

LAND TITLES (STRATA) ACT
(CHAPTER 158)

BUILDING MAINTENANCE AND STRATA MANAGEMENT
(STRATA TITLES BOARD) REGULATIONS 2005

STB NO 100 OF 2007

In the matter of an application under Section 84A of the Land Titles (Strata) Act in respect of the development known as **Oakswood Heights** (Strata Title Plan No.1691) comprised in Land Lot No 931L of Town Subdivision 23

Between

- 1 **Leong Soh Har**
- 2 **Urbina Alison Elizabeth**
- 3 **Tee Kam Chi**

(representing the majority owners of Oakswood Heights)

... Applicants

And

- 1 **Tjeng Hie Min/ Rina Pangastuti Adidharma**
- 2 **Chia Sow Kin/ Chia Sow Ang**
- 3 **Kek Beng/ Lam Marn Ling**
- 4 **Wong Ming Wah/ Yeo Mui Choo**
- 5 **Lee Jee Bah/ Lee Kam Yoke**
- 6 **Tan Khoon Eng**

... Respondents

Coram:

Mr Remedios Francis George
Deputy President

Panel Members:

Mr Goh Tiam Lock
Mr Lee Co
Dr Richard Tan
Prof Teo Keang Sood

Counsel:

Mr Ling Tien Wah

Mr Lee Liat Yeang

Ms Koh Jiaying

(Rodyk & Davidson LLP for the Applicants)

Mr Tjeng Hie Min

(1st Respondent In Person)

Mr David Liew

(M/s DSH Law Corporation for the 2nd to 6th
Respondents)

GROUND OF DECISION

1. In application STB 100 of 2007, the Applicants who are the subsidiary proprietors (SPs) holding not less than 80% (82.92%) of the total share value in the land comprised in Land Lot No 931L of Town Subdivision 23 applied for an order under S.84A of the Land Titles Strata Act ("LTSA") Cap 151 for the collective sale of the development known as Oakwood Heights ("Development").
2. The Development comprises 84 lots and common property. Between 16 January 2007 and 11 June 2007, the SPs of 69 lots (at the commencement of the hearing the Board was informed that 70 SPs had signed the collective sale agreement ("CSA"). The SP of Blk 47 #XX X signed the CSA on the 23 August 2007. Accordingly the percentage of SPs who signed the CSA is now 83.85%) signed the CSA agreeing to sell their rights and interests in the development by tender or private treaty or any other method employed for the sale of properties. The reserve price ("RP") was stated to be not less than \$130.5 million.
3. The Sales Committee (SC) comprised the following SPs:-
 - (i) Koh Cheng Hoe;
 - (ii) Michael Leong;
 - (iii) Png Lian Neo Angela;
 - (iv) Kwan Kin Yeng Anne;
 - (v) Tham Wai Chung Linus;
 - (vi) Alison Elizabeth Urbina; and
 - (vii) June Lee
4. The CSA also provided for the sale proceeds to be distributed by using the following formula:

50% share value and 50% strata floor area.

5. A Sale and Purchase Agreement ("SPA") (evidenced by an Offer to Purchase and Letter of Acceptance both dated 6 June 2007) was executed on the 6 June 2007 whereby it was conditionally agreed that the Development would be sold to UOL Development Pte Ltd ("UOL") for \$132 million.

6. As the SPs of 15 lots did not sign the CSA, this application was filed to Strata Titles Boards ("the Board") on 13 August 2007.

7. Following the filing of the application, objections were filed by 6 of the 15 SPs who did not sign the CSA viz:-

- (i) Tjeng Hie Min;
- (ii) Chia Siow Kin;
- (iii) Kek Beng;
- (iv) Wong Ming Wah;
- (v) Lee Jee Bah; and
- (vi) Tan Khoon Eng

8. Following 2 unsuccessful attempts at mediation, the matter was fixed for arbitration on 15 January 2008 and 18 January 2008. On 15 January 2008, the parties informed the Board that they were close to resolving the matter between themselves and applied for the matter to be adjourned to 18 January 2008. On 18 January 2008, the Board was informed that the parties were not able to resolve the matter between themselves and the Board proceeded to arbitrate the matter.

9. At the commencement of the hearing, the parties informed the Board that the minority owners were challenging the application on the following grounds:

- (i) The owner of Blk 47 #XXX, Wong Ming Wah ("4th Respondent") will suffer a financial loss of \$750.19 if the collective sale is completed before 2 June 2008, the amount being a penalty for early termination of a housing loan;
- (ii) The application to the Board in this case was invalid because the signatories of Blk 47 #XXX were different from the names of the SPs for that unit listed in the Strata Roll in Schedule 1 of the CSA;
- (iii) The SC failed to comply with a resolution passed at the extra-ordinary general meeting ("EOGM") on 26 September 2006 to put up quarterly reports on the Development's notice board;
- (iv) The SC failed to comply with a resolution passed at the EOGM on 26 September 2006 to convene a general meeting to approve the RP and method of distribution of the proceeds of the collective sale;
- (v) The fees charged by the sales consultants and solicitors were too high;
- (vi) The SC failed to circulate minutes of their meeting as well as meetings with the purchasers at each stage of sales negotiation to SPs to keep them informed;

- (vii) The offer price of \$132million was not pegged at current market price;
- (viii) The SPs were wrongly informed that the concluded sale price worked out to \$740 psf/pr and is higher than that of the neighbouring development's price of \$732 psf/pr because based on total net floor area of 188,400 sq ft, the price is actually \$700.64 psf/pr;
- (ix) Although it was highlighted to the SC, prior to the acceptance of UOL's offer that the collective sale of Fairways Condominium ("Fairways") was closed at \$785 psf/pr, the SC did not do anything constructive to persuade UOL to improve the offer;
- (x) The collective sale of the Development does not offer any premium to the SPs who are forced to sell their units at a discount from a price they would have obtained had they sold their units individually in the open market;
- (xi) The SC ignored requests of some SPs to attend meetings convened to address the SPs' concerns, and did not attend any of these meetings;
- (xii) SPs from 19 units who had signed the CSA had reservations about the RP and wrote to the SC to consider reviewing the RP before accepting UOL's offer but the SC ignored the request;
- (xiii) The SC did not consider the interest of the SPs in trying to get the best price for the Development in that they were in a hurry to seal a deal with UOL and refused to conduct a public tender for the collective sale of the Development;
- (xiv) The valuation report obtained by the SC which gave the open market price of the Development as \$125 million is biased, inaccurate and not relevant as Gan Eng Seng Secondary School which had shifted out more than 5 years ago was listed as one of the surrounding developments giving rise to the question of whether the information contained in the valuation report accurately reflects the current situation; and
- (xv) The SC's conduct gives rise to suspicion of collusion with UOL.

10. At the close of the hearing, there were no submissions from counsel for the Respondents with regard to the issue of financial loss.

11. The evidence in the joint affidavit of the 2nd to 6th Respondents was that the 4th Respondent would suffer a financial loss of \$750.19 as this was a penalty that had to be paid for early termination of a housing loan. This was not a financial loss that warranted the disapproval of the application in this case

12. Learned counsel for the Respondents did not also make any submissions with regard to ground (ii) above as there was evidence that Koh Shih Ling Rosalyn (who had signed in place of Koh Kok Hoe, Koh Kok Eng and Koh Kok Khong, whose names were listed on the Strata Roll in Schedule 1 of the CSA when the first signature was appended on the CSA on 16 January 2007) had signed the CSA on 5 June 2007 after the legal completion of her purchase of the shares of Koh Kok Hoe, Koh Kok Eng and Koh Kok Khong was completed on 30 May 2007. Her signature was also appended 1 day after the 80% (by total share value) threshold had

been achieved on the 4 June 2007 and did not affect the 80% (by share value) consent that was required for the making of the application.

13. It will be in order to set out the applicable law before we deal with the issues in this case.

THE LAW

14. It has on more than 1 occasion been observed that the main purpose of the provisions dealing with en bloc sales is to make it easier for en bloc sales to take place and that this is achieved by dispensing with the need for unanimity and requiring in lieu thereof the consent of only the requisite majority of the SPs.

15. Andrew Ang J ("Ang J") in *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2007] SGHC 190 ("Phoenix Court") after noting the comments of the Minister of State for Law at the Second Reading of the Bill containing the provisions for en bloc sales found that safeguards were introduced in the legislation to protect the interests of the minority owners by the provision of detailed procedures. The purpose of the procedures was to ensure that all relevant parties would have adequate notice of the sale and the terms of the sale, in order to decide whether or not to lodge objections with the Board. Ang J also found that "the procedures were not built as absolute obstacles to be surmounted on pain of the Board being precluded from exercising jurisdiction if any of the procedural requirements were not met regardless of whether or not and to what extent the interest of the minority were affected".

16. It was further noted that the grounds on which the Board will disapprove an en bloc sale are spelt out in S.84A(7) to (9) of the LTSA. Under S.84A(7), a minority owner can object if he will incur a financial loss or if the proceeds of sale will be insufficient to redeem any mortgage or charge. Under S.84A(9), objections can be made on the grounds that:-

- (a) the transaction is not in good faith after taking into account (i) the sale price; (ii) the method of distributing the sale proceeds; and (iii) the relationship of the purchaser to any of the subsidiary proprietors; or
- (b) the sale and purchase agreement would require a minority owner to be a part to an arrangement for the redevelopment of the land on which the strata lots and common property stands.

17. Ang J was of the view that the Board is required to approve a sale unless it was satisfied that any of the specific grounds set out above was made out. The Court of Appeal in *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2008] SGCA 7 ("Phoenix Court") agreed with Ang J on this issue.

18. With regard to the issue of "good faith" in S.84A(9) of the LTSA, previous Boards have grappled with the question of how and what should be considered when determining whether or not a transaction is or is not in good faith.

19. The Minister of State for Law at the Second Reading of the Land Titles (Strata) (Amendment) Bill (Bill No 28 of 1998) ("the Bill") summarized what the Board has to consider when dealing with an application for an en bloc sale **"The Board will look at the sale price, method of distributing the sale proceeds to ensure that the minority are treated no less favourably than the majority, and the relationship of the purchaser to the owners to ensure that there is no collusion. If the Board decides that the transaction is bona fide and an arm's length transaction, the sale will proceed"**.

20. In the matter of the Development known as Finland Gardens *Between Wee Chong Yeow and Others and Ong Guek Kim Valerie/ Chia Hiang Kiat and Others* [STB 17 of 2007], the Board after considering previous decisions of the Board and what was said by the Minister of State for Law at the Second Reading of the Bill and the Minister for Law at the Third Reading of the Bill concluded that it was the intention of Parliament to interpret "good faith" in the following context:-

- (i) whether the sale price is one where there is no collusion;
- (ii) whether there is conflict of interest
- (iii) whether the sale is not in good faith or at arm's length
- (iv) whether the price is too low

21. In the case of *Dynamic Investments Pte Ltd v Lee Chee Kian Silas and Others* [2007] SGHC 216 ("Holland Hill Mansions") where the court was concerned with determining if the chosen method of distributing the proceeds of sale was or was not "in good faith". Ang J succinctly dealt with the question as to how a transaction is or is not "in good faith" should be determined. His Honour's conclusion after considering various precedents on the matter was that in order to succeed in alleging that the chosen method of distributing the proceeds was not in good faith it had to be shown that the SPs when choosing the proposed method were **"actuated by dishonesty or bad faith"**.

THE OBJECTIONS AND FINDINGS OF THE BOARD:

22. We will consider grounds (v); (vii) to (xiii) and (xv) together as they relate to whether or not the sale transaction was not in good faith.

23. From the evidence adduced, the Board found the following to be the facts:

24. Credo Real Estate (Singapore) Pte Ltd ("Credo") was appointed as the marketing consultant on 5 November 2006 after the SC had invited 6 marketing consultants to make a

presentation after providing them with a standard brief. The SC then appointed Messrs Rodyk and Davidson ("Rodyk & Davidson") as the legal consultants after discussing with Credo and considering quotations from 4 law firms.

25. In a letter dated 26 December 2006, Credo inter alia informed the SPs of the Development that based on the Development parameters in the Urban Redevelopment Authority ("URA") 2003 Master Plan, the Development could be redeveloped into a 36-storey condominium and proposed a RP of \$103.8 million. On 16 January 2007, the RP was increased to \$113.8 million.

26. On 27 February 2007, Spottiswoode Apartments ("Spottiswoode"), the neighboring development was put up for sale by tender (the asking price was a range between \$73.2 million or \$673 psf/pr to \$77.2 million or \$710 psf/pr). Credo then advised the SC that it would be beneficial to launch the Development to create awareness among developers of the potential to combine Spottiswoode and the Development (thereby creating a much larger site with a greater redevelopment potential) especially among larger developers who would be able to offer a higher price for the Development and proposed that the RP be increased from \$113.8million to \$127 million. Credo also advised the SC that the Development could be launched by way of an "Expression of Interest" ("EOI") exercise in the absence of 80% SPs' consent and in the event that there was 80% agreement, by way of public tender.

27. Applicants' 2nd witness (AW2), Tan Hong Boon, an executive director of Credo explained that an EOI exercise is conducted in a manner similar to a tender process with a set of binding Offer to Purchase documents for potential bidders to submit. The SC accepted the proposal. Credo then marketed the Development as a site which may be redeveloped into a 36-storey high rise apartment block. Press releases were sent to major newspapers, weekly business papers, radio and TV stations. Fax mailers and letters with detailed fact sheets on the Development were sent to developers who were active on the market.

28. Following the marketing efforts, requests for detailed information on the site were received and information booklets were prepared and provided to 18 requesting parties (City Developments Ltd ("CDL") and UOL were among the parties). 5 of the 18 requesting parties requested for Offer to Purchase documents.

29. After the tender for Spottiswoode closed and UOL emerged as the successful bidder, Credo encouraged other developers including those who had expressed interest in Spottiswoode to participate in the EOI exercise. According to AW2, the other developers informed Credo that if they were to make an offer on the purchase price of the Development on its own (as opposed to a combined development with Spottiswoode) the offer price would not match UOL's price for Spottiswoode as it was likely that, due to "setback Requirements for Flats and Condominiums of the URA, a tower of around 20-storey (and not 36-storey) could be built".

30. When the EOI exercise closed on the 18 April 2007, Credo received a formal Offer to Purchase at \$120 million from UOL and a letter from CDL indicating an interest to negotiate. Credo, because the RP had not been met, requested both parties to resubmit improved and final offers by 27 April 2007. UOL then increased its offer to \$130.5 million (open for acceptance until 16 May 2007) but CDL did not submit a further bid.

31. As at 27 April 2007, the SC had not obtained the required 80% consent and on 6 May 2007, the RP was increased to \$130.5 million to match the offer made by UOL. As at 16 May 2007, the consent of owners with only 79.19% of the total share value of the Development had been obtained and UOL at the request of the SC extended the deadline for acceptance of its offer to 25 May 2007. The SPs of the Development were in a letter dated 16 May 2007 informed of the extension and "SPs who are still undecided" were urged to support the majority.

32. On 23 May 2007, the SC, Rodyk and Davidson and Credo met with UOL and their lawyers to negotiate for a higher price. Tjeng Hie Min ("1st Respondent") was at the meeting and indicated that he would sign the CSA if UOL increased its offer to \$138 million. UOL did not agree to increasing its offer.

33. On 25 May 2007, the SC had still not obtained the consent of SPs with 80% of the share value of the Development and UOL at the request of the SC agreed to a 2nd extension of the deadline for the acceptance of its offer to 4 June 2007 and this was communicated to the SPs.

34. On 4 June 2007, the SC obtained the consent of SPs holding at least 80% of the share values and on the same day, UOL extended its deadline to 8 June 2007 to allow for the finalisation of the terms and conditions of the sale. On 6 June 2007, the SC, Rodyk and Davidson and Credo met with UOL and their lawyers to negotiate the terms and the price. UOL agreed to increase the price to \$132 million and the SPA was signed by the SC after the terms were finalized.

35. In view of the Board's findings as set out above, it was clear that the marketing and legal consultants were appointed only after the SC had considered proposals from others who were interested in offering their services; the offer price of \$132 million was the best that was available after taking into account all the factors of the case; the price of \$740 psf/pr was arrived at by dividing the offer price by the allowable gross floor area; efforts were made to persuade UOL to improve its offer and UOL did increase its offer from \$120 million to \$130.5 million and then to \$132 million.

36. The objection that the collective sale did not offer any premium to the SPs was based on the Respondents erroneously comparing the offer price for their 16-year old individual units with the average transacted prices of nearby newer developments.

37. There was in this case nothing whatsoever to show that there was any dishonesty, bad faith, collusion or conflict of interest with regard to the sale transaction. The SC in this case had not rushed to seal the deal with UOL and had negotiated at length for better terms and price.

38. With regard to the valuation report by Chesterton International Property Consultants Pte Ltd ("Chesterton") that was used by the Applicants to support the application to the Board, the Respondents who had on their part not adduced any evidence from a qualified valuer with regard to the valuation of the development, submitted that the report was biased, inaccurate and unacceptable.

39. Applicants' 3rd witness ("AW3"), Tham Mun Keong, Executive Director, Valuation Department of Chesterton, gave evidence that he had arrived at a valuation of \$125 million based on 2 methods of valuation viz the Residual Method and the Comparison Sales Method. The workings in support of his valuation were set out in a supplementary report (AW3A) and during cross examination he elaborated on the factors he had considered in coming to his opinion. He conceded that his opinion of the market value was derived from variables that he had chosen to adopt and agreed that another valuer could have an opinion that was different from his. In the case of *Tan Jui Meng alias Chen Weiming and Others v Hoong See Chye and Tan Lem Yee and Others* [2005] SGSTB 1 ("Kim Tian Plaza"), the Board recognized that valuation is not an exact science but part science and part art requiring subjective judgments to be made:

40. There was no reason for the Board in this case to reject the report of AW3 as there was no evidence whatsoever that it was inaccurate or unreliable.

41. Grounds (iii); (iv); and (vi); are not grounds that can be said to fall within S.84A(7) to (9) of the LTSA and even if valid will not warrant the withholding of the Board's approval of the application. For completeness we will deal with the objections.

42. It was the submission of the learned counsel for the Respondents that in view of the fact the members of the SC were appointed at the EOGM on 26 September 2006 and in view of the resolutions passed at the meeting requiring the putting up of quarterly reports; calling for an EOGM to approve the RP and method of distribution; circulate minutes of meetings of the SC, the SC had a fiduciary duty to comply with the resolutions "over and above the obligations that it has in law under S.84A of the LTSA."

43. There was no dispute that the resolutions were passed at the EOGM and there was no dispute that they were not complied with. Applicants' 1st witness ("AW1"), Michael Leong Soh Har, who was one of the members of the SC testified that it was the solicitors who advised that it was not necessary to put up quarterly reports when the eight weekly notices required by law were sufficient to keep the SPs suitably updated. AW1 also testified that no general meeting was called to approve the RP and method of distribution because the SC was advised

by the solicitors that this was not required by law. Learned counsel for the Applicants submitted that the SP's approval of the RP and method of distribution could only properly be obtained by way of their signing of the CSA and not at a general meeting of the SPs. With regard to the circulation of minutes of meeting of the SC, it was submitted by counsel for the Applicants "that prior to the amendments to the LTSA on 20 September 2007, there was no legal requirement for the SC to keep minutes of their meetings and minutes of meetings with the purchaser much less to circulate the same."

44. There was in this case no evidence that the non compliance with the resolutions was for the purpose of suppressing material facts as submitted by learned counsel for the Respondents or that it had caused any loss to or had prejudiced the SPs in any way.

45. There was, from the facts of this case, no evidence that the transaction was not in good faith after taking into account the sale price, the method of distributing the proceeds of sale; and the relationship of the purchaser to any of the SPs.

ORDER BY THE STRATA TITLES BOARD

46. **PURSUANT** to Section 84A(7) of the Land Titles (Strata) Act and on the basis of facts available to the Board, the Board not being satisfied that:-

- (1) the transaction is not in good faith after taking into account only the following factors:-
 - (i) the sale price for the lots and the common property in the Strata Title Plan No. 1691;
 - (ii) the method of distributing the sale proceeds; and
 - (iii) the relationship of the purchaser to any of the subsidiary proprietors;
- (2) the sale and purchase agreement would require the subsidiary proprietors who have not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the Strata Title Plan No. 1691;

the Board hereby approves the application and orders:-

- (1) That all the units in the development known as **Oakwood Heights** (Strata Title Plan No. 1691) comprised in Land Lot Nos. 931L of Town Subdivision 23 be sold collectively to **UOL Development Pte Ltd** ("the Purchaser") under the CSA - Tulip Garden
 © M/s Lee & Lee as agreed in the Sale and Purchase Agreement dated 6 June 2007;

(2) That all subsidiary proprietors (including the minority owners) be bound by and ~~comply with the terms and conditions of the Sale and Purchase Agreement~~ dated 6 June 2007 as if they are parties thereto;

(3) That all subsidiary proprietors (including the minority owners) do forthwith: -

- (i) execute sign seal and deliver and perfect all acts and deeds and deliver unto the purchaser conveyances, assignments, surrenders, releases, transfers, deeds, instruments, deeds of variation or such other assurances;
- (ii) execute and furnish to the Purchaser or other relevant parties such Statutory Declaration(s) as are required by the Inland Revenue Authority of Singapore or the Purchaser; and
- (iii) do all acts, things and sign and execute all documents as may be necessary or expedient for the purposes of effecting or perfecting the collective sale;

Dated this 28th day of May 2008

MR REMEDIOS FRANCIS G.

Deputy President
Strata Titles Boards

MR GOH TIAM LOCK

Member
Strata Titles Boards

DR RICHARD TAN

Member
Strata Titles Boards

PROF TEO KEANG SOOD

Member
Strata Titles Boards

MR LEE COO

Member
Strata Titles Boards