

**LAND TITLES (STRATA) ACT (CHAPTER 158)**  
**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT 2004**  
**(NO. 47 OF 2004)**

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

STB No. 41 of 2006

In the matter of an application under section 84A of the Land Titles (Strata) Act in respect of the development known as **Eng Lok Mansion** (Strata Titles Plan No. 1871) comprised in Land Lot Nos. TS25-1348X

Between

1. **TAN HUI PENG**
2. **FRANCIS LIM EWE CHENG**
3. **GOH BAN HOCK ANDREW @ ONG BAN HOCK ANDREW**

... Applicants

And

1. **CHOW AI HWA**
2. **HUANG RAN-CHI KIBO**

... Respondents

Coram: Mr Alfonso Ang  
Mr Kong Mun Kwong  
Mr Tay Kah Poh  
Mr Lai Huen Poh  
Dr Richard Tan

Counsel: Mr David De Souza  
(M/s De Souza Tay & Goh for the Applicants)

Mr Lim Biow Chuan  
(M/s Lim BC & Co for the Respondents)

**GROUND OF DECISION**

1. The Applicants are the authorized representatives of subsidiary proprietors who hold at least 80% of the share value of Eng Lok Mansion. They seek an order under Section 84A of the Land Titles (Strata) Act ("the Act") for the collective sale of Eng Lok Mansion. The Applicants seek to sell Eng Lok Mansion for a sum of \$138 million, and the sale proceeds, less expenses, to be divided equally amongst all the subsidiary proprietors.

2. The objectors to the proposed collective sale are two subsidiary proprietors, Madam Chow Ai Hwa (Madam Chow) and her son Huang Rani-Chi Kibo ("the Objectors") who were the subsidiary proprietors of unit numbers, XX and XX respectively. Four subsidiary proprietors did not sign the Collective Sale Agreement ("CSA").

#### **ENG LOK MANSION**

3. Eng Lok Mansion is a property located at 7 to 10 Napier Road comprising of 64 lots of varying estimated floor area. It comprises of 4 blocks of 4 storey flats. There are 48 lots of sizes between 141 to 146 square metres ("Large Lots") and 16 lots of sizes between 118 to 122 square metres ("Small Lots").
4. The detailed breakdown of the sizes of the various lots is as follow:-
  - (a) 2 lots of 118 square metres;
  - (b) 6 lots of 120 square metres;
  - (c) 8 lots of 122 square metres;
  - (d) 6 lots of 141 square metres;
  - (e) 24 lots of 142 square metres;
  - (f) 18 lots of 146 square metres.
5. The Certificate of Statutory Completion for Eng Lok Mansion was issued on 9 September 1966. From the onset, each of the subsidiary proprietors had an equal share in the common area and hence they all contributed equally to the Maintenance and Sinking Fund, regardless of the size of their lot.

#### **EVENTS LEADING TO THE APPLICATION BEFORE THE STRATA TITLES BOARDS**

6. Sometime in 2005, a pro-tem sale committee for the collective sale of Eng Lok Mansion was formed comprising of 6 subsidiary proprietors. Of these, 4 of them owned Large Lots and 2 of them owned Small Lots. CB Richard Ellis was appointed as the marketing agent and the law firm of De Souza Tay and Goh as the solicitors for the collective sale.
7. This was the third attempt at a collective sale of the Eng Lok Mansion, the other 2 attempts being made in 1996 and 1999. On both these occasions, the required number of signatures could not be obtained for a variety of reasons.
8. On 2 July 2005, the subsidiary proprietors of Eng Lok Mansion approved the appointment of the marketing agent and the solicitors having conduct of the collective sale. It also approved the members of the pro-tem sale committee to act as the Sale Committee. Members of the Sale Committee were either owners, co-owners or immediate members of the owners of the lots.
9. The Sale Committee proceeded to obtain agreement of the subsidiary proprietors for the CSA. By 4 October 2005, at least 80% of the subsidiary proprietors by share value agreed to the sale and had signed the CSA. The CSA was then dated as 4 October 2005.
10. On 2 March 2006, Eng Lok Mansion was sold at a price of \$138 million to Napier Properties Pte Ltd who were the nominee of the successful tenderer, Hasetrale Holdings Pte Ltd, above the reserved price of \$96 million. The

method of distribution of the proceeds of the collective sale was based on share value of each of the unit which in this case was the same for all the subsidiary proprietors.

11. The Applicants advertised in the 4 language newspapers of their intention for a collective sale on 23 May 2006. The application to the Strata Titles Boards was filed on 25 May 2006.
12. Madam Chow filed her objection to the collective sale for herself and as the attorney for her son on 17 July 2006. Their grounds of objections were stated in the Objections filed by Madam Chow.
13. The Registrar of the Strata Titles Boards wrote to all parties on 22 June 2006 informing them of the proposed constitution of the Board to hear the Application. The Registrar asked all parties if there was any objection to any member appointed to hear the application for the collective sale. No objection was filed with the Registrar within the prescribed time.

#### **PRELIMINARY ISSUE BEFORE THE COMMENCEMENT OF THE ARBITRATION HEARING.**

14. The application came before the Board on 28 July 2006. The Board exercised its powers under Section 84A (5)(a) and attempted to mediate between the Applicants and Objectors but was unsuccessful. At the mediation, the Objectors did not raise any objections regarding the composition of the Board. The Board accordingly fixed the matter for an arbitration hearing on 26 August 2006.
15. When the arbitration hearing commenced, Madam Chow sought to disqualify the presiding member, Mr Alfonso Ang, and a member, Mr Tay Kah Poh. The Board heard her objections notwithstanding that the time to do so had lapsed under Regulation 6 of the Building Maintenance and Strata Management (Strata Title Boards) Regulation 2005 and the protest of the Applicants' solicitors that Madam Chow was out of time in her objections.
16. Her objection to Mr Alfonso Ang was that he was a former partner of a law firm which had unsuccessfully tendered for a previous unsuccessful attempt at a collective sale for Eng Lok Mansion. As regards Mr Tay Kah Poh, Madam Chow alleged that he was a director of the firm, Knight Frank Pte Ltd for 12 years which had dealings with the collective sale.
17. After hearing her objections, both Mr Alfonso Ang and Mr Tay Kah Poh declined to disqualify themselves from hearing the Application as neither one of them said that they will be in a position of conflict or bias.
18. Prior to the resumed hearing on 11 September 2006, Madam Chow applied to the High Court to disqualify the two members of the Board. At the resumed hearing, counsel for the Applicants informed the Board that a judge of the High Court, Justice Lai Siew Chiu, had dismissed Madam Chow's application with costs. As such, the Board continued with the arbitration hearing.

#### **OBJECTIONS RAISED BY THE RESPONDENTS**

19. Madam Chow filed an objection, adduced evidence and made submissions on the following:

- (a) that she has an outstanding dispute with the Management Corporation Strata Title (MCST) of Eng Lok Mansion in respect of a debt purportedly owed to the MCST which has yet to be resolved. If the sale were to proceed, the MCST will deduct what is purportedly owed to them and thereby prejudice her case against the claim;
- (b) that her late husband's spirit would have no place to go if her property was sold;
- (c) she would suffer financial loss on the basis of replacement cost;
- (d) the transaction was not made in good faith in view of the following:
  - (i) the valuation of Eng Lok Mansion;
  - (ii) the method of distributing the proceeds of the sale;
  - (iii) the EOGM was not conducted properly and there was coercion and lack of information on the sale; and
  - (iv) the legality of sale of freehold property.

20. At the arbitration hearing, the following gave evidence:- Francis Lim Ewe Cheng, a member of the Sales Committee; Chng Shih Hian, a licensed Appraiser with Chesterton International Property Consultants, who prepared the valuation report on Eng Lok Mansion and Madam Chow.

#### THE LAW

21. The relevant statutory provision concerning the matter in dispute is Section 84A of the Act which is now reproduced:

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) the subsidiary proprietors of the lots with not less than 90% of the share values where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building 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 comprised in the strata title plan, whichever is the later; or
- (b) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building 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 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).

(2) The subsidiary proprietors referred to in subsection (1) shall appoint not more than 3 persons from among themselves to act jointly as their authorized representatives in connection with any application made under that subsection.

(3) No application may be made under subsection (1) by the subsidiary proprietors referred to in that subsection unless they have complied with the requirements specified in the Fourth Schedule and provided an undertaking to pay the costs of the Board under subsection (5).

(4) A subsidiary proprietor of any lot in the strata title plan who has not agreed in writing to the sale referred to in subsection (1) and any mortgagee, chargee or other person (other than a lessee) with an estate or interest in land and whose interest is notified on the land-register for that lot may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Fourth Schedule or such further period as the Board may allow.

(5) The Board shall have power:-

- (a) to mediate in any matter arising from an application made under subsection (1); and
- (b) to call for a valuation report or other report and to require the subsidiary proprietors referred to in subsection (1) to pay for the costs.

(6) Where an application has been made under subsection (1) and no objection has been filed under subsection (4), the Board shall, subject to subsection (9), approve the application and order that the lots and common property in the strata title plan be sold.

(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) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.

(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 any deduction allowed by the Board, 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.

(9) 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) the method of distributing the proceeds of sale; and
  - (iii) the relationship of the purchaser to any of the subsidiary proprietors; or
- (b) the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan.

(10) Where no objection has been filed under subsection (4), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.

(11) The Board may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under subsection (6) or (7).

(12) The Board may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

(13) A notice sent by registered post under the Fourth Schedule shall be deemed to be duly served on the person to whom it is addressed 2 days after the day on which the notice was posted, notwithstanding the fact that the letter may be returned by the post office as undelivered.

(14) The Minister may, by order published in the Gazette, amend or add to the Fourth Schedule.

(15) For the purposes of this section, "subsidiary proprietor" includes a successor in title.

22. Section 84A of the Act is clearly drafted. Speeches made in Parliament in the Third Reading of the Strata Titles (Amendment) Bill confirm the true intent of Section 84.
23. In his speech made in Parliament on 4 May 1999, the Honourable Minister of Law, Professor S. Jayakumar, said:  

" In deciding on the 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. The majority owners must then address the issue."
24. The issue for this Board must therefore be whether the objections raised matters touching on financial loss by a subsidiary proprietor and whether the transaction would not be approved on the ground that it was "not in good faith".
25. What constitutes "not in good faith" is a matter of fact to be decided based on the facts of each individual application. It is not possible or desirable to enumerate each and every act which would constitute "not in good faith". The guiding principle must be that the Board must work within the framework of the wordings of Section 84A of the Act.

#### **THE DECISION**

26. After the conclusion of the hearing of the witnesses, written submissions were made by both parties on 18 September 2006. The Board considered the evidence adduced at the arbitration hearing and the submissions. On 11 October 2006, the Objectors appointed Mr Lim Biow Chuan to represent them to make further submission. The Board allowed him to do so and also that a valuation report prepared by Mr Tan Keng Chiam of Jones Lang LaSalle Property Consultant Pte Ltd be considered as part of his submission. The Board now gives its decision.
27. The Board will categorise the objections raised by the Objectors into two categories, namely those stated under the Act and those that do not fall within this ambit.

#### **OBJECTIONS THAT DO NOT FALL WITHIN THE ACT**

28. The nature of the main objections raised in the arbitration hearing and the submission that do not fall within the contemplation of Section 84A are:
  - (a) an outstanding dispute between the Objectors and the Management Corporation Strata Title of Eng Lok Mansion;
  - (b) the legality of en-bloc sale when properties, which are freehold in nature, should be properties that an owner can own "forever";
  - (c) Madam Chow's late husband's spirit would not have a place to return to if Eng Lok Mansion was sold;

- (d) Madam Chow has stayed at Eng Lok Mansion for nearly 40 years and she has great attachment to the place; and
  - (e) all owners should collectively re-develop Eng Lok Mansion.
29. The Board is of the view that these objections are not factors that the Board may take into account when determining whether the transaction was in good faith or not. The Act clearly directs that the Board shall only take into account the factors stated in Section 84A of the Act and nothing more.
  30. Madam Chow's dispute with the Management Corporation Strata Title of Eng Lok Mansion is a private matter for her to deal with and she can pursue them accordingly. Likewise, her contention that properties which are freehold should be owned forever, cannot be upheld.
  31. The Board, in dealing with Madam Chow's emotional objections, found some guidance in the parliamentary debate on the Third Reading of the Land Titles (Strata) Amendment Bill. Co-incidentally, a question was raised in parliament by Nominated Member of Parliament, Mr. Simon Tay. He asked, "Let me then paint a concrete but hypothetical picture and ask the Minister for clarification. If I see a widow in her 60s or 70s living now alone in a flat, it is a familiar neighbourhood, near her family, the sale may proceed but it gives her only a small profit, can the existing safeguards save this widow from the inconvenience of having to move at an old age? Can the guardian, the Strata Titles Board, save this widow from her situation?"
  32. The query posed by Mr. Simon Tay bears similarity with the present case, save that in this case there was more than a small profit to be made by Madam Chow. In reply to Mr Simon Tay, the Honourable Minister for Law, Professor S. Jayakumar, said that in respect of the emotional factors, "the approach by the Board is not to adjudicate and decide on these matters. We should leave it to all parties, whether it is the emotional aspect of an elderly lady or widow or some other emotional aspects..... But in the end, it should be a decision left to the parties to decide."
  33. Whilst the Board can understand her emotional attachment to Eng Lok Mansion for whatever reason, it is clearly not a factor that can be taken into account. Accordingly, all these objections raised by Madam Chow are not to be considered by the Board.

#### **OBJECTIONS UNDER SECTION 84 OF THE ACT**

34. The Board will now turn its attention to the other objections raised.
35. Madam Chow's objection regarding the valuation of the property and the sale price merit examination. She gave evidence, and submitted that Eng Lok Mansion was situated in her words in the "diamond belt" of Singapore together with the "Embassy Row". The sale price of \$138m was far too low in view of the upswing in the property market. She contended that shortly after the sale of Eng Lok Mansion, property prices in the surrounding vicinity rose thereby showing that the valuation was flawed.
36. The Applicants, through their witness, Chng Shih Hian of Chesterton International Property Consultant, gave evidence. Taking into account all



relevant factors, such as location and comparative pricing, he had valued the property at \$138m as at 2 March 2006.

37. Evidence was also adduced that C B Richard Ellis promoted and advertised Eng Lok Mansion for sale over a period of over 2½ months. A total of 12 advertisements were placed in a local newspaper and when tender closed on 28 February 2006, there were 7 bidders. The highest bidder was Hasetrale Holdings Pte Ltd who offered \$136,888,000.00. Parties subsequently negotiated to increase the price which, they did to \$138m, which was well above the reserve price of \$96m.
38. The Board took into account that there are several methods of valuation which a valuer can resort to. These methods include market comparison, residual and income method. Whichever method is used, the valuation should be based on the open market concept to support the selling price at the material time.
39. In our opinion, there was nothing untowards in the Valuation Report made by the Valuer. There is no evidence adduced by the Objectors that the valuation was improperly done or not done in good faith. In any case, the Objectors did not adduce an alternative valuation.
40. The Board gave due consideration to the Valuation Report and the sale price. Valuation is not an exact science nor one which can be derived from a formula. Whilst there are objective factors to bear in mind such as location and tenure of the property, it also requires a judgment call. We are satisfied that the valuation was not suppressed in order to achieve the collective sale.
41. The Board does not accept the Objectors' contention that the timing of the collective sale was not ideal as it could have realized a higher price now. The timing of the sale is a decision that can only be made by the owners and it is not for the Board to substitute a decision.
42. The method of distribution was also contested by the Objectors and the Board also examined this issue thoroughly. The Objectors complained that all subsidiary proprietors would be paid the same amount notwithstanding that they have different built-in floor area. They alleged that this method was not based on fact and size but on the emotion of the Sale Committee.
43. The Applicants, through their witnesses, informed the Board that there were previous unsuccessful attempts at a collective sale and one of the stumbling blocks was the method of distribution. There were difficulties such as size, facing of the unit and the floor of the unit.
44. The Sales Committee, comprising of 4 owners from Large Lots and 2 owners from Small Lots, decided that the most suitable method of distribution was to be based on share value after considering the various methods of distribution of the proceeds of sale.
45. The Board examined the various methods of distribution of the sale proceeds. The Board also took into account the process of the collective decision-making.

46. The Board bore in mind the composition of the Sale Committee which included 4 owners of Large Lots. The Board also took into account the overwhelming number of proprietors of Large Lots who willingly agreed or at least did not object to distribute the proceeds based on share value. For nearly 40 years, all the owners of the Small Lots had contributed to the maintenance and management of Eng Lok Mansion in accordance with the share value.
47. The Board does not find any reason why the decision of the majority should be changed and accordingly reject the Objectors' contention on this issue.
48. Madam Chow raised in her affidavit that she will incur a financial loss on the basis of replacement costs. In her evidence, it was clear that she and her son would make more than a tidy profit from the sale of the 2 units, she having bought her unit for \$40,000.00 in 1969 and \$280,000.00 for her son's unit in 1981.
49. The determining test is whether there is a financial loss and not that of a replacement cost. This is clearly provided under Section 84A 7(a) of the Act which clearly states that an owner shall be taken to have suffered financial loss if "the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot."
50. By her own admission and a simple mathematical calculation, even given the most generous deduction that the Board can allow, both Objectors did not suffer any financial loss.
51. Interestingly, Madam Chow argued that there is a financial loss as she would get a return which was the same as that of an owner of a smaller unit. The Board agrees with the Applicants' submission that this is irrelevant for the purpose of determining financial loss or a lack of good faith. Section 84A (8) (b) of the Act clearly states that a proprietor shall not be taken to have suffered financial loss by reason only that "his net gain from the sale of his flat will be less than that of the other proprietor."
52. We will now deal with all the other issues raised and that concerns the issue of good faith in the manner in which the sale was conducted. We have examined carefully and concluded that the Applicants have complied with the requirements of the Act.
53. We are satisfied that the collective sale process was in order. We have no evidence of anything that was improperly done at the 3 meetings to discuss the collective sale.
54. We considered the vague allegation that the sale was not an arms length transaction. There is no evidence that there was any relationship between the Purchaser and any of the subsidiary proprietors.
55. The Board is also satisfied that the other claims by the Objectors are unmeritorious. The Applicants do not dispute Madam Chow's view that 2 of the Sale Committee members were not the owners. However, the Board is of the view that there is no such requirement. Section 53 of the Act provides that an immediate member of a family may be nominated by the subsidiary

proprietor to be on the MCST Council and therefore should also qualify to be in the Sale Committee.

56. Madam Chow raised an issue that one of the subsidiary proprietors, Gan Yue Cheng, of Unit XX, was named as a proprietor when he had passed away. Counsel for the Applicants conceded that this was an error. The lot in question had been transferred to the deceased's wife and 2 children and they are now the registered owners. Gan Yue Cheng's daughter, however, has signed the Collective Sales Agreement as the attorney. The Board does not see how this error would in any way affect the manner in which the collective sale was conducted.
57. As regards her complaint that there was insufficient information on the collective sale, we are not satisfied with her objections. Against this bare allegation, the Applicants have held 3 meetings, posted notices on the notice board periodically and advertised the sale in the 4 language newspapers.

### CONCLUSION

58. Each case must be decided on its own facts and merits. The Board has reviewed the entire Objectors' allegations. We do not have any reason to interfere with the decision of the majority.
59. The Board therefore grants the order applied for under paragraph 9 of the application that all the units in Eng Lok Mansion be sold collectively to Napier Properties Pte Ltd, under the terms and conditions as agreed in the sale and purchase agreement dated 2 March 2006. The Board also makes the following order:-
  1. all subsidiary proprietors including the Objectors/Minority Owners be bound by the terms of the CSA and the Sale and Purchase Agreement as if they are parties thereto;
  2. all the costs and disbursements in connection with and incidental to this application be borne by all the subsidiary proprietors (including the Objectors/Minority Owners) equally on a full indemnity basis and that such costs be deducted from their share of the sale proceeds. Without limiting the generality of the foregoing, the said costs and disbursements shall include the costs of advertisements, valuation report, the Majority Owners' solicitors' costs in the application, the hearing fees, stamp duty and goods and services tax;
  3. the Objectors bear their own costs and disbursement in connection with and incidental to this application;
  4. the Objectors/Minority Owners shall:
    - (i) execute sign seal 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;

- (ii) execute and furnish to the Purchaser or other relevant parties such Statutory Declarations(s) and/or letters of confirmation as required by the Inland Revenue Authority of Singapore; and
- (iii) do all such acts and things as may be necessary or expedient for the purpose of effecting or perfecting the collective sale.

5. there be liberty to apply.

60. The Board will now deal with the issue of costs of the arbitration hearing under Section 117(1) of the Building Maintenance and Strata Management Act.

Dated this 11<sup>th</sup> day of October 2006

**MR ALFONSO ANG**

Deputy President  
Strata Titles Boards

**MR KONG MUN KWONG**

Member  
Strata Titles Boards

**MR TAY KAH POH**

Member  
Strata Titles Boards

**MR LAI HUEN POH**

Member  
Strata Titles Boards

**DR RICHARD TAN**

Member  
Strata Titles Boards