LAND TITLES (STRATA) ACT
(CHAPTER 158)

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

STB No 49 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 **FLAMINGO VALLEY** (Strata Title Plan No **1493**) comprised in Land Lot No **6495W** of Mukim **27**

Between

1. SARDOOL SINGH S/O BALJIT SINGH
2. YAP CHENG LIANG
3. CHAN KUM TAO

... Applicants

And

1. LAM KONG CHOONG
2. ANDREW JAMES ARTHUR MITCHELL/ POH MAY LIN MONICA
3. NGOEI BOON LIONG

... Respondents

And

1. WARREN MARC LIM KIAK JUEN/ CRISTY ANNE GOVER
2. KOH KIM SOAN

... Minority Owners

Coram: Mr Tan Lian Ker
President

Panel Members: Prof Teo Keang Sood
Mr Goh Tiam Lock
Mr Lai Huen Poh
Mr Lee Keh Sai

Counsel: Mr Ling Tien Wah

Ms Tang Woon Yee
(M/s Rodyk & Davidson for the Applicants)

Mr Keh Kee Guan
Mr Cheah Kok Lim
(M/s Silklegal LLP for the Respondents)

GROUNDS OF DECISION

Application

1. This is an application ("the application") made under s 84A of the Land Titles (Strata) Act (Cap 158) to the Board seeking an order for the collective sale of all units at Flamingo Valley in the strata title plan known as Strata Title Plan No. 1493 located at Siglap Road, Singapore.

Flamingo Valley

2. Flamingo Valley comprises 184 residential apartments and maisonnettes, and a shop unit in nine apartment blocks. It has a land area of 31,161.1 sq m and is a freehold estate. The units vary in size from 98.0 sq m to 203.0 sq m.

Majority Subsidiary Proprietors and Applicants

3. The application was filed on 24 April 2007 by Sardool Singh s/o Baljit Singh, Yap Cheng Liang and Chan Kum Tao (the Applicants), as the authorised representatives of the majority subsidiary proprietors who hold 97.64% of the share values of the units in Flamingo Valley as at 12 December 2007. Out of the 97.64%, 11.5% had signed the Collective Sale Agreement after the Sale Committee had contracted to sell Flamingo Valley for $194 million on 1 February 2007.

Minority Subsidiary Proprietors and Respondents

4. As at the date of application on 24 April 2007, owners of six units in Flamingo Valley had not signed the Collective Sale Agreement. Subsequently, the owners of Unit No. 466 #XXX and Unit No. 462 #XXX signed on 27 April and 3 May 2007 respectively. With this, only the owners of 4 units remain as minority owners who filed written objections under s 84A(4). However, the minority owners, Warren Marc Lim Kiak Juew and Christy Anne Gover of Unit No. 450 #XXX , subsequently withdrew their objection, leaving the minority owners of the remaining 3 units as the respondents in the application.

The Collective Sale Agreement

5. The subsidiary proprietors commenced signing the original Collective Sale Agreement on 25 June 2006 at the minimum/reserve price of $192 million. As there were discrepancies in the original Collective Sale Agreement, an amended Collective Sale Agreement (the Collective Sale Agreement) was used in place of the former. Although several objections were raised by the respondents initially, they were not pursued subsequently by the respondents in their written submissions in view of the evidence given by the Applicants and their witnesses at the hearing. By 17 July 2006, 80.06% of the subsidiary proprietors (by share value) had signed the Collective Sale Agreement.

Mediation

6. Pursuant to s 84A(5)(a), the Board carried out mediation between the Applicants and the Respondents. However, the mediation proved unsuccessful and hearing dates were fixed for 25,26 & 27 October 2007 and 15 & 19 November 2007.The Board also heard submissions from counsel for the respective parties on 3 January 2008.

Chronology of Significant Events

7. By 17 July 2006, 80.06% of subsidiary proprietors (by share value) had signed the Collective Sale Agreement. The first tender for collective sale of Flamingo Valley was launched on 25 July 2006 and closed on 22 August 2006. The minimum/reserve price was $192 million. No official bids were received. Negotiations by private treaty were pursued with interested developers but without success. The second tender exercise was subsequently launched on 11 January 2007 and closed on 1 February 2007. Two bids were received, namely, $182 million from Rivaldo Investments Pte Ltd and $193 million from FCL Estates Pte Ltd (Frasers Centrepoint). On the same day, a final negotiated price of $194 million was offered by Frasers Centrepoint and accepted by the Sale Committee. An Extraordinary General Meeting was convened on 31 March 2007 to consider the collective sale. On 24 April 2007, an application was made by the applicants to the Board for an order to effect a collective sale of Flamingo Valley.

8. The Sale Committee had earlier appointed Colliers International Pte Ltd (Colliers) to market the property and Rodyk & Davidson (Rodyk) to act in the proposed collective sale.

Grounds of Objections

9. From their written submissions, the respondents are objecting to the applicants' application on two main grounds, namely, that the sale was not in good faith pursuant to s 84A(9) of the Land Titles (Strata) Act (Cap 158) and that the application was defective. In regard to the latter ground, Counsel for the respondents submitted that there was no proper requisition in respect of the Extraordinary General Meeting (EOGM) convened on 31 March 2007 to consider the collective sale. In addition, the requisite majority of owners who owned at least 80% of the share value of the development had not been achieved given the circumstances in which it was obtained notwithstanding that there was the requisite majority of 80.06% who had signed the Collective Sale Agreement by 17 July 2006.

Whether Transaction Conducted in Good Faith

10. The relevant parts of s 84A(9) of the Land Titles (Strata) Act (Cap 158) read as follows:

"The Board shall not approve an application made under subsection (1) —
(a) if the Board is satisfied that —
(i) the transaction is not in good faith after taking into account only the following factors:
(A) the sale price for the lots and the common property in the strata title plan;
(B) the method of distributing the proceeds of sale; and
(C) the relationship of the purchaser to any of the subsidiary proprietors; or
(ii) 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; or
(b)... "

11. The respondents sought to argue that the sale transaction was not conducted in good faith on the basis of the sale price and the method of distributing the sale proceeds. Given the manner in which the reserve price was set, it could not be said that the requisite majority of 80% was achieved in the circumstances.

(i) Manner in which transaction concluded, reserve price set and requisite majority obtained

12. Among others, the respondents contended that the conduct of the Sale Committee, Colliers and Rodyk had not been transparent. They had set a high reserve price of $192 million to entice and induce the subsidiary proprietors to sign the Collective Sale Agreement so as to achieve the requisite 80% majority without indicating that this was a forward looking price which could only be achieved about five or six months down the road. If not for this ploy on their part, the requisite majority of 80.06% would not have been obtained by 17 July 2006 and the application to the Board was, accordingly, defective in this regard. In addition, they hid the fact that the market was improving for fear that the subsidiary proprietors would tell them to delay the proposed collective sale. Further, the sale was rushed, with negotiations commencing at 5.30 pm on 1 February 2007 and the deal concluded at 11.30 pm, such that there was a failure to review the reserve price in light of the improved market sentiments.

13. Counsel for respondents also alleged that "in the original conditions of tender, the purchaser was to pay to the owners on completion date a sum equivalent to the sinking fund of $1 million but this condition was subsequently removed by FCL when they increased the price from $193 million to $194 million presumably to circumvent the statutory prohibition against using any moneys in the sinking fund for any purpose for a collective sale". However, the Board was satisfied that this condition was removed by Frasers Centrepoint in their original offer of $193 million.

14. The Board is also of the view that, having regard to the evidence, there was no inducement or wrongdoing on the part of the relevant parties mentioned above in obtaining the requisite majority. Colliers was merely proposing an optimistic scenario with a price of $192 million at its presentation to subsidiary proprietors on 25 June 2006, including the estimated timeline involved, in the interest of owners and to gather as much support as possible. It was also to test the market. In addition, it was also made clear to subsidiary proprietors that the final sale price for Flamingo Valley would depend largely on demand

and market conditions. The evidence also supported the position that there was lengthy and considered discussions on 1 February 2007 which secured a higher negotiated price of $194 million from Frasers Centrepoint following the conclusion of the second public tender exercise. This higher price was conditional on the Sale Committee accepting the offer from Frasers Centrepoint by 12 midnight on 1 February 2007. Frasers Centrepoint had earlier made the higher bid of $193 million at the close of the second public tender exercise. In Colliers expert opinion, the better approach to take was to raise the asking price as there were no sufficient factors to justify an increase in the reserve price of $192 million. In any event, as borne out by the public tender exercise, potential developers were prepared to pay between $182 million and $193 million only for Flamingo Valley as at 1 February 2007. It should also be noted that the sale price of $194 million was accepted by the majority of the Sale Committee (five out of six members) after taking advice from Colliers and Rodyk. For the above reasons, and given that it takes time to conclude a collective sale, there was, accordingly, no intention to mislead, much less deceive, the subsidiary proprietors on the part of the Sale Committee and the other parties concerned.

15. It was also alleged by the respondents that the Sale Committee sold Flamingo Valley at the negotiated price of $194 million, which was above the reserve price of $192 million, as otherwise it could be sued for not doing so. This was alleged to have been stated by a representative from Rodyk at the EOGM convened on 31 March 2007. Having perused the evidence, the Board is of the view that the property was sold by the Sale Committee at the higher negotiated price of $194 million based on expert advice taken from the legal representative and Colliers and also after Colliers had tried its best to interest other property developers, including Rivaldo Investments Pte Ltd to offer a better price but without success. The evidence does not suggest that proper marketing had not been carried out. Also, as noted above, the sale to Frasers Centrepoint at the higher negotiated price of $194 million was concluded after lengthy and considered discussions.

16. On the marketing of the property by Colliers by private treaty after no bids were received at the close of the first tender exercise on 22 August 2006, Counsel for the respondents alleged that this was unauthorised under the Collective Sale Agreement and was one of the reasons for the sale being at an undervalue. However, Counsel for the applicants argued that under clause 4.1.11 of the Collective Sale Agreement read with the definitions of "Contract" and "Date of Contract" in clause 1.1 of the same Agreement, the Sale Committee had the discretion to proceed by way of private treaty.

17. Clause 4.1.11 reads: "Each of the Sellers hereby agrees to sell His Unit on the following terms: - unless directed by the Sale Committee, the first such Collective Sale may be by tender and the Award of Tender shall be granted to the Purchaser at such earlier time or extended time as may be determined by the Sale Committee and the sale shall be subject to the STB Order, if applicable;"

18. Clause 1.1 defines "Contract" to mean: "the document(s) entered or to be entered into by or with a Purchaser providing the terms and conditions governing the Collective Sale. For avoidance of doubt, a Contract may be concluded by way of an Award of Tender." and

19. "Date of Contract" to mean: "the date of the letter of acceptance of a tender bid or the date of the Memorandum of Contract in an auction sale or the date of acceptance of the Option/Offer to Purchase or the date of the Sale & Purchase Agreement where the context so admits."

20. While it is arguable that the provisions above permitted a sale by private treaty, what is crucial to note is that the sale to Frasers Centrepoint which was ultimately concluded was not by way of private treaty but by way of a second tender exercise, a mode expressly permitted under the Collective Sale Agreement. That this was so would, in the Board's view, render the respondents' objection insignificant in this regard.

21. Much was also made of the timing of the launch of the second tender exercise on 11 January 2007, following the failure of the first tender exercise where no firm bid was received. The respondents had contended that if the launch had been delayed, a higher price could have been obtained. The evidence again pointed to the fact that the Sale Committee did obtain expert advice from Colliers, an established and reputable property consultancy firm, before proceeding with the launch of the second tender exercise. This Board had earlier in *Tan Jui Meng alias Chen Weiming and Others v Hoong See Chye and Tan Lem Yee and Others* [2005] SGSTB 1 at [19.4] ruled that:

"...once the Board is satisfied that the decision to time the sale is not one made in bad faith within the meaning of Section 84A(9), the Board cannot question the majority subsidiary proprietors' timing on the ground that there might be a better price around the corner if they delayed putting the property on sale."

22. In fact, none of the majority owners had come forward to testify that the negotiated price of $194 million accepted by the majority of the Sale Committee at the close of the second tender exercise was obtained in bad faith. It was open to the respondents, if they wish, to get the majority owners or any witnesses to so testify which they did not. Moreover, given the evidence before the Board, the negotiated price of $194 million from Frasers Centrepoint was the highest on offer at the material time, there being no other competing price close to that offered by Frasers Centrepoint.

(ii) Valuation

23. Counsel for the respondents further contended that there was no good faith in the transaction as the sale price was below valuation. Having heard both the expert witnesses for the applicants and respondents, the Board is inclined to accept the expert evidence of Ms Poh Kwee Eng, the expert witness for the applicants and a valuer with 25 years professional experience, that the open market value of Flamingo Valley was $192 million as at 1 February 2007. Her valuation report was a reliable indication of the market value given. That the report was obtained after, and not before, the sale and purchase agreement was signed (which was not a requirement before the 2007 amendments to the Land Titles (Strata) Act (Cap 158) were effected) does not detract from the fact that it was a reliable report which was professionally done. This was, in fact, borne out by the highest bid of $193 million from Frasers Centrepoint (with the final negotiated price being $194 million) at the close of the second public tender exercise on 1 February 2007.

24. On the other hand, the respondents' expert valuer and witness, Mr Wilson Lim, had failed to convince the Board that the open market value was $209 million instead. His valuation report contained several errors and inconsistencies. When called upon by the Board and applicants' counsel to justify his valuation, he could not substantiate his opinion nor provide a list of comparables that he had used nor the adjustments or workings to arrive at his valuation. This made his assertions in respect of the open market value of the property subjective and untenable to the Board.

(iii) Method of apportionment

25. It was also submitted by Counsel for the respondents that the method of apportionment of the sale proceeds adopted by the applicants was inequitable and unreasonable, and hence, adopted in bad faith. In the Collective Sale Agreement, the subsidiary proprietors had adopted the "50% share value and 50% strata area" method of apportionment. Ms Poh Kwee Eng, the expert valuer and witness for the applicants, was of the opinion that the method adopted was fair and equitable having regard to the situation in this instance where the variation in size of the apartments range from 98.0 sq metres to 203.0 sq metres and the share value is either three or four share. The Board is of the view that there is no one method of apportionment which must necessarily be applied in any given case and each case before the Board must be judged on its own facts and circumstances. Provided the method of apportionment adopted does not unfairly disadvantaged any particular minority group, the Board will not interfere with the method adopted by the not less than 80% majority decision of the owners. In any event, the respondents' valuer did not propose any alternative method of apportionment for the development as a whole for the Board's consideration. Having regard to the situation, the Board is unable to conclude that the method adopted smacked of bad faith on the part of the applicants. This objection of the respondents is, accordingly, dismissed by the Board.

Convening of Extraordinary General Meeting

26. Counsel for the respondents had also submitted that the application to the Board was defective as there was no proper requisition to convene the Extraordinary General Meeting (EOGM) to consider the collective sale. Instead, the EOGM was convened by the management council merely by a letter dated 1 March 2007. The respondents took the view that this rendered the meeting invalid as the EOGM should have been convened by requisition having regard to s 27(3) of the BMSMA and paragraph 14 of the First Schedule thereto.

27. The relevant parts of s 27(3) read: "...the First Schedule shall apply to and in respect of any meeting of a management corporation, and voting at that meeting."

28. Paragraph 14 of the First Schedule deals with the convening of an EOGM on requisition.

29. It should also be noted that s 27(2) of the BMSMA expressly allows an EOGM to be convened by the management council without the need for a requisition. Section 27(2) reads as follows:

"A meeting of the management corporation which is not an annual general meeting shall be held whenever it is convened by the council and shall be an extraordinary general meeting."

30. The question which arises is whether there is any inconsistency between s 27(2) and (3) of the BMSMA. In the opinion of the Board, there does not appear to be any. Under s 27(2), the management council is empowered to convene an EOGM. Section 27(3) does not, in any way, take away or qualify the powers of the management council to convene an EOGM under s 27(2). Section 27(3) merely makes it clear that for any meeting of a management corporation, the First Schedule to the BMSMA shall apply. So if an EOGM is

to be convened by way of requisition, paragraph 14 of the First Schedule shall apply. There is nothing in the language of s 27(3) or paragraph 14 of the First Schedule which mandates that an EOGM must be convened only by way of a requisition. To do so would render s 27(2) otiose which is surely not the intention of Parliament. In fact, s 27(2) plays a useful role as it empowers the management council to call for an EOGM whenever it is necessary to do so. In the result, the Board finds the respondents' submission to be without merit.

Need to Show Prejudice to Minority Owners

31. It is clear from recent case-law that the guiding principle to follow is whether, in respect of any objection raised, prejudice has been caused to the minority subsidiary proprietors. The two recent relevant High Court cases that come to mind are *Siow Doreen and Others v Lo Pui Sang and Others (Horizon Partners Pte Ltd, first interveners and Reghenzani Claude Augustus and Others, second interveners)* [2007] SGHC 174 and *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2007] SGHC 190. In the former, Justice Choo Han Teck stated as follows (at [9]):

"...If an error or omission had caused prejudice to the minority, the Board may, in the exercise of its discretion dismiss the application. If it does not, the Board is, in my opinion, empowered to allow an amendment or correction so that the record is clear. ..."

32. In the latter case, Justice Andrew Ang explained to the same effect when he said (at [55]):

"At the end of the day, each objection must be examined on its own facts and the particular requirement breached set against the overall purpose of the legislation. One should then consider whether a strict construction and the invalidation of the Board's order is what Parliament would have intended, taking into account any prejudice to the rights of parties and the public interest (if any)."

33. It is clear from these two cases that the court in exercising its discretion is guided by whether or not prejudice has been caused to the minority subsidiary proprietors. Having regard to the available evidence in the instant case, the Board is unable to conclude that there is any prejudice caused to the minority subsidiary proprietors for the reasons given above.

Conclusion

34. For the above reasons, the Board approved the application.

Costs

35. On the issue of costs, Counsel for the applicants has asked for costs to be awarded against the respondents. The Board has deliberated carefully on the matter and has decided that each party bear their own costs. The Board is of the opinion that the objections raised by the respondents were not frivolous and merited consideration notwithstanding that they were not upheld by the Board. On the part of the applicants, certain processes could have been improved upon, for example, making available certain information and documents

requested for, which would have facilitated the respondents in the initial preparation of their case. This would, in turn, have saved time in the hearing.

Order

36. Pursuant to Section 84A (4) of the Act and on the basis of the facts available, the Board not being satisfied that :-

a) the transaction is not in good faith after taking into account only the following factors :-
   (i) the sale price of all units at Flamingo Valley in the strata title plan known as Strata Title Plan No.1493.
   (ii) the method of distributing the proceeds of sale; and
   (iii) the relationship of the purchaser to any of the proprietors;

b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the Apartments and the land in the said development.

The Board hereby, under Section 84A (9) approve the application and order :-

(1) that all the strata units in the Development be sold collectively to FCL Estates Pte Ltd ("the Purchaser") under the terms and conditions as agreed in the sale and Purchase Agreement dated 1 February 2007;

(2) that all subsidiary proprietors including the Minority Owners, namely, the subsidiary proprietors of the units known shortly as 450 #XXX , 454 #XXX , 456 #XXX, 462 #XXX, 466 #XXX and 468 #XXX, be bound by all the terms in the Collective Sale Agreement dated 17 July 2006 and in the said Sale and Purchase Agreement as if they are parties thereto;

(3) that all costs and disbursements in connection with and incidental to this application be borne by all the subsidiary proprietors (including the said Minority Owners) equally on a full indemnity basis and that such costs be deducted from their respective share of the sale proceeds. Without limiting the generality of the foregoing, the said costs and disbursements shall include the costs of advertisements, valuation reports, the Majority Owners' solicitors' costs in the application and hearing fees, stamp duty and goods and services tax;

(4) that the said Minority Owners (including the Respondents) shall bear their own legal costs and disbursements (if any) in connection with and incidental to this application;

(5) that the said Minority Owners:-

   (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 Declaration(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; and

(6) such other order(s) as the Board deems fit.

Dated this 25th day of January 2008

MR TAN LIAN KER
President
Strata Titles Boards

PROF TEO KEANG SOOD
Member
Strata Titles Boards

MR LEE KEH SAI
Member
Strata Titles Boards

MR LAI HUEN POH
Member
Strata Titles Boards

MR GOH TIAM LOCK
Member
Strata Titles Boards