LAND TITLES (STRATA) ACT
(CHAPTER 158)

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

STB No 17 of 2007

In the matter of an application under section 84A of the Land Titles (Strata) Act

And

In the matter of the Development known as **FINLAND GARDENS** (Strata Title Plan No **1082**) comprised in Land Lot No **6138P** of Mukim **26**

Between

1. Wee Chong Yeow
2. Song Koon Poh
3. Lawther Janice Fiona

... Applicants

And

1. Ong Guek Kim Valerie/ Chia Hiang Kiat
2. Lim Cheng Huat Raymond
3. Sim Kwee Kiat/ Sie Janey
4. Sakamoto Sumiko/ Nalanda Dixit
5. Teh Eng Soo @ Teh Khek Hean/ Hua Tinh Van/ Teh Eileen
6. Gho Peng Tjin/ Khoo Kim Heng Nancy
7. Tee Eng Kiong
8. Eileen Koh Ai Ling/ Celine Neo Kim Hwa @ Ong Kim Hwa Mrs Celine Beaumont

... Respondents

Coram:	**DR PHILIP CHAN** Deputy President
Panel Members:	**MR F G REMEDIOS** **MR LEE KEH SAI** **MR LAI HUEN POH** **MR TAY KAH POH**
Counsel:	**MR LOW CHAI CHONG** **MS JOANNA YEO** (Rodyk & Davidson LLP for the Applicants) **MR DENNIS TAN** **MR THOMAS TOH** (M/s Toh Tan & Partners for the Respondents)

Background

1. The Applicants in this case represent the subsidiary proprietors of the development known as Finland Gardens ("FG") who entered into a collective sale agreement ("CSA"). These are known hereinafter as the consenting subsidiary proprietors ("CSPs"). The Applicants are Wee Chong Yeow, Song Koon Poh and Lawther Janice Fiona. The Applicants are represented by the firm of Rodyk and Davidson.

2. The Respondents are the subsidiary proprietors of the development who did not sign the collective sale agreement and who filed objections. Those who did not sign the CSA are hereinafter known as minority owners. There were eight sets of Respondents. The Respondents are represented by Toh Tan and Partners

3. The CSPs entered into a conditional sale and purchase agreement ("SPA") with Finland Gardens Pte Ltd ("Purchasers") dated 30 November 2006. The Board was duly constituted with no objections to its composition, carried out two sessions of mediation on 30 May 2007 and 8 June 2007 without success. The Board went on to hear the case over a period of 5 days. Throughout the hearing no reference was made to Finland Gardens Pte Ltd, reference was made only to Sing Holdings whom, we have been informed by the Applicants, are the majority owners of Finland Gardens Pte Ltd.

4. On 29 November 2007, the Board dismissed the Applicants' application and gave the following decision orally.

> "The Board has of course heard the evidence and received and read the submissions and the reply submissions and the grounds of objection that have been identified. We have to go through it again. We basically found that the grounds can be said to be the 80% issue, the bona fide issue in respect of sale price as well as the financial loss in

respect of the 1st respondent. Having considered the evidence and the submissions, the Board's finds as follows:

(1) That the Application should be dismissed as the Board found as a fact that there was no 80% of share value held by the consenting Subsidiary Proprietors.
(2) Further the Board also found as a matter of fact that the transaction not in good faith in respect of the sale price.
(3) The objection of the 1st Respondent in respect of financial loss has not been made out and is dismissed.

Having announced that, we would like Counsel to address on the matter of costs. We would require written submission to be submitted by next Thursday 5pm for consideration by the Board in respect of costs given the result of the decision of the Board in this particular application."

5. On 14 January 2008, the Board warded costs of $17,500.00 to the Respondents.

6. The Board now, gives its grounds of decision under the following headings.

(a) Application not made by subsidiary proprietors with not less than 80% of the share values;
(b) Transaction Not in Good Faith;
(c) Objection filed by a subsidiary proprietor in respect of financial loss

Application not made by subsidiary proprietors with not less than 80% of the share values

7. The Board had received objections alleging that the application submitted by the Applicants was not made on behalf of subsidiary proprietors with not less than 80% of the share values 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. Accordingly, the Respondents have asked the Board to dismiss the application.

The Law

8. The governing provision is found in section 84A(1)(a) of the Land Titles (Strata) Act (hereinafter called "LTSA") which, inter alia, provides as follows:

"Application for collective sale of parcel by majority of subsidiary proprietors who have made conditional sale and purchase agreement

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

(a) ...

(b) the subsidiary proprietors of the lots with not less than 80% of the share values 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).

Undisputed facts

9. In the application filed by the Applicants on 9 February 2007, it was declared by the Applicants at Part 5 of the application form that the date on which the collective sale agreement (hereinafter called "the CSA") was last executed by any subsidiary proprietor was 30 November 2006 and the date shown on the sale and purchase agreement (hereinafter called "the S&P Agreement") found at Annex 8 is also 30 November 2006.

10. The subsidiary proprietors who executed the CSA as it appears in the copy filed in the application form includes the execution pages of the following subsidiary proprietors whose agreement are called into issue by the Respondents (hereinafter collectively called "the doubtful signatories"):

(1) Neo Tin of Block 41 #XXX (hereinafter called "NEO") with a date of 30 November 2006 appearing beneath the witness's signature;
(2) Yo Siow Kuan of Block 54 #XXX (hereinafter called "YO") with a date of 25 November 2006 appearing beneath the witness's signature; and
(3) Tang Ah Bah @ Tan Jek Heng and Lee Ah Sim both of Block 54 #XXX (hereinafter called "TANG & LEE") with a date of 25 November 2006 appearing beneath the witness's signature.

11. Also found in the copy of the CSA that was filed are the following terms:

(1) Clause 6.4(a) "The TOTAL SALE PRICE shall not be less than Singapore Dollars Forty four million (S$44,000,000.00) (hereinafter called "RESERVE PRICE"). Provided Always that the SALE COMMITTEE may, in its absolute discretion and only in accordance with the advice of the PROPERTY CONSULTANTS, be entitled to increase the RESERVE PRICE (the "NEW RESERVE PRICE") set out in this clause prior to 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 any fresh agreement in supplement to this Agreement";
(2) Clause 4.1 "The SALE COMMITTEE'S APPROVAL shall be deemed effective with regard to any resolution when there are votes of at least THREE (3) members of the SALE COMMITTEE in favour of the resolution either at a meeting or by a written notice circulated to the members of te SALE COMMITTEE."

12. At Annex 12 of the application form, the distribution of the TOTAL PRICE of S$$49,500,000.00 indicates the following PRICE in respect of the doubtful signatories:

(1) NEO – S$922,540.37;
(2) YO – S$1,146,535.70; and
(3) TANG & LEE – S$1,082,787.39.

13. The documents adduced by the Applicants and not disputed by the Respondents are set out below.

(1) The execution page of NEO on a document titled "SCHEDULE 1" dated 3 August 2006 marked as A15 [with price indicated as S$52,700,000.00];
(2) The execution page of TANG & LEE on a document titled "SCHEDULE 1" dated 7 August 2006 marked as A16 [with price indicated as S$52,700,000.00];
(3) The execution page of YO on a document titled "SCHEDULE 1" dated 4 August 2006 marked as A17 [with price indicated as S$52,700,000.00];
(4) The execution page of NEO on a document titled "PRIVATE & CONFIDENTIAL" dated 20 September 2006 marked as A12 [with price indicated as S$950,000.00];
(5) The execution page of YO on a document titled "PRIVATE & CONFIDENTIAL" dated 6 September 2006 marked as A13 [with price indicated as S$1,180,000.00];
(6) The execution page of TANG & LEE on a document titled "PRIVATE & CONFIDENTIAL" dated 7 September 2006 marked as A14 [with price indicated as S$1,125,000.00];
(7) A letter of confirmation dated 25 November 2006 addressed to YO marked as A10 [with price indicated as S$1,180,000.00]; and
(8) A letter of confirmation dated 30 November 2006 addressed to NEO marked as A11 [with price indicated as S$937,000.00].

14. Having reviewed the evidence, the Board accepts that the parties are not in dispute as regards the above although the legal significance is disputed.

The Respondent's case

15. It is the Respondents' case that the application before the Board does not have the 80% majority as stipulated under the LTSA and that the sale committee had no power to sell the property at a price below S$52.7 million.

16. It is also the Respondents' case that the four owners, NEO, YO and TANG & LEE could not be deemed to have agreed to sell the property at S$49 million.

The Applicant's case

17. The Board is not able to find any submission by the Applicant in respect of this point neither in the Applicants' Closing Submission nor the Applicants' Reply Submission.

The Board's View

18. The law applicable to the issue before the Board is as set out in section 84A(1)(b) of the LTSA, namely, "An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by the subsidiary proprietors of the lots with not less than 80% of the share values …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…"

19. On the face of the application documents, the CSA appears to be in order as the documents appeared to indicate that the requisite 80% was achieved before the application form was filed. However, in the light of the documents adduced by the Applicants themselves, marked A10 to A17 inclusive, a closer scrutiny of the same is required to establish whether the doubtful signatories have in law qualified their acceptance of the terms of the CSA..

NEO's case

20. In the case of NEO, the first document marked A15 in the chronological sequence shows that NEO was bound by the CSA at a sale price of not less than S$52,700,000.00 as at 3 August 2006. This is followed by A12 that purports to supercede A15 and NEO was bound by the CSA at personal NETT sale proceed of S$950,000.00 as at 20 September 2006. In both A15 and A12, it was expressly provided that A15 and A12 respectively "shall form part of the CSA".

21. The last document marked A11 had NEO to "agree to the contents of this letter and hereby confirm that the letter signed by me dated 20 September 2006 (a copy of which is enclosed) shall be superceded by this letter and the Nett Proceeds for my unit at 41 EAST COAST AVENUE #XXX arising from the collective sale of the Development shall now be S$937,000.00." as at 30 November 2006. This might be contrasted with S$922,540.37 which is the amount that NEO is entitled at the S&P sale price of S$49,500,000.00 as set out in the Annex 12 of the application documents filed. In addition A11 no longer carries the express provision that A11 "shall form part of the CSA". Accordingly, the CSA is also executed by NEO and dated 30 November 2006.

22. In view of the above, the Board holds that NEO did not agree with the terms of the CSA as filed as NEO, by A11, had agreed on the basis of a Nett Sale Proceed of S$937,000.00 which a sale price of S$49,500,000.00 is not able to produce.

YO's case

23. In the case of YO, the first document marked A17 in the chronological sequence show that YO was bound by the CSA at a sale price of not less than S$52,700,000.00 as at 4 August 2006. This is followed by A13 that purports to supercede A17 and YO was bound by the CSA at personal NETT sale proceed of S$1,180,000.00 as at 6 September 2006. In both A17 and A13, it was expressly provided that A17 and A13 respectively "shall form part of the CSA".

24. The last document marked A10 had YO to "agree to the contents of this letter and confirm that the letter signed by me dated 6 September 2006 (a copy of which is enclosed) shall be superceded by this letter and the Nett Proceeds for my unit at 54 EAST COAST AVENUE X arising from the collective sale of the Development shall now be S$1,180,000.00." as at 25 November 2006. This might be contrasted with S$1,146,535.70 which is the amount that YO is entitled at the S&P sale price of S$49,500,000.00 as set out in the Annex 12 of the application documents filed. In addition A10 no longer carries the express provision that A10 "shall form part of the CSA". Accordingly, the CSA is also executed by YO and dated 25 November 2006.

25. In view of the above, the Board holds that YO, as in NEO's case, did not agree with the terms of the CSA as filed as YO, by A10, had agreed on the basis of a Nett Sale Proceed of S$1,180,000.00 which a sale price of S$49,500,000.00 is not able to produce.

TANG & LEE's case

26. In the case of TANG & LEE, the first document marked A16 in the chronological sequence shows that TANG & LEE were bound by the CSA at a sale price of not less than S$52,700,000.00 as at 7 August 2006. This is followed by A14 that purports to supercede A16 and TANG & LEE were bound by the CSA at a personal NETT sale proceed of S$1,125,000.00 as at 7 September 2006. In both A16 and A14, it was expressly provided that A16 and A14 respectively "shall form part of the CSA".

27. In the case of TANG & LEE, there was no further document adduced by the Applicants. However, the CSA shows a date of 25 November 2006 below the witness's signature next to the signatures of TANG & LEE.

28. In view of the above, the Board holds that TANG & LEE did not agree with the terms of the CSA as filed as TANG & LEE, by A14, had agreed on the basis of a Nett Sale Proceed of S$1,125,000.00 which a sale price of S$49,500,000.00 is not able to produce.

Conclusion

29. Under S 84A(1)(b) an application to the Board can only be made by the subsidiary proprietors of the lots with not less than 80% of the share values who have agreed in writing to sell all the lot and common property to a purchaser under a sale and purchase agreement which specifies a proposed method of distributing the sale proceeds to all the subsidiary proprietors.

30. In seeking the order prayed for the applicants are informing the Board that subsidiary proprietors with not less than 80% of the share values have agreed to sell the development at a price of $49.5 million and have agreed that the $49.5 million should be distributed in accordance with Clause 8.5 of the CSA i.e. not less than 80% of the subsidiary proprietors have agreed to receive the amounts shown in Annex 12 of the "Application for Collective Sale Order"...

31. It was not in dispute that the subsidiary proprietors who made up the 80% included the subsidiary proprietors of Blk 41 #XXX ,(NEO); Blk 54 #XXX (YO) and Blk 54 #XXX (TANG & LEE) and that without the agreements of the three of them it would not be possible for an application to the Board to be made.

32. It was not in dispute that the owners of the abovementioned three lots did not agree that the development should be sold for $49.5 million and that they should respectively receive the sums of $922,540.37; $1,146,535.70; and $1,082,787.39.

33. The subsidiary proprietor of Blk 41 #XXX ; Blk 54 #XXX ; and Blk 54 #XXX agreed to sign the CSA only if he/she would receive sums of $937,000; $1,180,000; and $1,125,000 respectively (these amounts could not be paid if the development was sold for $49.5 million and the sale proceeds distributed in accordance with Clause 8.5 of the CSA .Under Clause 8.5 of the CSA, the subsidiary proprietors of Blk 41 #XXX ; Blk 54 #XXX and Blk 54 #XXX would receive the sums of $922,540.37; $1,146,535.70 and $1,082,787.39. The subsidiary proprietors of Blk 41 #XXX; Blk54 #XXX and Blk 54 #XXX did not agree to this.

34. Accordingly we found that in this case there was no agreement from not less that 80% of the subsidiary proprietors that the development should be sold for $49.5 million and that the sale proceeds should be distributed in accordance with Clause 8.5 of the CSA.

35. Accordingly, the aggregate share values of the subsidiary proprietors who have agreed to sell the development at $49,500,000.00 is reduced by the share values attributed to the lots owned by NEO, YO and TANG & LEE thereby reducing it to a figure below 80%.

36. Therefore, the Board holds that at the time the Applicants filed the application documents, the application was not made by the subsidiary proprietors of the lots with not less than 80% of the share values 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. This being a premature application, the Board dismisses the application.

Transaction Not in Good Faith

37. The Board had received objections alleging that the transaction is not in good faith after taking into account the sale price of the lots and the common property in the strata title. Accordingly, the Respondents have asked the Board not to approve the Applicant's prayer for an Order of sale.

38. The governing provision is found in section 84A (9) of the Land Titles (Strata) Act which, inter alia, provides as follows:

> "The Board shall not approve an application made under subsection (1) if the Board is satisfied that –
>
> (a) 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;
> (ii) ...
> (iii) ..."

The Law

The Applicant's case

39. The Applicants premised their case on two main issues:

(1) the burden is on the Respondents to **satisfy** the Board that the transaction is not in good faith;
(2) the Board ought to consider the test of good faith to be equated with honesty.

40. In support of their position, the Applicant referred to the following authorities:

(1) the burden of proof point
    a. *Preston-Jones v Preston-Jones* [1951] AC 391;
(2) the meaning of good faith

a. Words and Phrases Legally Defined (3rd Edition);
b. Stroud's Judicial Dictionary (5th Edition);
c. Singapore Parliamentary Debate Reports marked ASBOA TAB 2.

41. In addition, the Applicants' position is that the price was obtained in good faith. In support of their position, the Applicant referred to the following authorities:

a. Thevathasan Gnanasundram and Others v Khaw Seng Ghee and Another [2000] SGSTB 4;
b. Cuckmere Brick Co Ltd and another v Mutual Finance Ltd;
c. Good Property Land Development Pte Ltd v Societe General;
d. The Bank of East Asia Ltd v Mody Sonal M and others;
e. Expo International Pty Ltd (in liq) & Anor v Chant & Ors 4 ACLR 679
f. Yong Hwai Ming & Anor v Koh Gek Hwa [2003] SGSTB 1.

The Respondent's case

42. The Respondent's case is underpinned by reference to the previous decisions of the STB that have ruled unequivocally that the duties and areas of enquiry taken by the courts in determining whether a mortgagee has breached its duty to act in good faith in exercising his power of sale are equally relevant for the purposes of section 84A(9).

43. In support of their position, the Respondents referred to the following authorities:

(1) *Yong Hwai Ming & Anor v Koh Gek Hwa* [2003] SGSTB 1;
(2) *Thevathasan Gnanasundram and Others v Khaw Seng Ghee and Another* [2000] SGSTB 4;
(3) *Sri Jaya (Sendirian) Berhad v RHB Bank Berhad* [2001] 1 SLR 486;
(4) *Cuckmere Brick Co Ltd and another v Mutual Finance Ltd;*
(5) *Good Property Land Development Pte Ltd v Societe General;*
(6) *Lee Nyet Khiong v Lee Nyet Yun Janet;*
(7) *Forsyth v Lundell.*

The Board's View

The burden of proof point

44. It is the Applicant's case that the Respondents must prove their case beyond reasonable and supported their position with reference to the *Preston-Jones* case. In response, the Respondents argued that such a standard of proof is a burden of proof applicable to only criminal proceedings and that the Board would have to assess the evidence on a balance of probabilities as the matter before the Board is not a criminal or quasi-criminal nature. In any event, the *Preston-Jones* case was one that dealt with the determination of whether adultery was committed by the wife and whether it was satisfied beyond reasonable doubt as to the commission of the matrimonial offence.

45. As the case relied upon by the Applicant has no similarity with the collective sale application before the Board, the Board accepts the position put forward by the Respondents that the applicable standard of proof would be on a balance of probabilities.

The Good faith point

46. The fundamental position of the Applicants is that the legal meaning of the phrase "good faith" reaffirms the broad principles that are derived from the intention of Parliament as set out in the Parliamentary Debate Reports marked ASBOA TAB 2. Inevitably, both parties were drawn into an analysis of the meaning of "good faith" as used in section 84A (9) by making reference to two STB cases, viz, *Yong Hwai Ming* case and *Thevathasan* case. However, it is common ground that the principles relied upon by the STB have been taken from the court decisions on the duty of a mortgagee to a mortgagor in obtaining the sale price of the mortgaged property in a mortgagee sale.

The Common Law

47. The starting point for the Board's purpose must be the Court of Appeal case of *Lee Nyet Khiong*. The learned judge, LP Then JA held at page 722, paragraph 34:

> "It is well settled law that a mortgagee, in exercising his power of sale, has a ***duty to act in good faith*** and ***also*** a ***duty to take reasonable care to obtain the true market value or the property price of the mortgaged property at the date on which he decides to sell it.*** In *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949 TT P 966, Salmon LJ said:
> The proposition that the mortgagee owes ***both duties***, in my judgment, represents the true view of the law." [Emphasis by author]

48. Immediately it is clear that whereas the common law has imposed two separate and distinct duties on a mortgagee, Parliament has chosen to impose only one duty on those involved in collective sale transactions in relation to the sale price, that is, the duty of good faith in relation to sale price, method of distributing the sale proceeds and the relationship between the purchaser and any subsidiary proprietor.

49. The next case that is helpful is the Court of Appeal case of *How Seen Ghee v Development Bank of Singapore Ltd* [1994] 1 SLR 526 which was referred to in the *Sri* Jaya case and which elaborated on the *Cuckmere Brick Co* case. Warren LH Khoo J at page 531, having referred to the judgment of Salmon LJ in the *Cuckmere Brick Co* case, then referred to Cross LJ's judgment at page 972:

> "Cross LJ posed the question in terms of obtaining a proper price. He also came to the view that the mortgagee does have a duty to obtain a proper price ***in addition to acting honestly***. ..." [Emphasis by author]

50. In the words of Cross LJ, there are two duties imposed on the mortgagee, that is, the duty to obtain a proper price and a duty to act honestly. As Cross LJ delivered his judgment while sitting with Salmon LJ, they are in agreement as to the two duties to be imposed on a mortgagee in a mortgagee sale and a duty of good faith identified by Salmon LJ is described as a duty to act honestly by Cross LJ.

Purposive Interpretation – s9A, Interpretation Act

51. More importantly, the Board is obliged by section 9A of the Interpretation Act to take a purposive approach in giving meaning to "good faith". The relevant parts of section 9A are set out below.

> "Interpretation Act
> Purposive interpretation of written law and use of extrinsic materials
>
> Section 9A
>
> (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.
> *[11/93]*
>
> (2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material
>
> (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or
> (b) ...
>
> (3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include
> (a) ...
> (b) ...;
> (c) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
> (d) any relevant material in any official record of debates in Parliament;
> (e) ...
> (f) ...
>
> (4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to
> (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
> (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

52. By section 9A(1), an interpretation of "good faith" such that it would promote the purpose or object of the LTSA shall be preferred to an interpretation that would not promote that purpose or object. In order to assist the Board in ascertaining the purpose and object of the LTSA as well as the meaning of "good faith", the Board may look at a list of materials set out in section 9A(3).

53. Of relevance would be the speech made in Parliament by the Minister of State for Law, Assoc. Prof Ho Peng Kee, when he was moving for the motion that the LTS Bill containing the provision of "good faith" be read a second time in Parliament. This is permitted by section 9A(3)(c). In addition, the Board may look at the official record of debates in Parliament under section 9A(3)(d). In particular, the replies given by the Minister for Law, Prof S. Jayakumar, in the third reading in Parliament are relevant to ascertaining the purpose and object of the LTSA as well as the meaning of "good faith".

54. In the Second Reading, Assoc. Prof Ho Peng Kee explained the role of the Strata Titles Board (STB) at column 634. He said that ***the STB is not to decide on the law***. As regards ***price***, there should be ***no collusion***. As regards ***method of distribution***, it ***should not be unfair to the minority***.

> "
>
> ...The other big area that we looked at was the role of the Strata Titles Board. I think, like I have said in my speech, it is an important safe guard. The Strata Titles Board will be enhanced. There will be more members. And as Mr. Rai has rightly pointed out, based on personal experience, the Board comprises senior professionals in the various fields which are ***relevant to what the Strata Titles Board will have to do, not to decide on the law, but to decide on whether the sale price is one where there is no collusion***, decide on the method of distribution, whether it is unfair to the minority owners. The composition of the panel will ensure that this task is better done, rather than a judge sitting in court by the rules of evidence." [Emphasis by author]
> Singapore Parliamentary Debate Reports Volume 69column 634: Second Reading

55. The term, "***collusion***", is also used by the Minister for Law, Prof S. Jayakumar in the Third Reading at column 1343 in addition to "***conflict of interest***" when referring to the approach to be taken by the STB when deciding on the minority's objection.

> "
>
> I...I think Mr. Chiam said that he agrees with the approach where the Strata Titles Board will pay attention to factors such as is there ***collusion***, is there ***conflict of interest***? And he therefore is in agreement with the approach. He also agrees with the approach of not taking an interventionist approach." [Emphasis by author]
> Singapore Parliamentary Debate Reports Volume 70column 1343: Third Reading

56. Relating to price, the Minister for Law, Prof S. Jayakumar, in the Third Reading, said at column 1329 that the Board must be satisfied that the sale is ***not in good faith or at arm's length*** taking into account the sale proceeds, otherwise the Board can stop the sale. The other ground concerning price when the Board can stop the sale is ***when the price is too low***.

> "
>
> ...where objections have been raised, the Board will, where relevant, mediate. Where mediation on objections of a personal or non-pecuniary nature fails, the Board cannot

stop the sale from proceeding unless the Board is satisfied, for example, that the minority owner will suffer a loss, that is, the purchase price which he will receive is less than the price he paid for his unit, including all allowable deductions; the purchase price also which a minority owner receives is not sufficient for him to discharge a mortgage or charge on his unit; the board can also refuse if the minority owner is forced to be part of a joint venture agreement with the purchaser/developer; or ***if the Board is satisfied that the sale is not in good faith or at arm's length taking into account the sale proceeds***, method of distributing the sale proceeds and the relationship of the purchaser to any of the unit owners.

In deciding on a case, the Board will not impose its own terms and conditions on the parties. ***If the Board feels that the price is too low*** or the method of distribution of the sale proceeds is not equitable, ***it will order that the sale not proceed.***" [Emphasis by author]
Singapore Parliamentary Debate Reports Volume 70column 1329: Third Reading

57. In summary, the above references would lead the Board to conclude that it was the intention of Parliament to interpret "good faith" in the following context, that is:

(1) whether the sale price is one where there is *no collusion*;
(2) whether there is *conflict of interest?*;
(3) that the sale is not in *good faith* or at *arm's length*;
(4) that the *price is too low*

58. In addition, the Board accepts the Applicant's submission that good faith should be interpreted as honesty which is a common meaning given by most English language dictionaries. Honesty in turn has the dictionary meaning of having qualities of being "truthful" and "not cheating".

59. A review of the evidence presented to the Board and the submissions given by the Respondents would show that the Respondents did not raise the issues of collusion, conflict of interest, at arm's length and the price is too low.

60. Instead, the Respondents raise the following issues:

(1) rise in the property market value and failure to make Sing Holdings bid against Tan;
(2) hasty sale;
(3) no transparency and deliberate deception.

61. Indeed, the Respondents' case might be set out as follows:

(1) Applying the principle set out in *Sri Jaya* and *Lee Nyet Khiong* cases, the sale committee had quite clearly been in dereliction of its duties to the owners who had given it the mandate to secure the best price in the market;
(2) The sale committee was clearly in breach of their duties as members of the sale committee and their dereliction of their duty has resulted in not obtaining the true market value of the property;

(3) The sale committee, Credo and its lawyers had throughout the process of the sale had deliberately been withholding vital information and misleading owners, both majority and minority.

62. In response, the Applicants relied on the following:

(1) While the seller's duty is to take all reasonable care to obtain whatever is the market value at the time of the sale, the price obtained was above market value as evidenced by the valuations obtained by the Applicants and by the Respondents themselves;
(2) The background of the Sime Darby deal failure, the dire market sentiment, the dearth of purchasers prepared to match the research price of S$49 million and the reasonable presumption that Summitville's "offer" of S$49.5 million on 29 November 2006 was their best offer all point to one thing – the decision to enter into the sale and purchase agreement with Sing Holdings was a reasoned and calculated one, far from one that was made in haste;
(3) The purported lack of transparency in the collective sale process is irrelevant to the test of "good faith" as set out within the limited confines of Section 84A(9) of the Act.

63. After considering the evidence put before the Board and the submissions and reply submissions filed, the Board holds that the Respondents have discharged their burden of proof that on the balance of probabilities, the transaction was not in good faith after taking into account the sale price. The reasons for this decision are set out below.

Particulars

64. It is important to note that the final sale price of S$49.5 million actually started as an initial amount of S$49 million. As the two are closely connected, the transaction taking into account the sale price that is being considered as not in good faith will include conduct relating to both amounts.

65. Before Sing Holdings made its offer of $49m on the 17 November 2006 one Tan Koo Chuan (TAN) of M/s RV Capital Pte Ltd made an offer of $46m for the property to Mr. Karamjit Singh (KS) of Credo. KS told TAN that the offer had to be above $49m. Following this, on the 17 November 2006, Sing Holdings offered $49m. TAN continued to be interested in the property, but was told by KS that it was not appropriate for the Applicants to deal with him as matters "had progressed". On the 27 November 2006 and on the night of 28 November 2006 TAN called KS and insisted on a meeting (email dated 29 November 2006 at 4.16pm from KS to the members of the sale committee in R1 pg 272) There was a meeting between KS and TAN at about noon on the 29 November 2006 and it is quite clear from the contents of the email that TAN was very keen to purchase the property. KS told TAN that "we are at a very advanced stage of our negotiations, are due to sign the deal very soon and it would not be appropriate for us to comment' (i.e. to comment on the level that TAN should offer). TAN was told that if he wanted to make an offer he should do so in writing and to do it urgently. On the same day at 2.20pm TAN through the law firm of M/s Ho Wong and Partners made an offer of $49.5m in the name of Summitville Pte Ltd.

66. Before the offer from Summitville was received KS had alerted Sing Holdings to inform them about a potential "unsolicited buyer." KS's reasons for alerting Sing Holdings was to

assure them that he(KS) was serious in his dealing with them and to inform them that the potential offer was unsolicited.

67. Following the receipt of Summitville's offer, there was a meeting between the sale committee, the marketing agents and the legal advisers in the management office of the property in the night of 29 November 2006 and a decision was taken to allow Sing Holdings to match the offer of $49.5m and that pending Sing Holding's agreement to all the material terms of the sales and purchase agreement there should be no response to Summitville's offer of $49.5m. The reason for this decision was that solicitors for the Applicants and SH were in the advanced stages of negotiating the terms and conditions of the SPA

68. The state of the SPA up to that point was as follows:
After Sing Holding's offer had been accepted on the 17 November 2006 the lawyers for the Applicant on the 20 November 2006 sent the first draft of the SPA to M/s Rodyk and Davidson (R&D) who were acting for Sing Holdings. On the 22 November 2006 R&D responded to the draft and on the 25 November 2006 the lawyers for the Applicant responded to the responses made by R&D. Up to the 29 November 2006 the parties had yet to agree on the terms. At that point of time also the share value of the subsidiary proprietors who had signed the CSA was less than 80%. (The last of the subsidiary proprietors viz NEO whose agreement was required in order that there was a majority of subsidiary proprietors with not less than 80% of the share value agreeing to the en bloc sale had yet to execute the CSA)

69. The Applicants response to Summitville's offer of $49.5m was that they would give Sing Holdings a chance to match the offer. It was not to ask Sing Holdings to better the offer and no opportunity was given to Summitville to raise its offer when Sing Holdings matched the offer of $49.5m. The fact was that TAN was serious in making his offer and was prepared to increase his offer. On the 30 November 2006, before the SPA was executed, Ms Elizabeth Ho of M/s Ho Wong and Partners, on the instructions of TAN spoke with Ms Winnie Tan of LawHub representing the sale committee, to inform her of Summitville's intention to increase its offer of $49.5m (The Board accepts the evidence of Elizabeth Ho to be the truth) and at 5.22pm on that day Ms Ho Wong and Partners on behalf of Summitville faxed over an increased offer of $50.5m. It may well have been the case that the offer was made after the SPA had been executed, this, however did not detract from the fact that the lawyers for the Applicants were aware that an increased offer was on the way.

70. The evidence of KS as to why Sing Holdings was asked to match and not to better Summitville's offer of $49.5m was that at that point of time the market would not have gone up that high. The fact that Summitville submitted an increased offer of $50.5m on the 30 November 2006 showed that his belief was not correct. With regard to KS's dealing with TAN the Board was of the view that he (KS) was more concerned with not incurring the displeasure of Sing Holdings rather than with obtaining a higher price for the property

71. Accordingly it was noted that before the SPA had been finalized on the 30 November 2006, the Applicants were aware of a potential buyer who had on the 29 November 2006 offered a price that was higher than what had been offered by Sing Holdings. The Applicant had then only asked Sing Holdings to match the new offer and not to better it. When the offer was matched, no opportunity was given to or any kind of effort made to get Summitville to increase its offer. There was in this case evidence to show that Summitville was in fact prepared to increase its offer.

72. The Board also noted the rather hasty manner in which the SPA was executed. The first member of the sale committee who appended her signature to the SPA viz Lawther Janice Fiona did so on the night of 29 November 2006. This was before the lawyers for the Applicants and Sing Holdings met in the morning of 30 November 2006 to discuss the outstanding terms of the SPA. Three other sale committee members viz Song Koon Poh, Richard Tan and Wee Chong Yeow signed in the morning of the 30 November 2006 before the terms of the SPA were finalized. All four of them had signed even before there was a majority of subsidiary proprietors with 80% of the total share value of the property who had signed the CSA. NEO at that point of time had yet to execute the CSA.

73. In the course of the hearing some questions were raised about the status of Summitville Pte Ltd. The fact was that M/s Ho Wong and Partners had made genuine offers on behalf of their clients for the property and the offers had to be considered. It was not the case that the Applicants did not want to deal with Summitville because they were suspicious about the validity of the offers.

74. Additionally, in respect of the sale price of S$49 million, the Board found that the following facts showed that the transaction was not in good faith or dishonest:

a. When Sing Holdings agreed on 17 November 2006 to offer $49 million, it was accepted in principle by the sale committee even though the number of subsidiary proprietors who accepted the reserve price of $49 did not own 80% of the total share values;
b. Although the Sale Committee was aware of this fact, they did not inform all the other majority subsidiary proprietors of this fact before their acceptance nor when the sale committee executed the sale and purchase agreement for the final sale price of S$49.5 million;
c. On 24 November 2006, when Credo, as agent of the Sale Committee, sent out the letter of appeal to the majority subsidiary proprietors asking for pledges to a fund that seeks to pay three of the subsidiary proprietors in consideration of reducing their respective asking reserve price to the reserve price of $49 million, they explained that unless the necessary amount was raised, the sale committee could not accept any offer from any developer although the sale committee had already accepted in principle, Sing Holdings offer of S$49 million.

75. Further, the manner in which the Applicants had accepted Sing Holdings offer of $49.5m in the light of the presence of another potential buyer, the Board considered the acceptance of the offer in connection with the monies in the Sinking Fund of the MCST.

76. In July 2006 and October 2006 the use of approximately $60,000.00 out of approximately $200,000.00 that was in the Sinking Fund was being considered by the subsidiary proprietors of the property for the purpose of repainting the external walls of the property. It was eventually decided that the repainting should not be done as the possibility of an en bloc sale was becoming a reality. The subsidiary proprietors were aware that whilst monies in the Sinking Fund would when a property was sold, belong to the buyers, they were aware that it was possible to negotiate with potential buyers for the monies to be returned. Accordingly it was commonly understood that the sale committee would, when negotiating in this case require the purchaser to return the monies in the Sinking Fund. Even though the Applicants were fully aware of this, they had proceeded to execute an SPA where the terms of the agreement required that the monies in the Sinking Fund be surrendered to Sing Holdings i.e. they had executed an SPA where the net

purchase price was $49.5m minus $200,000.00. Even if it was argued that the available offer could well have required the surrender of the monies in the Sinking Fund, the fact was that no attempt was made to verify this

77. In view of the above the Board was satisfied that the transaction was not in good faith. Accordingly, as the transaction after taking into account the sale price is not in good faith the Board is not approving the Application's application for an order of sale.

Objection filed by a subsidiary proprietor in respect of financial loss

78. The Board had received an objection alleging that a subsidiary proprietor will suffer financial loss if the Board approves application put in by the Applicants. Accordingly, the First Respondents, which refers to Ong Guek Kim Valerie (hereinafter called ONG) and Chia Hiang Kiat as co-subsidiary proprietors, have asked the Board to dismiss the application.

The Law

79. The governing provision is found in sections 84A(7)(a) and 84A(8) of the Land Titles (Strata) Act (hereinafter called "LTSA") which, inter alia, provide as follows:

> "Section 84A(7)
>
> Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that —
>
> (a) any objector, being a subsidiary proprietor, will incur a financial loss; or
> (b) ...
>
> Section 84A(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 Board may allow, 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;

The Respondent's case

80. The First Respondent's case is set out in ONG's affidavit marked R2 at paragraph 13 and is reproduced below:

> "...My purchase price was actually $1,251,200.00 inclusive of 3% stamp duty. My gross apportionment is $1,268,800.00. However, I still have to pay Credo a 1% commission + 7% GST. This works out to be $13,576.16. Other disbursements

($1,200.00), legal fee + 7% GST ($1,605.00) plus STB expenses ($1,968.75) and the loss of our sinking fund of $5,312.50 amounts to my husband and I receiving nett sales proceeds of only $1,245,137.59. This is a shortfall of $6,062.41 from my purchase price. [emphasis] as in affidavit]

The Applicants' case

81. The Applicants' case is set out below.

(1) the stamp fee of $31,200.00 is not contemplated or sanctioned by section 84A(8) and ought to be disregarded;
(2) the "sinking fund" loss of $5,312.00 belongs legally to the Management corporation, a separate legal entity;
(3) Credo's fee of $13,576.16 is not contemplated by section 84A(8) and should be disregarded;
(4) Other disbursements of $1,200.00 should be disregarded because no evidence has been tendered to explain what it is, or how it has been incurred;
(5) STB expenses of $1,968.75 has not been allowed by the Board.

82. In addition, the applicants rely on clause 8.5 of the CSA which provides for compensation for financial loss and is reproduced below.

> "...the consenting owners hereby agree that the Sale Committee shall deduct a sum amounting to 1.04 times of the original purchase price which the owner had paid for his unit (the "Purchase cost") as verified by the solicitors (such sum is hereinafter called the "Deduction") from the Total Sale Proceeds to compensate the financial loss suffered by the owner or owners. For the avoidance of doubt, an owner shall be deemed to have suffered financial loss if the Purchase Cost which the owner has incurred for his unit is higher than his unit's share of the Total Sale Proceeds. Subject to the above, the Sale Committee shall, in addition to the Deduction, and only upon STB's advice or order made pursuant to the provisions of the LTSA, deduct such further sum or sums from the Total Sale Proceeds (the "further Deduction") towards payment of financial loss refereed to in this clause."

The Board's View

83. As the Board had decided to dismiss the application because at the time of the application, the requisite 80% share value requirement was not achieved, the issue of financial loss in respect of the First Respondents is no longer a live issue.

84. However, to be complete, the Board decides to dismiss the First Respondents' objection in respect of financial loss as the First Respondents failed to prove their case. Although the alleged financial loss is fixed at the amount of $6,062.41, a first cut examination shows that this cannot be sustained. The total amount from two items would have wiped this amount away. The first item is "other disbursements" of $1,200.00 in which no evidence was tendered and the other item is the "sinking fund" item of $5,312.00 which the Board is not allowing as a deduction for the purpose of section 84A(8) thereby totaling $6,512.00. As regards the other items, the Board is not deciding on the matter in this case but let it be known that the Board is not implicitly approving it either.

It is certified that the abovementioned order is a true copy of the order made by the Board.

Dated this 15th day of January 2008

DR PHILIP CHAN
Deputy President
Strata Titles Boards

MR FRANCIS GEORGE REMEDIOS
Member
Strata Titles Boards

MR LEE KEH SAI
Member
Strata Titles Boards

MR TAY KAH POH
Member
Strata Titles Boards

MR LAI HUEN POH
Member
Strata Titles Boards