit or contradict such express words.

49 The 1st and 4th Defendants did complain that the group of subsidiary proprietors agreeing to the variations (i.e. the 1st SA and 2nd SA) was of a different composition from that consenting to the original Sale Agreement. It is not, however, necessary that the subsidiary proprietors consenting to the original Sale Agreement also be the exact same persons to agree to its variation. What matters is that the requisite threshold of subsidiary proprietors in favour of the sale, at that price, and in favour of the application to the STB for approval of the sale be met. It is conceivable that after an original agreement is executed, variations may not obtain the agreement of the original set of supporters, but may attract others who were originally outside. In the approval of any variation, any shedding of support from the original set and any gaining of others outside would not render the original execution, or the variation, nugatory and inoperative.

50 This interpretation I believe accords with the policy intent of the LTSA. The LTSA does not address variation, or much else in respect of the terms of the collective sale agreement. It prescribes certain procedural safeguards, and imposes requirements of good faith, but beyond that, the LTSA has apparently left the terms of the agreement open as a matter for negotiation between the parties involved. In this regard, there is nothing in the Parliamentary debates, namely in the 2nd reading speech or responses, that would assist.

51 It may be that there are other limitations or controls on the variation of a collective sale agreement, and some of these may need to be considered on a

case by case basis. But as long as any variation accords with the policy objectives of the LTSA and the terms of a properly executed collective sale agreement, it will likely be upheld.

Lack of good faith

52 The second issue relates to the question of good faith. The 1st and 4th Defendants' arguments about the Sale Committee's lack of good faith, procedural unfairness, bias and the other objections are summarized above at [14]-[15], whereas the Plaintiffs' response is outlined at [24]-[25]. Having heard the parties, I find that the Defendants' allegations are not made out. In reaching this conclusion, I acknowledge that the good faith requirements are imposed by case law as well as s 84A(9) of the LTSA on the Sale Committee. However, none of the allegations of breach were established on the facts.

53 The requirement of good faith is laid down in s 84A(9)(a)(i) of the LTSA:

(9) The High Court or a Board shall not approve an application made under subsection (1) —

(a) if the High Court or Board, as the case may be, is satisfied that —

(i) the transaction is not in good faith after taking into account only the following factors:

(A) the sale price for the lots and the common property in the strata title plan;

(B) the method of distributing the proceeds of sale; and

(C) the relationship of the purchaser to any of the subsidiary proprietors

54 Good faith encompasses concepts of fiduciary obligations and fairness between the consenting and objecting subsidiary proprietors (*Horizon Towers*

at [126]-[133]; *N K Rajarh* at [37]-[40]). In *Horizon Towers*, the Court of Appeal specified that the Sale Committee's duties include (at [134]; *N K Rajarh* at [40]):

- (a) the duty of loyalty or fidelity;
- (b) the duty of even-handedness;
- (c) the duty to avoid any conflict of interest;
- (d) the duty to make full disclosure of relevant information; and
- (e) the duty to act with conscientiousness.

55 In assessing whether breach of the duty of good faith is made out, the burden lies on the asserting party, i.e. the Defendants here and the objectors generally. This is based on an application of the general position that he who asserts must prove, as well as a construction of the statutory language in s 84A(9) of the LTSA which requires the satisfaction of the Court that there is lack of good faith. The mere assertion of a lack of good faith in an affidavit is not enough; the Court must consider the evidence as a whole to see whether the assertion is made out.

56 The allegations raised by the Defendants will be dealt with under the following two heads:

- (a) Improprieties as to the sale process; and
- (b) Existence of a conflict of interest between owner-occupiers and absentee owners of the Property.

Impropriety in the sale process

57 The allegations of impropriety broadly related to:

- (a) the sale of the Property by private treaty; and
- (b) the conduct of the Sale Committee and its agents.

(1) Private Treaty Sale

58 I disagreed with the Defendants that there was anything procedurally improper or unfair about the fact that the eventual sale of the Property was conducted by private treaty. In particular, there was no requirement that, subsequent to a failed public tender, another public tender must be sought at a lower price before a private treaty sale could be concluded at that lower price. In the circumstances of this case, given the two failed public tenders preceding the private treaty sale, and the fact that requisite approval of the subsidiary proprietors had been obtained for the private treaty price (i.e. execution of the 2nd SA providing for \$638 million), I do not agree that the Sale Committee failed to explore its sale options and seek the best possible sale price.

59 Paragraph 11 of the Third Schedule to the LTSA is relevant to our analysis of the requirement for public tenders to precede private treaty sale. In particular, para 11(1) stipulates that a collective sale of a strata development must be launched through a public tender or public auction. Such a sale is to be supported by a valuation report by an independent valuer: para 11(2). Paragraph 11(3) then allows the collective sale committee to enter into a private treaty sale within 10 weeks from the close of the public tender or public auction. Paragraph 11 of the Third Schedule is reproduced here for ease of reference:

Collective sale by public tender or auction

11.—(1) The collective sale of all lots and common property in a strata title plan shall be launched for sale only by way of public tender or public auction.

(2) A valuation report by an independent valuer on the value of the development as at the date of the close of the public tender or public auction shall be obtained by the collective sale committee on the date of the close of the public tender or public auction.

(3) Notwithstanding sub-paragraph (1), the collective sale committee may, within 10 weeks from the close of the public tender or public auction, enter into a private contract with a purchaser for the sale of all the lots and common property in a strata title plan.

60 In the present case, two public tenders were already called for at a reserve price of \$688 million and failed. Although those were at a different price compared the later private treaty sale price of \$638 million, there is no requirement under the LTSA that a private treaty sale must be preceded by a public tender at the same price. Indeed, it would not be efficient to demand that, following a failed public tender or auction, yet another public tender or auction at a lower price had to be called before a private treaty sale could be concluded at that lower price. Once a public tender has failed, it is indicative that the market does not support a sale at the price sought. It is then open for the collective sale committee to seek whatever it can through private treaty: it is probable that the private treaty price will be lower, but it cannot be ruled out that negotiations could result in a price that matches or even exceeds the reserve price in respect of the earlier public tender. The LTSA clearly does not require the Sale Committee to constantly test the private treaty price against what may be obtained in a public tender.

61 Further, the ambit of the price range within which a collective sale committee can negotiate in a private treaty sale, and in the mechanisms to control their actions, are matters left by the LTSA to the subsidiary proprietors to determine in their collective sale agreements. There was nothing in our

present case suggesting anything untoward that constituted fatal procedural irregularities as alleged by the Defendant.

62 This reasoning also applies to the argument raised by the 1st Defendant that the negotiation was improper in that the negotiations with the Developer was on an exclusive basis. Exclusivity is sometimes a necessary precondition for agreement and so long as the terms are in line with the agreed contract, and the LTSA, it is not to be impugned for its own sake. There was nothing else in the LTSA that to my mind would cause the exclusive nature of the negotiations to be fatal. As for the argument that the relevant statutory approval had not been obtained, this issue does not arise on my interpretation of the required timelines under the LTSA.

(2) Conduct of the Sale Committee

63 In relation to the conduct of the Sale Committee and its agents, I found that there was no breach of the duty of good faith, no founded allegations of bias, and no undue influence or pressure exerted on the subsidiary proprietors of the Property.

64 The 1st Defendant pointed to alleged improprieties in relation to the variation of the Sale Agreement by way of the 1st SA and 2nd SA. These have been addressed above—there was no breach or impropriety by the Sale Committee in effecting the application for approval of sale on the basis of consents that were obtained in relation to the 2nd SA, as that was permitted by law.

65 The Defendants also alleged that the Plaintiffs made a false statutory declaration as to whether the requisite approval for the proposed sale had been obtained. I did not agree. The Plaintiffs merely referred to the date of

execution of the original Sale Agreement instead of the date of its variation—it is a matter of law and construction whether that variation can be backdated to the date on which the original Sale Agreement satisfied the requisite threshold. I see nothing in the LTSA that points one way or another, and do not find that there was any intention to mislead on this basis. Accordingly, the statutory declaration was not rendered false or fraudulent because of this allegation.

66 The Defendants also argued that the Sale Committee breached its duty of even-handedness by preferring the interests of the consenting subsidiary proprietors. The Plaintiffs on the other hand maintained that they acted fairly to all the subsidiary proprietors, whether consenting or otherwise, providing them with updated information and being fully transparent with them. I accepted that there was no evidence of bias or lack of good faith generally in the conduct of the Sale Committee. Nothing alleged by the Defendants was substantiated and would show that there was any relevant breach by the Sale Committee.

67 There was also a lack of evidence to support the 1st Defendant's allegations that there was hounding of, or pressure exerted against, various subsidiary proprietors to urge their consent to the sale. In relation to the 1st Defendant himself, I accept the Plaintiffs' contentions that the 1st Defendant was not harassed or pressured in any way. Additionally, the 1st Defendant was not present at the relevant signings of the Sale Agreement and supplemental agreements, and would thus not have had personal knowledge of any occurrence or otherwise at those signings. If there were any such pressure there, it would be for the affected subsidiary proprietors to step forward.

68 The 1st and 4th Defendants pointed to an affidavit of Mr Shoo How Beng, in which Mr Shoo asserted that he was pressured to sign the original Sale Agreement. However, as the Plaintiffs highlighted, Mr Shoo only signed the Sale Agreement 10 days after the SPA was entered into with the Developer.³¹ In light of that, I accept it as unlikely that there was pressure exerted, as was alleged. The additional questions whether there was a break in causation, and whether causation is at all material in considering good faith, can be left for another day.

69 There were also other allegations of pressure, including a letter given to one Ms Helen. It would seem, though, that this was done without the knowledge of the Plaintiffs and for the purpose of giving financial advice. Having considered the letter, I do not think that there was anything untoward in this letter properly considered that would amount to pressure or harassment, albeit perhaps it would have been better for that letter not to have been sent. In any event, the letter could not be attributed to the Sale Committee, and would not therefore constitute relevant evidence of its lack of good faith.

70 There were some allegations made against the lawyers and property agents related to the Plaintiffs, including assertions of pressure and partiality. The Plaintiffs denied any such behaviour and portrayed at least one of the incidents, which related to the lawyers speaking to a previously non-consenting owner, as being initiated by that subsidiary proprietor's daughter herself. I accepted that there is insufficient evidence to establish any claim that undue pressure was exerted by these lawyers and property agents. Similarly, for the other allegations of lack of good faith on the part of the agents, nothing went beyond the level of mere allegation.

³¹ Joint Reply Affidavit of the Plaintiffs dated 2 December 2016 at para 103.

71 I observe generally that some of the allegations of pressure related to discussion about the possible impact of the collective sale not going through. It is inevitable in any such enterprise that there will be a difference of opinion. Each side may wish to make its concerns known to the rest, and just as the objectors may wish to raise their concerns, those supporting the sale may also give their take on matters. What is not permitted is anything that goes beyond the presentation of arguments for or against the sale: certainly threats of violence or anything of that nature would be clearly beyond the pale. But forecasts of returns or lack thereof are to be expected. As for the Sale Committee, they have a duty of even handedness, as do the agents, including the property agents and lawyers. Their role should properly be the provision of information and they should as matter of caution refrain from advocating any position or outcome.

72 In relation to the 1st Defendant's claim that the scope of the Sale Committee's powers were "conspicuously broad", I did not consider that improper in any relevant sense of the word. In any event, the broad powers of the Sale Committee were obtained by consent of the subsidiary proprietors who were entitled to vote, and did in fact vote, at an extraordinary general meeting on 23 November 2013.

73 For these reasons, I considered the Defendants' many allegations but declined to find in their favour in respect of any of them.

Conflict of interest between owner-occupiers and absentee owners

74 The Defendants took issue with the fact that the Sale Committee had members who were not owner-occupiers and argued that this meant that those members were in a position of conflict as regards the interests of the

subsidiary proprietors as a whole. This was not, to my mind, a valid objection. The LTSA does not preclude absentee owners from acting or being a member of the Sale Committee. Distinguishing between owner-occupiers and those who let out their units slices matters too thinly. Their economic interests may differ, but just as conceivably could coincide: it cannot be said that all owner-occupiers would be against selling, and all absentee owners in favour of doing so. Furthermore, the LTSA already prescribes disclosure requirements in para 2 of the Third Schedule. The facts stated in that paragraph are the matters that the legislature considered sufficiently important to require disclosure. There is no requirement targeting the actual occupancy of the units.

Other matters raised by the 4th Defendant

75 The 4th Defendant raised other matters relating to his family's particular circumstances. While these are worthy of sympathy, as was also expressed by the Plaintiffs, these considerations were not, however, matters within the ambit of the statutory regime.

Compensation to the 5th Defendant

76 The 5th Defendant initially objected to the sale on the basis that she would suffer a financial loss because, amongst others, of the fact that she had purchased her unit at a premium, and in 2013 and 2014 expended a considerable sum renovating it. However, the 5th Defendant did not eventually present arguments before me, having reached the Settlement Agreement with the Sale Committee. Accordingly, the Sale Committee also did not take issue with the 5th Defendant's claim for financial loss.

77 Section 84A(7A) of the LTSA permits the Court to increase the amount payable to an objector if the Court is satisfied that it would be just and

equitable to do so and the collective sale committee agrees. The reading adopted by the Plaintiffs appears to be that if a financial loss is shown under s 84A(7) of the LTSA, then the Court may order an increased payment under s 84A(7A). This may not be the only reading, but as the matter was not contested before me, I will not go further into this.

78 Financial loss is not fully defined under the LTSA; s 84A(8) does draw some limits around what can be taken as financial loss:

(8) For the purposes of subsection (7)(a), a subsidiary proprietor —

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after such deduction as the High Court may allow (including all or any of the deductions specified in the Fourth Schedule), are less than the price he paid for his lot;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his lot will be less than the other subsidiary proprietors; and

(c) shall not be taken to have incurred a financial loss by reason that the proceeds of sale for his lot, after such deduction as the High Court may allow (including all or any of the deductions specified in the Fourth Schedule), are less than the price he paid for his lot if he had purchased the lot after a collective sale committee had signed a sale and purchase agreement to sell all the lots and common property to a purchaser.”

However, s 84A(8) does not assist in the current situation. The plain words could conceivably cover any financial loss, but I would be inclined to the view that such financial loss should relate to the purchase or acquisition of the unit in question, rather than costs incurred in its improvement. I thus had some reservations about whether the loss claimed by the 5th Defendant would qualify; there is a reasonable argument that financial loss must be tied to the price of the property when bought. However, s 84A(7A) of the LTSA

contemplates a broad power being conferred on the court to order an increase in the sale proceeds to an objector on a just and equitable basis. That broad power is not limited to expenditure or expense of any particular nature. Certainly, even such a broad power should be exercised in a principled manner, but there was nothing here in the language of the statute that would preclude the specific claim made, and at least in the circumstances of this case, it would be just and equitable to so order it, given the extent of her expenditure, the loss she would otherwise suffer, and the position taken by the Plaintiffs. It may be that there are other arguments, but the considered examination of this issue will need to wait for another day.

79 I thus ordered under s 84A(7A) of the LTSA that the proceeds to be paid to the 5th Defendant be increased by the agreed sum stated in the Settlement Agreement.

Conclusion

80 In light of the above, the application for sale of the Property was approved, with a higher sum awarded to the 5th Defendant.

Aedit Abdullah
Judicial Commissioner

N Sreenivasan SC, Ang Mei-Ling Valerie Freda and Vithyashree
(Straits Law Practice LLC) for the plaintiffs;
The first, fourth and fifth defendants in person;
The second and third defendants unrepresented