IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 186

Originating Summons No 191 of 2018

Between

(1) Teo Mei Ling Karen
(2) Ng Wei Xiang Stanley
(3) Lim Siew Ming

… *Plaintiffs*

And

(1) Low Kwang Tong
(2) Seng One Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Land] — [Strata Titles] — [Collective Sales]

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Teo Mei Ling Karen and others
v
Low Kwang Tong and another

[2018] SGHC 186

High Court — Originating Summons No 191 of 2018
Ang Cheng Hock JC
5–8 June; 2, 18 July 2018

23 August 2018

Ang Cheng Hock JC:

Introduction

1 This was an application by the collective sale committee of an industrial building for a collective sale order. The subsidiary proprietors of two ground floor units in the building objected to the sale primarily on the basis that the collective sale committee had acted in bad faith in determining the size of their share of the collective sale proceeds under the agreed method of apportionment. Parties attended before me and called witnesses who were cross-examined. Thereafter, parties filed submissions and reply submissions. After considering the matter, I granted the collective sale order because I found that there was no bad faith in the transaction. I now give the detailed reasons for my decision.

Facts

The parties

2 The three plaintiffs are members of the collective sale committee for the collective sale of a strata title development called Citimac Industrial Complex (Strata Title Plan No. 1002) comprised in Land Lot No. 8935P Mukim 24. The plaintiffs are the authorised representatives of the collective sale committee ("CSC") to make the application for a collective sale order.

3 The 1st defendant is one of the subsidiary proprietors of unit #01-18. This is one of the showroom units located at the ground floor of Citimac Industrial Complex.

4 The 2nd defendant is the subsidiary proprietor of the adjoining unit, #01-19, which is also a showroom unit on the ground floor of the building.

Background to the dispute

5 Citimac Industrial Complex is located at the junction of Macpherson Road and Paya Lebar Road, where Upper Paya Lebar Road begins. It was constructed more than 30 years ago. The development comprises a total of 110 strata title units (which I will refer to in short as "units").

6 These 110 units are made up of (i) 9 showroom units located on the 1st floor, (ii) 19 warehouse units located on the 1st and 2nd floors; and (iii) 82 factory units located on the 3rd to 8th floors. These units have a total strata floor area of 29,377 square metres and a total share value of 2,999 shares.

7 The members of the CSC were unanimously elected by the subsidiary proprietors (which I will hereinafter refer to as "SPs", and each of them as an

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"SP") present at an Extraordinary General Meeting held on 22 October 2015. The CSC subsequently then appointed Edmund Tie & Company (SEA) Pte Ltd ("the Marketing Agent") as the marketing agent for the collective sale exercise.

8 At a meeting on 5 January 2016, the CSC decided to recommend setting the reserve price for the collective sale of Citimac Industrial Complex at $430m. This was after discussions with the Marketing Agent, and with the benefit of experience, because there had been an earlier collective sale attempt for the development, which started in 2013 where the reserve price had been set at $550m, and there had been no bids after the public tender closed on 26 March 2015.

9 At several meetings in January to March 2016, the CSC also discussed and considered the method of distribution of the collective sale proceeds among the SPs. With the benefit of advice from the Marketing Agent and their solicitors, the CSC proposed to adopt a method of apportionment of the sales proceeds based on 90% valuation and 10% share value. This was the method of apportionment that had also been adopted in the earlier collective sale attempt.

10 To this end, Jones Lang LaSalle Property Consultants Pte Ltd ("JLL") had been appointed by the CSC in January 2016 to carry out valuations of the units in the development. JLL was instructed by the CSC to come up with the following valuations:

(a) each of the 9 showroom units on the 1st floor;

(b) warehouse unit #01-01 (on the 1st floor);

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(c) a *typical* warehouse unit on the 1st floor. This would be the figure that would be used as the valuation for each of the warehouse units on the 1st floor, save for unit #01-01;

(d) a *typical* warehouse unit on the 2nd floor. This figure would be used as the valuation for each of the warehouse units on the 2nd floor; and

(e) a *typical* factory unit from the 3rd to 8th floors. This figure would be used as the valuation for each of the factory units.

11 Mr Tan Keng Chiam ("TKC"), JLL's head of its Valuation Advisory service, carried out the valuation and issued his report on 23 February 2016. With the valuation report and using the method of apportionment of 90% valuation and 10% share value, the Marketing Agent was able to work out the percentage share that each unit's SP or SPs would be entitled to and also the estimated amounts that they would receive in respect of the collective sale, assuming that the development was sold at the reserve price. TKC's valuation report and the figures the Marketing Agent had prepared were considered by the CSC at their meetings of 26 February 2016 and 7 March 2016. The CSC then decided that it would recommend this method of apportionment to be adopted in the Collective Sale Agreement ("CSA").

12 At an Extraordinary General Meeting held on 7 April 2016, the SPs present unanimously approved the reserve price of $430m, the method of apportionment based on 90% valuation and 10% share value, and the terms and conditions of the CSA. Each unit's share of the sale proceeds by percentage and amount was shown in a slide at the Extraordinary General Meeting that had been prepared by the Marketing Agent. These shares were also set out at

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Schedule 6 of the CSA. The percentage was described as the "Apportionment Ratio" and the amount was described as the "Unit's Entitlement based on Reserve Price of $430,000,000".

13 Immediately after this EGM, some of the SPs signed the CSA, and the permitted time, within the meaning of para 1(a) of the First Schedule to the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) (the "Act"), commenced on 7 April 2016.

14 At a meeting of the SPs held on 3 May 2017, they were informed by the CSC that the SPs of 89 units, out of the 110 units, had executed the CSA. This represented a consent level of 81.03% by share value and 81.06% by strata area to the proposed collective sale. Given that the statutory threshold of 80% approval to the collective sale had been crossed, the sale of Citimac Industrial Complex was launched by public tender on 1 June 2017.

15 At the close of the public tender on 21 July 2017, only one bid was received. Negotiations with the bidder took place immediately after the close of public tender. On 22 July 2017, the CSC awarded the tender to the sole bidder at the sale price of $430,111,000.00. This sale price was 0.02581% above the reserve price and 7.5276% above the valuation of the development as at the date of the close of the public tender.

16 On 19 October 2017, the plaintiffs filed their application to the Strata Titles Board ("STB") for a collective sale order.

17 The 1st and 2nd defendants separately filed their objections with the STB. By the time the first mediation session took place before the STB on 4 December 2017, the SPs of 92 units, out of 110 in total, had signed the CSA.

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By percentage, this was 83.83% by share value and 83.85% by strata area.

18 The mediation sessions were unsuccessful and the STB issued a stop order under s 84A(6A) of the Act on 31 January 2018 at the end of the second mediation session. The plaintiffs then commenced these proceedings under s 84A(1) of the Act on 12 February 2018 for the collective sale order. The defendants re-filed their objections to the sale in their affidavits filed in these proceedings.

The parties' cases

19 The 1st defendant's objection to the collective sale was on the basis that the process was carried out in bad faith. He had obtained approval from the Urban Redevelopment Authority ("URA") in 2009 for the change of his unit's (#01-18) use from a showroom to a canteen. He then renovated the premises so that it could be used as a canteen. He had been renting out the unit for use either as an eatery or canteen since 2009. Despite informing the CSC and the Marketing Agent that his unit should be valued as a canteen, TKC had valued his unit as a showroom. According to the 1st defendant, this was not reflective of its true market value, which was higher.

20 The 1st defendant called a valuer, Mr George Low ("GL"), to give evidence. GL valued his unit as having a market value $3,000 per square foot ("psf"), if used as a canteen. This was significantly higher than TKC's valuation, which was that the unit's market value was $1,288 psf as at 23 February 2016. This in turn meant that the 1st Defendant would get a smaller share of the proceeds of the collective sale because the method of apportionment among the SPs was based on 90% valuation and 10% share value.

21 GL was also of the view that the failure of the valuer to carry out another

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valuation of the units as at the date of the close of the public tender, that is, 21 July 2017, was not in compliance with the requirements of the Act. This was a point that was separate from the allegation of bad faith.

22 The 2nd defendant also objected to the collective sale on the basis that the transaction was not in good faith. In the affidavit filed by Ms Er Mee Lee, the director of the 2nd defendant, she criticised JLL's valuation of the units as being arbitrary, devoid of proper reasons and "totally inaccurate". There was also an allegation that JLL must have given the CSC a range of valuation figures to choose from before TKC's report was finalised and issued. In doing so, the CSC had influenced the valuer to ascribe a higher value to the units owned by certain groups of SPs. Hence, the CSC had failed to act even-handedly in the interest of all the SPs and had breached its fiduciary duties.

23 The 2nd defendant called a valuer, Mr Robert Khan ("RK"), to give evidence. RK prepared a report expressing the view that the showroom units should *not* have been individually valued. Instead, they should all have been ascribed the value of a *typical* 1st floor showroom unit, which he found to be $1,300 psf. TKC had valued the 2nd defendant's unit (#01-19) as having a market value of $1,240 psf in his report.

24 The plaintiffs' case was that the CSC members had acted honestly and in good faith throughout the whole collective sale process. They had asked TKC to carry out individual valuations of the showroom units (and the warehouse unit, #01-01) on the 1st floor because they had different road frontages and it would therefore not be fair to attribute the same valuation figure to all these showroom units. The change of use of the 1st Defendant's unit was known to the CSC members and was also a factor which led them to decide that individual valuations for the showroom units were appropriate. The CSC members had

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instructed the Marketing Agent to bring this change of use to the attention of TKC before he proceeded with his valuation exercise.

25 TKC testified that he had taken into account the fact that unit #01-18 had been granted permission to change its use to an industrial canteen when he valued it at $1,288 psf. He denied ever having shown draft valuation figures to the CSC or having discussed his valuation with the CSC members before he issued his report. TKC also defended the valuation figures in his report as being justifiable and reflective of the true market values of the units in the development.

Issues to be determined

26 The main issue before me was whether the collective sale transaction was in bad faith, taking into account the way the proceeds from the collective sale are to be distributed among the SPs. There were a number of sub-issues that had to be determined to decide whether there had been bad faith.

27 In relation to the 1st defendant's objection, there was the issue of whether the change of use of the 1st defendant's unit had been considered by TKC in his valuation of that unit. The 1st defendant argued that if it had not been considered by TKC, the valuation process, and hence the transaction, would be in bad faith.

28 As for the 2nd defendant's objection, there were the issues of: (i) whether the CSC members had been shown, and had then tried to influence, the valuation figures before TKC's report was issued; and (ii) whether the CSC members had influenced TKC to skew his valuation figures in favour of the units owned by certain groups of SPs and or some CSC members. If this had been done, the 2nd defendant argued that the CSC would have breached its

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fiduciary duties in (i) failing to act in an even-handed manner and (ii) acting in conflict of interests. In either situation, the 2nd defendant argued that bad faith would be established.

29 Related to the above, given the different valuations proffered by the two property valuers called by the defendants, GL and RK, there was the further issue raised by the defendants as to whether TKC's valuation of the units in the development was flawed. I should add that there was a nuance to the defendants' position in this regard. They were *not* arguing that the court could reject TKC's valuation as being incorrect, and that that would be sufficient to show bad faith. Rather, the defendants were contending that the views of GL and RK showed that TKC's valuation was so obviously flawed that he *must* have been influenced by the CSC to skew his valuation figures in a particular way so as to benefit only certain groups of SPs and or some CSC members.

30 As related to this was whether, *even if* the CSC had *not* influenced TKC in his valuation of the units, the CSC should independently have enquired into TKC's valuation report because it was so obviously flawed. It was argued that, by failing to do that, the CSC had breached its fiduciary duties and failed to act in good faith.

31 Separate from the question of bad faith, I also had to decide whether the Act requires the CSC to have procured another valuation of the units as at the date of the close of the public tender, that is, 21 July 2017.

Good faith in the transaction

32 An application for a collective sale order under s 84A(1) of the Act may be assailed on the basis that the transaction is not in good faith. In this regard, s 84A(9) provides that:

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> 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***;
>
> (C) the relationship of the purchaser to any of the subsidiary proprietors; or
>
> …
>
> [Emphasis added in bold italics]

33 The scope of this requirement that the "transaction" must be in "good faith" has been extensively discussed in a number of Court of Appeal decisions. In the landmark decision of *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Horizon Towers*"), the Court of Appeal held that a collective sale committee owed fiduciary duties *qua* agent to the SPs of the strata development units (at [109]). It was explained that, in considering whether there was "good faith", the court should consider what was good faith at general law, not just whether the sale price was fair or not (at [201]). In this regard, the Court of Appeal held (at [124]) that the committee's duties included: (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. The duty to act with conscientiousness includes the duty to obtain the best price for the properties of the SPs and the duty to consult the SPs (at [153]). If these duties of the collective sale committee as fiduciary agent of all the SPs have not been complied with, the transaction would not be in good faith.

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34 In *Horizon Towers*, the Court of Appeal also held that the word "transaction" as used in s 84A(9)(a)(i) embraced the entire sale process, including the marketing, negotiations and finalisation of the sale price (all of which steps ought to be evaluated in the context of the prevailing market conditions), culminating in the eventual sale of the property (at [130]). In *N K Rajarh and others v Tan Eng Chuan and others* [2014] 1 SLR 694, the Court of Appeal further explained that "transaction" included how the consent for the collective sale was secured (at [53]).

35 In relation to the method of distributing the collective sale proceeds, the Court of Appeal in *Lim Li Meng Dominic and others v Ching Pui Sim Sally and another and another matter* [2015] 5 SLR 989 ("*Gilstead Court*") stated as follows at [57]:

> In our view, when a court takes into account the method of distributing the sale proceeds for the purpose of assessing the good faith of the transaction, it is concerned with the substance of the transaction and not merely its form. What is crucial is the actual consideration that each SP will receive and how that sum will be calculated. The purpose of s 84A(9)(a) is to safeguard the interests of the minority and ensure that they are treated no less favourably than the majority … The court will not defeat that purpose by giving the provision a narrow and pedantic interpretation. ***We do not consider the phrase "the method of distributing the proceeds of sale" to be a term of art, even though the issue usually arises in the context of the amount of sale proceeds, for example, when the SPs are unable to agree on whether to apportion the sale proceeds by share values, valuation or the size of the units. The better view is that the phrase simply refers to the entire system by which the final shares of the sale proceeds are determined as a whole and this would cover not only the amount of sale proceeds to be received by an objecting SP but also the method of distributing such proceeds as well.***
>
> [Emphasis added in bold italics]

36 As for the standard of determining whether there is good faith insofar as

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the method of distribution of the collective sale proceeds is concerned, the Court of Appeal in *Gilstead Court* went on to state at [61], [63] and [64] as follows:

> As stated in Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012) at p 717, the requirement of good faith in relation to the method of distribution is likely to be satisfied if it "can be justified as being rational and designed to be *as fair as possible* to all the subsidiary proprietors as the circumstances of the case would permit" [emphasis added]. ***To this observation, we would add that, if the method of distribution is objectively unfair and designed to prejudice the interests of a particular class of SPs, a court will not hesitate to find that the statutory duty of good faith has not been discharged...***
>
> ***In other words, the subjective views of the parties as to the fairness or unfairness of the method of distribution of the sale proceeds are not determinative. A member of a sale committee may be in breach of his or her duty even if he or she thought that he or she was doing the right thing by preferring the interests of one group over another...***
>
> ***On the other hand, a sale committee is not necessarily in breach of its duty of even-handedness merely because any individual SP is (subjectively) dissatisfied with the sum he would receive due to circumstances which are unique to him. The distribution of the sale proceeds may be unfair or inequitable from the subjective perspective of an individual SP, without there being any bad faith in the process.***
>
> [Emphasis added in bold italics]

37 It was with these principles in mind that I considered the objections on the grounds of bad faith raised by the 1st and 2nd defendants to the collective sale and the various issues that arose for my determination. It bears pointing out that there was no dispute between the parties that the appropriate method of apportionment of the collective sale proceeds was 90% valuation and 10% share value. Rather, the quarrel here was over the relative size of the two units' share in the collective sale proceeds compared to the other units because of TKC's valuation.

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The change of use of unit #01-18

38 The substance of the 1st defendant's objection was that the change of use of his premises had not been taken into account when TKC valued his unit for the purposes of determining his share of the collective sale proceeds. The 1st defendant referred to TKC's valuation report of 23 February 2016 where his unit had been described in a table, which sets out the valuation figures of all the units, as "showroom" under the heading "type", which means the type of unit in question. There was also no reference in the valuation report to his unit being rented out for use as an eatery. He also pointed to the fact that the CSC meeting minutes in the relevant period of January and February 2016 did not indicate that the CSC had instructed the Marketing Agent to convey to JLL that his unit had been granted URA permission to be used as a canteen. According to the 1st defendant, all this suggested that TKC had, in truth, not taken the change of use into account when he valued the 1st defendant's unit at $1,288 psf.

39 TKC filed an affidavit and attended court to give evidence. He explained that he had received his instructions as to the scope of the valuation from the Marketing Agent, who he regarded as the representative of the CSC. Throughout the process, he did not meet, discuss or interact with the CSC directly. Shortly after JLL was appointed, the Marketing Agent provided it with a list of approved URA planning permissions for the site. Included in that list was the URA approval for unit #01-18 to be used as a canteen, granted on 20 April 2009. He was also provided with a copy of the "Grant of Written Permission" issued by URA, which showed that the 1st defendant's application for planning permission to use the premises as a canteen was approved, with one of the conditions of approval being that "[t]he proposed canteen is for staff use only".

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40 TKC explained that he did take into account the information in these documents when he valued the units, including the change of use approved for unit #01-18. In fact, he also pointed out that there were other units, which also had been granted a change of use. I noted from the list that, for example, units #01-16 and #01-17, which were showroom units, were granted approval in 1994 for use as an ancillary office for certain warehouse units in the development. In December 2005, unit #01-17 was granted approval to be used as a canteen. In June 2007, the SPs of that unit obtained approval to revert the use back to a showroom. In December 2015, unit #01-14, another showroom unit, was granted approval for use as a nightclub.

41 TKC testified that he had inspected the building on 22 January 2016 with his team from JLL, and one or two more times subsequently. He observed that unit #01-18 had been used as a bakery *cum* café. He was also aware from several advertisements that the SPs of the unit were actively looking for new tenants because the existing tenancy was ending and the premises was being marketed as being suitable for use as a restaurant. His assessment was that the best use of the premises was not as a canteen, but rather as a showroom. This was because the tenants of #01-18 had changed three times over a short span of 4 to 5 years, #01-18 was used to run cafés and was not actually used as a canteen, and there were competing canteens and eateries in the vicinity. In TKC's opinion, therefore, a showroom was the most superior and probable use of #01-18 if it were to be sold in the open market. For this reason, TKC valued unit #01-18 as a showroom, and not based on its actual or existing use as a café.

42 I accepted TKC's evidence that he was fully cognisant of the fact that unit #01-18 was, at the time of the valuation, being used as a café, and that he was aware that it had obtained URA's approval for the change of use to a canteen. His evidence was consistent with that of the Marketing Agent's Ms

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Swee Shou Fern who testified that she did communicate this change of use to JLL.

43 Ms Swee is a senior director of the Marketing Agent and was one of the persons in charge of the Marketing Agent's role for this collective sale. She gave evidence that the CSC had, at their first meeting on 5 January 2016, brought up the fact that unit #01-18 had been granted approval for use as a canteen. Ms Swee was asked by the CSC to pass on this information to JLL for their use in the valuation. The 2nd plaintiff, who testified on behalf of the CSC, also gave evidence that the change of use was told to Ms Swee, who was asked to convey this information to the valuer.

44 The 1st defendant attacked the credibility of TKC, Ms Swee and the 2nd plaintiff. He argued that their evidence cannot be true because the minutes of the CSC meetings, including the meeting on 5 January 2016, did not indicate that his unit's change of use was ever discussed. He also argued that there was nothing in writing to show that Ms Swee had indeed conveyed the unit's change of use to TKC and his team.

45 I did not accept that the 1st defendant had shown that TKC, Ms Swee and the 2nd defendant had all lied in this regard. The evidence presented to me from all three witnesses was clear and consistent. I also accepted Ms Swee's and the 2nd plaintiff's evidence that not every detail of what was discussed at the CSC meetings found their way into the minutes. It was open to the 1st defendant to call any of the other CSC members to give evidence to establish his allegation that the unit's change of use had never been discussed. But, this was not done.

46 Strictly speaking, it was not incorrect for the 1st defendant to assert that

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there was nothing in writing showing unit #01-18's change of use being communicated to JLL. But, TKC was able to refer me to a letter from the URA to the Marketing Agent's Ms Lee Joo Fee dated 14 January 2016 setting out the list of planning decisions for the development, including the approval of the change of use of unit #01-18 to that of a canteen. This was referred to at [39] above. TKC explained that this information was handed over to him in his initial meeting with Ms Swee and Ms Lee in January 2016, after JLL was appointed.

47 Ms Swee gave evidence to the same effect. She recounted that the meeting with JLL took place in mid-January 2016 at JLL's office after they had just been appointed but before work started on the valuation. This was a meeting where the Marketing Agent briefed JLL on their scope of work for the valuation and this was when Ms Swee had communicated to them unit's #01-18 change of use. She also handed over to JLL URA's letter of 14 January 2016. I should add that there would have been no reason for this information not to have been passed to JLL given that it was obtained from the URA precisely because there was going to be a valuation of the units in the development.

48 Next, the 1st defendant relied on the fact the TKC's valuation report had wrongly described the use of unit #01-18 as a showroom. I did not find that there was much force to this submission. The valuation report produced by TKC was succinct and did not descend into any details as to the actual use of the individual units in the development. Unit #01-18, together with units #01-11 to #01-17 and #01-19, were listed as "showroom" because this described the type of unit they all were. It bears reiterating that the development only had three types of units – showroom, warehouse and factory – and TKC's report categorized each of the units under one of these three descriptions. This was to

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be distinguished from the actual use of each of the units, which was not described in TKC's report. As such, I do not think I can infer too much from the fact that unit #01-18's actual use was not referred to in TKC's report.

49 After TKC's report was issued, both the 2nd plaintiff and Ms Swee did notice that unit #01-18's use as an eatery was not mentioned in the report. The 2nd plaintiff's evidence was that the CSC then asked Ms Swee whether the valuer had taken into account the unit's change of use. Ms Swee subsequently raised this query to TKC, who explained to her that he did take into account the fact that the unit had been granted approval for use as a canteen when he valued the unit. Ms Swee conveyed this explanation to the CSC. This mode of communication was followed throughout. Whether prior to or after the issuance of the valuation report, the CSC did not communicate directly with the valuer, but always through the conduit of the Marketing Agent. The evidence was clear in this regard.

50 Given that TKC was fully aware that the 1st defendant's unit could be used as a canteen, but was of the view that the market value of the premises was best assessed on the basis that the unit would be used as a showroom, the question before me was whether there were any grounds for me to find that there was bad faith. In my judgment, there were none.

51 First, I did not find that there was anything else that the CSC could have done in the circumstances. They were aware of unit #01-18's actual use and that the 1st defendant had obtained URA's approval for the use of the unit as a canteen. They specifically asked the Marketing Agent to convey this information to JLL, which the Marketing Agent duly complied. Upon receipt of the valuation report, the CSC asked the Marketing Agent to check with TKC whether he had taken into account the unit's change of use. Through the

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Marketing Agent, they received TKC's explanation that he had. In such circumstances, I was unable to conclude that the CSC acted in bad faith.

52 As for TKC's valuation itself, his assessment that the highest and best use of the unit was that of a showroom, and that the market value would be determined on that basis, was an exercise of his professional judgment which I did not think there was any basis to fault. The 1st defendant's valuer, GL, did not say in his report that TKC's approach was contrary to professional valuation standards. He simply disagreed with TKC's valuation and proceeded to value unit #01-18 at $3,000 psf based on its use as an eatery. This did little to assist the court in determining whether TKC's valuation was in bad faith because it appeared to me that he simply had a different opinion as to how the unit should be valued and what the unit was worth. That did not shed light on whether TKC had adopted an approach which no reasonable valuer would have taken, which perhaps would have hinted at something untoward. I should add that, even on the question of the unit's valuation, I found GL's report to be unhelpful because he valued the unit as at 21 July 2017, *the date of the close of the public tender*. This was quite obviously a different proposition altogether from TKC's valuation, which was done as at 23 February 2016. There was therefore no proper basis of comparison.

53 For the above reasons, I did not find that there is bad faith in the transaction insofar as the 1st defendant's objection concerning his unit's change of use was concerned.

54 I should add that the plaintiffs did not take any point in relation to the use of unit #01-18 as an eatery, such as a café or restaurant, rather than as a canteen for "staff use only", which the URA subsequently expanded to permit such "industrial canteens" to serve workers in the industrial estate, not just for

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staff working within the same building. As such, I did not regard this as relevant to my consideration of the matter.

Presenting draft valuation figures for the CSC to choose from

55 In her affidavit setting out the 2nd defendant's objection to the sale, Ms Er Mee Lee, the 2nd defendant's director, alleged that TKC must have shown the CSC members a range of figures for the valuation of the units and allowed them to express a preference for the figures that they wanted. This was tantamount to alleging that the valuer had colluded with the CSC in coming up with figures for the valuations which the CSC was happy with. If true, this would have been suggestive of a possible breach of the fiduciary duties of the CSC to act in the interests of SPs as a whole and constitute bad faith in the transaction. However, the evidence of the 2nd plaintiff, Ms Swee and TKC was consistent and unequivocal that no such thing had happened in this case.

56 The 2nd plaintiff was a candid witness who answered questions directly, with little hesitation and, in my assessment, honestly. He admitted that, in the prior collective sale attempt in 2013-2014, the valuer, who was not from JLL, had given the then collective sale committee a range of figures to consider and express views on, before the figures were fixed by the valuer and the valuation report issued. Ms Er was a member of the collective sale committee in that previous collective sale attempt. The 2nd plaintiff testified that this did not happen for the current collective sale exercise. He did not speak or discuss with TKC or any of the JLL team before they issued the valuation report on 23 February 2016. As far as he knew, neither did any of his fellow CSC members. All communications with the valuer were through the Marketing Agent.

57 Ms Swee testified that she had a few phone calls with JLL in February

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2016 before the valuation report was issued, but these were to find out about the progress of the valuation and not about any valuation figures for the units. She rejected any suggestion that there was any attempt to influence TKC. Just before the report was released on 23 February 2016, she was told over the phone the final valuation figures that the TKC had determined. This was to allow her more time to prepare for a CSC meeting that was coming up on 26 February 2016 to discuss the valuation report that was about to be issued.

58 TKC testified that he did not give the Marketing Agent or the CSC a range of figures to pick from before he issued his valuation report on 23 February 2016 although he was aware that some valuation firms do carry out this practice. However, he could not remember whether he had informed Ms Swee over the phone about the final valuation figures just before his report was issued.

59 Under cross-examination, the 2nd defendant's Ms Er accepted that she had no evidence for her allegation that the valuer had given the CSC a range of values to consider and choose from before he finalised his report. To substantiate this allegation, the 2nd defendant could have subpoenaed the other CSC members to give evidence on this issue, but it chose not to do so.

60 On the evidence, I found that there was no basis for the 2nd defendant's allegation that the valuation figures had been shown in draft to the CSC for its views before TKC's report was finalised and issued.

Skewing the valuation figures

61 Ms Er made another attack on TKC's valuation in her affidavit, which was that the valuation was arbitrary, devoid of any reasons or basis, and generally flawed. From this, the 2nd defendant asked me to draw the inference

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that the CSC must have influenced the valuer to skew the valuation figures of the units to benefit some of the CSC members, who owned "multiple units" in the development. This allegation was later expanded in the post-hearing submissions to include an attempt by the CSC to prefer certain groups of subsidiary proprietors, which I will explain below.

62 Ms Er explained under cross-examination the reasons for the 2nd defendant's allegation that the TKC's valuation was flawed. The main disagreement was that TKC had individually valued each of the showroom units on the 1st floor instead of ascribing to *all* of the showroom units the value of a *typical* 1st floor showroom unit. Not only that, she felt TKC had acted in an illogical manner because unit #01-19's road frontage was the longest (combining the frontage along Playfair Road and Macpherson Road), but yet it had been valued at $1,240 psf, which was the lowest of all the showroom units. It appeared to her that TKC had acted arbitrarily by placing undue weight on the distance of each showroom unit from Tai Seng MRT station rather than on the length of the road frontage of each unit. The result of this was that unit #01-19, being the furthest showroom unit from the MRT station, had the lowest valuation, save for warehouse unit #01-01 which had an even lower valuation with a road frontage facing Playfair Road only. The only explanation for TKC's valuation figures, according to the 2nd defendant, was that the CSC must have influenced him.

63 In support of the 2nd defendant's case, RK ascribed unit #01-19 a value of $1,300 psf, which he found to be the valuation of a typical 1st floor showroom. RK gave evidence that, in his view, an individual valuation of the showroom units of the 1st floor would have to take into account a whole host of factors, such as, frontage, distance to the MRT station, human traffic, motor traffic, unit size, etc. Because of the number of variables involved, he did not

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think that doing individual valuations was appropriate. In his words, it would be "challenging to do that" and that "[i]t would be very difficult to come [up] with individual valuations [for the showroom units] that will be fair and equitable to all the subsidiary proprietors of the showroom units". However, he did agree that those units with road frontages on the 1st floor would command a premium over units with no road frontage at all.

64 It must be remembered that TKC was *instructed* to value the 1st floor showroom units individually. That instruction came from the CSC. The antecedent question was thus whether the fact that such an instruction was given showed bad faith on the part of the CSC.

65 The 2nd plaintiff gave evidence that the issue as to how the 1st floor showroom units should be valued came up for discussion at the CSC meeting on 5 January 2016, which the Marketing Agent's Ms Swee also attended. He explained how he had been the chairman of the collective sale committee in the prior collective sale exercise in 2013-2014. In the earlier exercise, some of the SPs of the 1st floor showroom units (SPs of unit #01-16 and #01-12) had voiced the opinion that their units should have been individually valued because they had different road frontages, and that meant that their units could have a higher market value. Drawing from that experience, when the matter came up for discussion on 5 January 2016, after deliberations, the CSC was of the view that the 1st floor showroom units (and the warehouse unit #01-01, which also had a road frontage) should be individually valued so as to be fair to the SPs of these units. The Marketing Agent was then asked to convey these instructions to the valuer.

66 I note that Ms Er had herself initially conceded under cross-examination that, given the 1st floor showroom units all had different road frontages, they

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should be individually valued. However, she subsequently changed her evidence and insisted that the showroom units should all be ascribed the value of a typical 1st floor showroom unit.

67 It is axiomatic that, when using valuations as part of the method of determining a SP's share of the collective sale proceeds, different valuations for different strata units will result in each SP having different shares. The fact that there will be a differential is, in a sense, unavoidable. This in itself cannot amount to bad faith in the transaction. The real question is whether the decision to ask for individual valuations of the 1st floor showroom units was objectively unfair and designed to prejudice the 2nd Defendant. I do not find that the evidence established this.

68 There appeared to me no dishonesty in CSC's decision-making. The CSC was trying to act fairly given that the 1st floor showroom units had differing road frontages which might result in differing market values amongst the showroom units as compared to the factory units or the warehouse units which were more uniform in nature. This was a matter of common sense. Objectively viewed, individual valuations would mean that the showroom units would probably be ascribed different valuation figures. This could not be described as inherently unfair to the 2nd defendant. Further, there was no evidence to suggest that the CSC would have known that asking for individual valuations would mean that the 2nd defendant's unit, #01-19, would be valued the lowest of all the showroom units. As such, I could not accept the 2nd defendant's contention that there was a breach of the CSC's fiduciary duty to act in an even-handed manner in respect of all the SPs by deciding on individual valuations for the 1st floor showroom units. I was therefore unable to conclude that the decision by the CSC to individually value the 1st floor showroom units was made in bad faith.

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69 The next question was whether TKC had carried out his valuation in a manner which showed bad faith. The 2nd defendant attacked TKC's valuation on a number of fronts, criticising his methodology, his decision to take into account a sale of a factory unit on the 7th floor on 28 December 2015 as part of his data on the transacted prices for units in Citimac Industrial Complex, his choice of comparables, just to name a few lines of attack. Ultimately, though, I found that the 2nd defendant was simply trying to convince me to prefer RK's valuation of unit #01-19 over that of TKC's, by showing that RK's approach was sounder as a matter of valuation principles.

70 In my judgment, it was not sufficient for the 2nd defendant to show that TKC would have come to another value for unit #01-19 if he had taken a different approach, or even that TKC was negligent in his valuation. To establish bad faith in relation the valuation itself, the 2nd defendant must show that TKC's valuation was carried out with the intention, objectively ascertained, of depriving the 2nd defendant of its fair share of the collective sale proceeds.

71 Leaving aside direct evidence of such *mala fides* for which there was none, in their post-hearing submissions, the defendants argued that the court should infer bad faith from the fact that TKC's valuation was so hopelessly flawed that the only reasonable conclusion to be drawn was that he was instructed to skew the valuation figures in a particular way. However, based on TKC's affidavit evidence and his explanations when he was cross-examined on his valuation report and his reasoning, the defendants fell well short of showing that.

72 TKC explained in his evidence that he used the direct comparison method in valuing the units at Citimac Industrial Complex. His evidence was that this was the most commonly used method of valuation in carrying out the

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valuation of strata industrial properties. Using this method, the subject property is compared to recent transactions of comparable properties within the development or in comparable developments in the vicinity. One would take into consideration the prevailing market conditions, and will also make adjustments for differences in location, tenure, size, shape, design and layout, age and condition of the building, dates of transaction, amongst other things, before arriving at the value of the subject property. Both GL and RK agreed that this this was an appropriate approach to take. In fact, they used the same direct comparison method in coming to their valuation of units #01-18 and #01-19 respectively.

73 Insofar as the 2nd defendant's expert, RK, was concerned, where the disagreement lay was in how TKC applied this method of valuation. First, TKC took into account, as part of his comparable data, the sale of the 7th floor factory unit that took place on 28 December 2015. RK was of the view that this should not have been included because the collective sale exercise had already started by then. As such, that particular transaction would not be reflective of the true market value of the unit. If used as a comparable, it would artificially push up the valuation of the factory units. TKC disagreed with this because he explained that the "enbloc potential" of a unit, no matter how real or speculative, would form part of the factors reflecting the unit's market value at a particular point in time. He also examined the transaction in question and did not find evidence of anything suspicious about it. In my judgment, I found TKC's explanation to be logical and consonant with common sense. I did not find that it was unjustifiable to include the transaction on 28 December 2015 as part of the comparable data.

74 Secondly, TKC and RK were in disagreement over the choice of buildings in the vicinity that should be used as comparables. TKC relied

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primarily on transactions in Kapo Factory Building along Playfair Road, while RK preferred to use other buildings further away as comparables. Both described each other's choices of comparables as less suitable than his own. I found that this was simply a difference of opinion between the two valuers, which did not show that TKC's valuation was flawed.

75 Thirdly, TKC utilised a model to determine the valuation of the various types of units within Citimac Industrial Complex. He first used comparable data to determine the market value of a factory unit (located on the 3rd to 8th floor) as $800 psf. This was then used as a "base" to determine the market values of the other type of units. He was of the view that the value of the 2nd floor warehouses enjoyed a premium because of the convenience of having direct access to the car park of the building. He assessed the value of a typical 2nd floor warehouse to be $850 psf. His analysis of historical data showed that the transacted prices of 1st floor warehouses in the development was 21% to 45% higher than the "base" factory unit. He assessed the market value of the 1st floor warehouses (save for unit #01-01 which was to be individually valued because it had a road frontage) as $1,100 psf.

76 RK said in his oral evidence that he had a "fundamental disagreement" with TKC over the use of this model. He felt that a direct comparison method should have been used to determine the market values of all the different types of units in the development. However, RK was not able to cite any valuation standards or texts which showed that the "modelling" done by TKC was not acceptable practice for a valuer. My view was that, again, this was just a difference in approach taken by two professional valuers.

77 Fourthly, as indicated earlier, RK was of the view that the showroom units on the 1st floor should not have been individually valued but all ascribed

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the value of a typical 1st floor showroom unit. As TKC had been specifically instructed to carry out individual valuations of the showroom units, he could hardly be criticised for carrying out his client's instructions. But, even TKC's individual valuations of the showroom units was not spared criticism by RK. In his evidence in court, RK questioned whether TKC actually carried out a valuation of each of the 1st floor showroom units, or whether he arbitrarily assigned values to the units depending on their distance from Tai Seng MRT station. He also criticised TKC for not explaining in his report of 23 February 2016 how his individual valuation figures were arrived at.

78 While I agreed that TKC's report did not explain the reasons for the individual valuation of each 1st floor showroom unit, it must be noted that he was not asked by his client (*ie,* the CSC) to provide in his report explanations of his valuation of the units, but simply to value all the units in the development. Thus, not much can be made out of this omission.

79 In his evidence, TKC did explain that he accorded premiums to the 1st floor showroom units enjoying road frontages with the highest visibility and exposure to human traffic, regardless of the length of the frontage. The example he gave was that the human traffic flow is the highest between the traffic intersection of Upper Paya Lebar Road and Macpherson Road and Tai Seng MRT station, and that was why units #01-11, #01-12 and #01-13 were valued the highest amongst the 1st floor showroom units. These three units were at the corner of the development nearest to the traffic intersection. In his opinion, accessibility, visibility and exposure to human traffic were the most important attributes when determining the market values of the 1st floor showroom units.

80 In my assessment, TKC had provided an adequate and proper explanation for his valuations for the 1st floor showroom units. While RK

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might disagree and think that unit #01-19 should be valued higher at $1,300 psf, albeit on a typical valuation basis, I did not find that TKC's approach showed that his valuation was affected by bad faith or improper motives.

81 In summary, I was unable to agree with the contention that TKC's valuation was flawed to such an extent that I should infer that he must have been influenced by the CSC in determining his valuation figures.

Breach of duty of even-handedness and acting in conflict of interest

82 In their post-hearing submissions, both defendants made arguments that the CSC had (i) preferred the interests of the SPs owning showroom units over that of the SPs as a whole, and or (ii) preferred the interests of the SPs of factory units over that of the SPs as a whole. In both situations, it was argued that the CSC would have acted in breach of its duty to act in an even-handed manner and also in conflict of interest, for reasons I will set out below.

83 I preface this portion of my analysis with the observation that I was somewhat troubled by the fact that these arguments were only fleshed out in the post-hearing submissions and had never been raised, or at least raised clearly, in the defendants' affidavits or the opening statements in these proceedings.

84 The 1st defendant's affidavit had not made any allegation that the CSC had acted in breach of its duty to act even-handedly or in conflict of interest. As for the 2nd defendant's Ms Er's affidavit, all that was stated in this regard was that the CSC was "*obliged to act even-handedly and in the interest of all the Subsidiary Proprietors and not to act in their personal interest or in the interest of certain groups of Subsidiary Proprietors*". There was no mention of how precisely the CSC members were alleged to have acted in their personal interest or in the interest of certain SPs. Neither was there any identification of who

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these other SPs or the members of the CSC were who had interests that conflicted with their duties. In short, there was no particularisation of the alleged conflict of interest. Thus, the plaintiffs and the other CSC members never had an opportunity to file affidavits to specifically deal with these allegations.

85 Both defendants argued that the CSC had preferred its own interests by instructing TKC to conduct individual valuations of the showroom units on the ground floor, even though a valuation of a typical 1st floor showroom unit would have been appropriate. This was because some of the showroom units were owned by CSC members. There was no clear evidence before me, however, as to who were the CSC members that were alleged to have interests in the showroom units, and which units in particular.

86 I could not accept this rather serious allegation that the CSC members had acted in conflict of interest and had breached their fiduciary duties. There was simply no evidence to support such an allegation other than the fact that certain showroom units nearer to Tai Seng MRT station had been valued higher than the defendants' units. This, in itself, was insufficient to show any conflict of interest. There did not appear to me any obvious motivation for the CSC to benefit only the SPs of the showroom units. I was not furnished with any evidence that the CSC members had any disagreement amongst themselves as to the decision to ask for individual valuations of the showroom units so I must proceed on the basis that it was their unanimous decision.

87 Furthermore, as mentioned earlier, I found that the CSC could not be said to have acted in bad faith in deciding to instruct JLL to individually value the 1st floor showroom units. I accepted the 2nd plaintiff's evidence that the CSC members were acting honestly in what they believed was fair to the SPs of

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the 1st floor showroom units and the warehouse unit #01-01, which all enjoyed differing road frontages. I did not find that the decision to ask for individual valuations of the showroom units was objectively unfair or designed to prejudice the interests of either defendant.

88 I should add that the 2nd defendant also argued that the CSC favoured the 1st floor showroom units nearest to the Tai Seng MRT station. But, there was no evidence to support such an allegation of influence being exerted on TKC or that the CSC even harboured such an intention to prefer those units. Rather, the evidence showed that it was TKC who determined, in his professional opinion, that the showroom units closer to the MRT station would enjoy greater accessibility, human traffic and visibility and should thus be ascribed a higher valuation.

89 Both the defendants next argued that the CSC favoured a higher valuation for the factory units from the 3rd to 8th floors. Given that the majority of the units in Citimac Industrial Complex were factory units, a higher valuation of the factory units would help ensure that the consent level of 80% was reached for the collective sale. In favouring the SPs of the factory units, it was contended that the CSC not only failed to act even-handedly, but also acted in its own interest because there were CSC members who owned "multiple units" in the development and they were anxious for the collective sale to go through. Having said that, there was no particularisation as to which CSC member owned more than one unit in the development, and which were these additional units. The only evidence I had before me was that the 2nd plaintiff, who described himself as a property investor, had interests in six units in the development – three factory units, two warehouse units and one showroom unit. But, he was just one out of the twelve CSC members.

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90 In my judgment, the defendants were not able to point to any evidence that would support a finding that the CSC did have an intention to secure a higher valuation for the factory units. Neither were the defendants able to show that TKC had such an objective when he valued a typical 3rd to 8th floor factory unit. Ultimately, the defendants' arguments (both on favouring the SPs of the factory units and on favouring some of the SPs of the showroom units) rested on an inference which they wanted the court to draw from TKC's valuation of the units – that the valuation was so obviously flawed that the CSC must have influenced TKC to come up with his figures. But, as pointed out earlier, I was unable to agree this contention as I did not accept that TKC's valuation had been shown to be flawed.

91 For the above reasons, I did not agree with that the CSC had breached its fiduciary duties by failing to act in an even-handed manner or by acting in conflict of interest.

Failing to enquire into the valuation report

92 The 2nd defendant argued that, even if the CSC had not influenced the valuer to skew his valuation figures in a particular way, the CSC members had breached their fiduciary duties because they failed to enquire into the basis of TKC's valuation report when it should have been obvious to them that the report was flawed. According to the 2nd defendant, it would have been obvious that the valuation was flawed because the reserve price from the last collective sale exercise in 2013-2014 had fallen by 22% from \$550m to \$430m, but (i) the factory units saw an increase in their valuation by 6.7% from \$750 psf to \$800 psf, and (ii) the 1st floor warehouses saw an increase in their valuation by 4.8% from \$1,050 psf to \$1,100 psf.

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93 As I have stated earlier, I did not accept the argument that TKC's report had been shown to be flawed, let alone that one could tell that it was so obviously flawed by simply reading his report. Be that as it may, the 2nd defendant's argument proceeded on a misconceived basis that market prices of the units had obviously fallen significantly just because the reserve price for the current collective sale exercise was 22% lower than that for the previous collective sale exercise. There may have been a number of reasons for the reserve price in the earlier collective sale exercise being set at $550m (for which there were no bidders), such as, a too optimistic view of the development's collective sale potential by the valuer at that time, or that the SPs were asking for too much. These possible reasons were not explored in the evidence before me and, as such, I could not conclude that the market values of the units in the development had declined significantly from the time of the last collective sale exercise to the present one, such that the CSC must have known that TKC's valuation of the factory units and the 1st floor warehouses was clearly wrong.

Date of the valuation

94 The 1st defendant argued that TKC's valuation of the units, as at 23 February 2016, was out of date. In his affidavit, the 1st defendant's valuer, GL, produced a valuation report which valued the units at 21 July 2017, which was the date of the close of the public tender. It was argued that the right date for the valuation of the units should be 21 July 2017 so that the units' values would be more reflective of the prevailing market conditions at the time of the contract of sale with the purchaser of the development.

95 But, as pointed out by the plaintiffs, this was an erroneous understanding of the purpose of the valuation by TKC. The valuation that the CSC had asked TKC to perform in February 2016 was to ascertain the values of the units in the

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development in order to determine each SP's share of the collective sale proceeds. Such a valuation was necessary because the method of apportioning the sale proceeds was based on 90% valuation and 10% share value. After TKC issued his report on 23 February 2016, the Marketing Agent and the CSC were able to work out each unit's share of the collective sale proceeds. These shares were then included as part of the CSA and approval of the SPs to the proposed collective sale was sought on that basis. Subsequently, a majority approval of more than 80% in both share value and strata area was achieved. It would not make sense if another valuation of the units was then done, whether at the close of public tender or later, and the shares of the units re-worked on the basis of the newer valuation figures. That would undermine the basis upon which the SPs had signed the CSA. In his evidence, after some questioning, GL conceded that another valuation at that stage to re-work the shares of the SPs would not be appropriate.

96 I would also add that paragraph 11(2) of the Third Schedule of the Act only requires that the CSC obtain 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. This is quite different thing from saying that the strata units in the development must be valued as at that date. In any event, it is not disputed that this statutory requirement was fulfilled because the CSC did in fact obtain such a valuation report on the value of *the development* as at 21 July 2017, the date of the close of the public tender, which valued the development at $400m as a redevelopment site.

Conclusion

97 For all the above reasons, I did not accept the defendants have shown that there was bad faith in the collective sale process. I found most of the

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arguments raised by the defendants to be thinly disguised complaints about the amounts they would receive as their share of the collective sale proceeds because of the circumstances that were unique to them. As explained by the Court of Appeal in *Gilstead Court* at [64], the distribution of the sale proceeds may be unfair or inequitable from the subjective perspective of an SP without there being any bad faith in the process. In my judgment, this was such a case. Accordingly, I granted the collective sale order sought by the plaintiffs.

98 After hearing submissions on costs, I ordered the 1st and 2nd defendants to bear the plaintiffs' costs of this application, which I fixed at $72,000 with disbursements to be agreed or taxed, equally.

Ang Cheng Hock
Judicial Commissioner

Jason Lim Chen Thor, De Souza Kevin David and Geena Liaw Jin Yi (De Souza Lim & Goh LLP) for the plaintiff;
Linus Ng Siew Hoong and Sharmila Sanjeevi (Donaldson & Burkinshaw LLP) for the first defendant;
Yeo Choon Hsien Leslie and Jolene Tan Shu Ann (Sterling Law Corporation) for the second defendant.

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