LAND TITLES (STRATA) ACT
(CHAPTER 158)

LAND TITLES (STRATA TITLES BOARD)
REGULATIONS 1999

STB No. 18 of 2005

In the matter of application under Section 84A of the Land Titles Strata Act in respect of the development known as One Tree Lodge (Strata Title Plan No. 1728) comprised in Land Lot No. TS24-1560N

Between

1. **Gong Ing San** (ID No. not known)
2. **Ang Ah Hoe** (ID No. not known)
3. **Lee Kok Wai** (ID No. not known)

... Applicants

And

1. **Questvest (S) Pte Ltd**
(RC No. 199504337E)
2. **Koronac Pte Ltd**
(RC No. 199202354N)

... Respondents

Coram: Mr Alfonso Ang
Deputy President

Panel Members: Mr Goh Tiam Lock
Mr Lim Gnee Kiang
Mr Chia Aik Kok
Mr Tang Tuck Kim

Counsel: Dr Phang S K for the Applicants
Mr Martin De Cruz for the Respondents

GROUNDS OF DECISION

The material facts of the case are not in dispute. One Tree Lodge ("OTL") is a development comprising 30 strata units situated along One Tree Hill.

On 4 July 2004, the owners of OTL began signing a Collective Agreement ("CSA") to collectively sell the development at a reserve price of S$45.6million.The owners of the development eventually agreed to sell the development at a price of S$38.2million that being the only bid at or above the reserve price and they signed a Supplemental Collective Sale Agreement (SCSA).

Based on the proposed method of apportionment on equal apportionment, each unit would be entitled to a sum of S$1,273,333.33 million.

The First Respondent, Questvest (S) Pte Ltd had previously purchased the unit #XXX at a price of S$1,620,000.00, which was above the proceeds that they would receive for that unit from the proposed collective sale.

The First Respondent, the Second Respondent Koronac Pte Ltd, a related company of the First Respondent, and all the other owners of the development entered into a "Topping Up Agreement". It was agreed that the other units would contribute such amounts (the "topping up sum") so that the gross sale proceeds for the unit owned by the First Respondent plus the top up sum will be equal to the purchase price of their unit. In consideration of this, both respondents undertook to sign the SCSA and that the First Respondent shall have no claim for any financial loss whatsoever.

All the owners, including the Second Respondent, of the development agreed to the topping up for the First Respondent so that the gross sale price of that unit equaled to that of the purchase price.

Both the First and Second Respondent subsequently refused to sign the SCSA and they filed their objections to the Strata Titles Board claiming financial loss.

Both respondents claimed that they are entitled to claim financial loss as a result of loss that they suffered from "holding costs". The respondents claimed that if interest incurred in the housing loan, in holding the units over the period of ownership were taken into consideration they would have suffered financial loss. As the respondents were corporate owners and had purchased the properties for rental yield, the Strata Title Board must take into account bank interest charges, bank expenses and operating expenses. The list of what constituted as operating expenses claimed by the respondents include:

a. depreciation
b. management fee and sinking fund
c. repair and maintenance
d. valuation fee
e. property tax
f. advertisement
g. telecommunication
h. professional fee
i. agents' fee
j. legal fee
k. secretarial fee
l. bank charges
m. front end fee
n. interest on overdraft

In his submission the First Respondent's solicitor had stated that as at May 2005 the First Respondent had incurred S$535,594.00 on the housing loan taken on that unit. Expenses of S$109,458 were incurred in earning rental for that unit. Rental earned for that unit amounted to S$216,900.00. The total net loss suffered by the First Respondent amounted to S$428,152.00.

The First Respondent's claim is that if the Board does not recognize holding costs as an allowable deduction, they would fall back on their claim for bank interest charges as a deduction claimed.

The Second Respondent's claim is similar in nature as that of the First Respondent. In summary they claimed that the operating income from the unit amounted to S$322,129.00 and after operating expenses of S$9,561.00 and financial expenses of $548,196.00 (interest charges), the net loss suffered by them amounted to S$364,882.00.

The sole issue for the Board to determine is whether holding costs as claimed by the respondents should be an allowable deduction under Section 84A(78) read with Section 84A(8) of the Land Titles (Strata) Act.

Sections 84 A (7) and (8) of the Land Titles (Strata) Act entitle a subsidiary proprietor who has incurred a financial loss to object to the sale of the property. For the purpose of the Act a subsidiary proprietor shall be taken to suffer a loss if the proceeds of the sale of the property for his lot, after any deductions allowed by the Board, are less than the price he paid for his lot.

In support of their contention, the solicitors for the respondents cited the decision of Parkview Condominium (STB 50 of 2004). In that case the Board considered whether the term financial loss should be construed as to take into account the pricing of future replacement property. In that decision the Board held that the respondent did not suffer any financial loss but by way of a general remark stated that the Board's view is that "allowable deductions should pertain to the subject property for the collective sale such as the original purchase price, costs incidental to the purchase, and interest charges".

It is the decision of this Board that the holding costs and/or the interest on bank charges should not be considered as a deduction. Past decisions of the Board have not dealt with this specific issue. The law is silent as to what deductions should be allowed by the Board. As such the Board must view each and every claim for deduction on its own merits. The Board is of the opinion that whilst it must be consistent with its decision, each Board is not bound by the decision of the other. This Board is of the opinion that the decision in Parkview Condominium did not decide on the issue of interests on bank charges but had by the way commented that even if it is a deductible, there is still no financial loss. It is the view of this Board that the issue of interest on bank charges was not argued nor considered in that case and the comment is not in any way binding. A departure of this view should not be viewed as an inconsistency on the Strata Title Boards.

If interests on bank charges or holding costs were to be allowed, it would not be unreasonable to foresee that virtually no en bloc sale would ever succeed in Singapore. The sum total of all the interests paid by the subsidiary proprietors would be so substantial that it would be virtually impossible to sell the development at a price that would cater to all the bank interest and holding costs and the purchase price of the

various subsidiary proprietors. This would defeat the very purpose of the Act which is to facilitate en bloc sale.

The Board is of the view that holding costs as claimed should not be a deduction that the Board should consider. Holding costs are recurring nature and each owner would have vastly different methodology of calculating holding costs. This would also pit owners who had purchased the property as a business as against owner occupier proprietors. To permit such a deduction would open the floodgate for all manners of claims as to what income each subsidiary proprietor might have earned or had lost.

Section 84A(8) of the Land Titles (Strata) Act states that at the minimum the subsidiary proprietors will recover the price that they have paid for their lot. This amount will of course vary from owner to owner, they having bought at different time and prices. In addition the Board has allowed various expenses in the past and they have been narrowly construed. The items that the Board has dealt with include costs of replacement of a future property, renovation costs and capital gain tax payable on the sale price. In our view the claim for interests on bank charges and operating expenses should not be allowed.

Both the respondents would not suffer any financial loss. In respect of the First Respondent the other proprietors have agreed to the top up so that they will receive a sum equal to the purchase price. In addition the Applicants have agreed that a further sum of S$54,677.53 will be paid to the First Respondent upon the successful completion of the SCSA to meet the claims under items 3, 4 and 5 of their objections dated 8 June 2005. We accordingly leave parties to honour this agreement. In respect of the Second Respondent, we also accordingly rule that they have not suffered financial loss.

The Board accordingly grants the order sought by the Applicants as follows:

1. that all the units in the Development be sold collectively to SB (GRANGE) DEVELOPMENT PTE LTD ("the Purchaser");

2. that all the lots and common property in the Development be sold collectively to the Purchaser, subject to and in accordance with the Sale and Purchase Agreement ("S&P") dated the 7th January 2005 made between the subsidiary proprietors of the lots who own not less than 80% share values comprised in the Development of the one part and the Purchaser of the other part;

3. that the gross sale proceeds of the Majority and the Minority Owners shall be allocated in accordance with Annex 12 of Form 1;

4. that all the Majority Owners' costs and disbursements in connection with and incidental to this application be borne by all the subsidiary proprietors of the Development (including the Respondents) in the proportion in which they share the gross sale proceeds. Without limiting the generality of the foregoing, the said costs and disbursements shall include the costs of advertisement, valuation reports, the Majority Owners' solicitors' costs and disbursements in the application, the costs and commission of the property consultants, the Board's application and the hearing fees, stamp duty and goods and services tax;

5. that all the subsidiary proprietors of the Development be bound by all the terms of the S&P and the Collective Sale Agreement dated the 4th day of July 2004 and the Supplemental Collective Sale Agreement dated the 8th November 2004, as if they are parties thereto;

6. that the aforesaid Respondents do bear their own legal costs and disbursements in connection and incidental to this application;

7. that all the subsidiary proprietors of the Development do forthwith:-

(a) execute sign and deliver and perfect all acts and deeds and to deliver unto the Purchaser conveyances, assignments, surrenders, releases, transfers, deeds, instruments, deeds of variation, or such other assurances;

(b) execute and furnish to the Purchaser or other relevant parties such Statutory Declaration(s) as required by the Inland Revenue Authority of Singapore or the Purchaser; and

(c) 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;

8. that any and all leases affecting any of the lots in the strata title plan (other than a lease held by a subsidiary proprietor) shall, if there is no earlier agreed date, determine on the date on which vacant possession is to be given to the Purchaser of the lots and common property;

9. that costs of S$5,000/- be paid by the Respondents to the Applicants; and

10. that the parties be at liberty to apply.

Dated this 26th day of October 2005

MR ALFONSO ANG
Deputy President
Strata Titles Boards

MR GOH TIAM LOCK
Member
Strata Titles Boards

MR LIM GNEE KIANG
Member
Strata Titles Boards

MR CHIA AIK KOK
Member
Strata Titles Boards

MR TANG TUCK KIM
Member
Strata Titles Boards