LAND TITLES (STRATA) ACT
(CHAPTER 158)

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

STB NO 53 OF 2007

In the matter of an application under Section 84A of the Land Titles (Strata) Act in respect of the development known as **GILLMAN HEIGHTS CONDOMINIUM** (Strata Title Plan No. 2031) comprised in Land Lot No. 2443T of Mukim 1

Between

1 **Wiener Robert Lorenz**

2 **Ng Seng Kee**

3 **Ragunath Guha Ramanathan**

(representing the Majority Owners of Gillman Heights Condominium)

... Applicants

And

1 **Chua It Poh/ Ng Lee Beng**

2 **Lim Chee Kiat/ Wang Li Cheang**

3 **Lee Seow Chuang Jenny/ Kwek Beng Ching Karen**

4 **Goh Beng Seh @ Tan Beng Seng / Lee Jiong**

5 **Teo Swee Huat/ Tan Kok Kim**

6 **Thng Beng Huat/ Tan Gek Heok**

7 **Lee Foon Yoong/ Pang Tee Lian**

8 **Tan Siew Ann/ Ong Lie Leng**

9 **Tan Lan Eng**

10 **Peter George Manning**

11 **Ng Yian Hock/ Ee Hock Neo Shirley**

12 **Chan Cok Seng @ Chan Kok Seng/ Wong Yoke Lai**

13 **Siew Seck/ De Young Todd David**

14 **Lee Hong Kwang/ Chiang Virginia Jane**

15 **Ter Kim Cheu/ Khew Kah Leng**

16 Chua Kim Choon (Cai Jinchun)/ Selinna Tsang

17 Krishnan Kanabiran/ Choo Lai Sim

18 Chan Yan Kwoy @ Chan Yew Kong/ Ang Ah Bang

19 Kok Chong Weng/ Oey Hen Tju

20 Lek Jiunn Feng/ Debbie Wong Teck Pei

21 Teo Lan Seng @ Teo Lam Seng

22 Lim Chin Tiok/ Gan Lai Yong

23 Yeo Yeow Kwang/ Ng Kim Lian

24 Chua Wee Loon Stanley

25 Ting Keng Sin/ Wee Phek Hong

26 Soh Siong Tee/ Lee Kim Choo

27 Ong Chong Teck/ Lim Siew Yong

28 Mak Yuen Teen/ Linda Law Chiew Har

29 Ng Geck Imm/ Ng Pok Chong @ Ng Bok Chong

30 Chow Kum Hoi/ Chia Sin Choon Hannah

31 Tan Geok Huay/ Yong Chong Ming @ Seow Chong Ming

32 Lim Joo Soon/ Pang Soon Lan

33 Vinod Kumar Pawa/ Shashi Pawa

34 Mah Kah Hoe/ Mrs Mah Kah Hoe Nee Ng Seng Seng

35 Chong Siew Long/ Quek Hyu Har

36 Lee Chin Leong/ See Gim Ngoh

37 Low Seok Peng

38 Tang Chong Chee/ Tan Suan Keow

39 Kevin Lam Yenn Khan/ Lyndsey Lam Yenn Jinn/ Tan Hwee Huang

40 Lee Bee Lan

41 Peter Gerard Murray/ Kim Foo @ Foo Wai Kum

42 Lek Kam Meng/ Ng Bee Hoon

43 Harish Pillay/ Usha Nair

44 Chua Teck Chin

45 Chang Mei Wah Selena/ Alan Khew Sin Wui

46 Wong Weng Kong/ Teo Mee Lee

47 Anbu Ganesh s/o Kanapathy/ Sant Kaur d/o Nand Singh

48 Jong Yock Kee @ Tan Yock Kee/ Saw Yew Hock

49 Seetoh Chun Heng/ Kee Peck Yin

50 Abdullah Bin Mohd Yusoff/ Pauzimah Binte Hashim

51 **Cheng Wai Chuen/ Tan Kwa Hua**

52 **Chee Siew Yong/ Yap Chye Hock**

53 **Peng Swee Teng @ Pang Swee Teng/ Peng Hong Eng**

...Respondents

Coram: **MR ALFONSO ANG**
Deputy President

Panel Members: **MR CHUA KOON HOE**
MR LEE COO
MR MICHAEL NG
MR TAN EE PING

Counsel: **MR QUEK MONG HUA**
MR OW YONG THIAN SOO
MR MICHAEL KUAH
MR JULIAN TAY
(M/s Lee & Lee for the Applicants)

MR RICHARD TAN
(M/s Tan Chin Hoe & Co for the 10th to 41st Respondents)

MR KANNAN RAMESH
MR EDDEE NG
(M/s Tan Kok Quan Partnership for the 5th and 6th Respondents)

MR DAVID LIM
(M/s Lim & Bangras for the 42nd, 45th, 47th to 50th and 52nd Respondents)

GROUNDS OF DECISION

1. This is an application under section 84A(1)(b) of the Land Titles (Strata) Act ("the Act") made by the Sales Committee representing 532 registered subsidiary proprietors holding 87.54% of the total share value of Gillman Heights Condominium ("Gillman Heights") for an order approving the sale of Gillman Heights to Ankerite Pte Ltd at the price of S$548million.

Gillman Heights

2. Gillman Heights is an estate that was exempted from the operation of section 5 of the Building Control Act 1973 and the regulations under the Building Control (Order) 1984. Gillman Heights is situated in what was commonly known then as district 4. It consists of 607 residential units and 1 shop unit.

3. In or around 1996 Gillman Heights was privatised and in November 1996 Gillman Heights was issued with Strata Title Plan. As part of the privatisation process, works were done which involved the building of ramps, railings, boundary fencing, fire engine hard standing areas, fire engine access and installation of fire-rated doors. Sometime in February 2001, each of the registered subsidiary proprietor contributed monies to construct a clubhouse, a swimming pool and a children's playground. The total cost for the construction of the clubhouse, swimming pool and children's playground was about S$3million.

4. On 23 October 2002, a Certificate of Statutory Completion ("CSC") was issued in respect of works carried out pursuant to the privatisation process. On 27 November 2002, a Temporary Occupation Permit ("TOP") was issued in respect of the clubhouse/swimming pool at Gillman Heights.

5. There are 4 point blocks marking the four corners of Gillman Heights. In between the point blocks are 6 low-rise terraced apartment blocks. Each of these blocks is made up of 5 to 8 pairs of double-storey maisonettes, one maisonette stacked on top of the other. Each pair of 2 stacked maisonette units (i.e. 4 units) share a common staircase and covered parking lots. Thus the number of pairs also represents the number of staircases, each staircase shared by 4 units.

6. Of the total of 607 residential units in Gillman Heights, the National University of Singapore ("NUS") owns 303 apartments, making them the majority owner whose total share value amounts to 49.84%.

Grounds of objection

7. The main objections filed by all the Respondents may be broadly summarised as follows:-

(i) the Respondents contended that the Applicants' reliance on section 84A(1)(b) of the Act which requires subsidiary proprietors having at least 80% of the total share value, is wrong in law. They argued that Gillman Heights is less than 10 years old as the last CSC and TOP were issued on 23 October 2002 and 27 November 2002 respectively. Hence section 84A(1)(a) of the Act should apply and this would require subsidiary proprietors having at least 90% of the total share value agreeing to the collective sale;

(ii) there was non-compliance with section 84A(3) of the Act when the Applicants failed to comply with Paragraph 1(b) of the Schedule of the Act in that they failed to affix on a conspicuous part of each building comprising the strata title plan, the notices once every 8 weeks ("the 8 weeks notices") specifying the number of subsidiary proprietors who had signed the Collective Sale Agreement ("CSA") and the proportion (in percentage). As an appendage to this issue, the Respondents claimed that the statutory declaration made by one of the Applicants that the 8 weeks notices were affixed on the buildings was false when in fact some of the 8 weeks notices were not affixed to the buildings but onto notice boards;

(iii) the Application for the collective sale of Gillman Heights could not proceed as the CSA had expired on 17 February 2007 or alternatively on 22 June 2007.

Additionally, the Supplemental Collective Sale Agreement (SCSA) executed on 10 March 2007 extending the validity of the CSA to 5 February 2008 was invalid as some of the original signatories to the CSA did not sign the SCSA. Subsidiary proprietors who did not sign the CSA also signed the SCSA; and

(iv) the valuation and the method of distribution of the proceeds of sale of Gillman Heights was not done in good faith.

8. There are 2 issues raised by the Respondents which involved interpretation of the Act and they will be dealt together. They are issues (i) and (ii) enumerated above.

Section 84A(1)(a) or section 84A(1)(b) - 90% or 80% requirement for collective sale

9. The Respondents raised the issue as to whether the Applicants can rely on section 84A(1)(b) of the Act which has a requirement of 80% of the total share value agreeing to sell. The Respondents' position is that the correct provision must be an application under section 84A(1)(a) of the Act which has a requirement of the subsidiary proprietors having no less than 90% of the total share value. In addition, some of the Respondents' submission went further and questioned whether Parliament ever intended that the Act should apply to ex-Housing and Urban Development Corporation ("HUDC") estates.

10. The Respondents submitted that it was only in the last amendment to the Act that ex-HUDC estates were for the first time being included under section 84A of the Act. Even if Parliament had not intended that the last amendment include ex-HUDC estates for the first time, it cannot be certain that the old section 84A applied to ex-HUDC estates. They argued that if Parliament had intended in 1999 that section 84A was to apply to ex-HUDC estates, it would have done so expressly. This lacuna was only filled in by Parliament in the last amendment to the Act when it enacted the new subsections 126A (6A) and (6B). The Respondents also pointed out that the Board should not second guess what Parliament had intended and further as the Board is a creature of statute, it has no jurisdiction or power to fill in any lacuna or second guess policy consideration.

11. The Respondents submitted that on a proper construction of the Act, the Applicants required a total of 90% of the total share value before an application can be made to the Board. In summary their objection is that in a sale of all the lots and common property not less than 90% of the share value is required where less than 10 years have passed since the date of the issuance of the latest TOP on completion of any building comprised in the strata title plan or if no TOP was issued, the date of the latest CSC for any building comprised in the strata title plan, whichever is the later. It was argued that the Board should look at all the TOP and CSC issued for any building comprised in the strata title plan in respect of the development and takes that last TOP or CSC to calculate the start date for eligibility for collective sale from that date.

12. When Gillman Heights was completed, and the owners moved in to occupy the premises in October 1984, the issuance of the CSC on 23 October 2002 and the TOP on 27 November 2002 were not in dispute. It was also not disputed that no TOP or CSC was issued when owners moved in to occupy their units in 1984/1985. The Respondents stressed in their submissions that when the CSC of 23 October 2002 was issued, it was for "4 blocks of 20-Storey Flats and 6 blocks of 4-Storey Maisonettes on Lot(s) 01478C MK01 at Gillman Heights" that was to say, the whole condominium. Since both the latest TOP and CSC for Gillman Heights were issued less

than 10 years at the time of the Application, the said Application falls within section 84A(1)(a) of the Act.

13. The Applicants' response to this issue can be summarised as follows. The key element for the required threshold support for collective sale is the age of the development i.e. whether it is more or less than 10 years since the completion of the development. Any reference to TOP or CSC in section 84A(1) of the Act is but formal means by which the age of an estate can be determined. They contended that "building comprised in the strata title plan" must refer to those buildings that carried strata lot or value since the scheme of the Act required subsidiary proprietors' vote based on strata values. The issuance of the TOP for the clubhouse and swimming pool was irrelevant for the purpose of section 84(A) of the Act as it did not relate to any building comprised in the strata title plan which pertained to the age of the development. In respect of the CSC issued on 23 October 2002, it was for works carried out as part of the privatisation process. The Applicants further submitted that it had been the legislative intent not to include the TOP or CSC of the buildings which are common property and this issue has been settled in the latest amendment to the Act. The Applicants whilst not relying on the last amendment which came into effect, nevertheless sought to rely on the Amendment Bill as evidence of the legislative intent which was to clarify that building did not include common property in a development.

14. The Applicants sought to rely on a letter issued by the Building and Construction Authority ("BCA") dated 23 April 2007 which was in reply to a letter by the Applicants' lawyers dated 23 April 2007.

15. In the letter to the BCA, the Applicants sought confirmation that "the date of completion of Gillman Heights by the Housing Development Board ("HDB") in 1984 can be taken as equivalent to the TOP issued by the BCA". The BCA confirmed that "the date of completion of the building can be taken an equivalent to the TOP issued by the BCA."

Failure to comply with the "8 weeks notices"

16. It was argued that there was a procedural defect which was incurable in that the Applicants failed to affix to a conspicuous part of each building comprised in the strata title plan once every 8 weeks, a notice as required under Part 1(b) of the Schedule of the Act. This notice in the 4 official languages shall specify the number of subsidiary proprietors or proprietor who, immediately before the date of the notice, had signed the CSA and the proportion (in percentage) of the total share value of all lots comprised in that strata title plan.

17. It was not in dispute that there are 10 blocks of flats in Gillman Heights and that the Applicants conceded that notices were not affixed on the buildings at 5 of the maisonette blocks namely blocks 1D, 1G, 1H, 1J and 1K. It was also not in dispute that the notices for these 5 blocks were affixed on the notice boards that were near the buildings. The Respondents further argued that since the notices were not affixed on all the buildings, the statutory declaration made by one of the Applicants that the notices were affixed on all the buildings was false.

18. Citing authorities of previous decisions of other boards in the *Mandalay Court* [STB 2 of 2000] (*"the Mandalay"*) and *Grenville Condominium* [STB 12 of 2000] (*"the Grenville"*), the Respondents argued that the mandatory nature of the Act required this Board to recognise the strict interpretation of the Act so as to protect the minority in the event of non-compliance with

the relevant provision of the Act. They also referred to the judgment of Justice Choo Han Teck in [2007] SGHC 174 *Siow Doreen and Others v Lo Pui Sang and others (Horizon Partners Pte Ltd, first interveners and Reghenzani Claude Augustus and others, second interveners)* (*"the Horizon Towers"*) case and argued that the powers of the Board to allow minor amendments are limited under the Act.

19. The Applicants whilst conceding that notices were not affixed on the 5 buildings nevertheless argued that they had complied with the substance and spirit of the procedural requirements. In the alternative, even if there was no full compliance, there was still substantial compliance. Lastly, even if there was non-compliance this was an irregularity which had no adverse consequence and should not invalidate the Application.

20. In respect of the 5 blocks in issue, the Applicants argued that, had the notices been affixed on any part of the building, there was even a greater likelihood that the notices would be missed and not brought to the attention of the owners of the blocks. They therefore argued that the affixing on a building must include a designated locked notice board. Although such notices were not physically affixed to the buildings, they were nevertheless designated as part of that particular building which they served.

21. Like the Respondents, the Applicants cited various authorities as to how the Board should deal with the issue of interpretation of the Act and non-compliance with procedural requirements including the recent decision of [2007] SGHC 190 *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* (*"the Phoenix Court"*) by Justice Andrew Ang.

Decision of the Board

22. At the onset, this Board will state the position that it should adopt regarding how it should deal with the interpretation of the Act. This Board need not look beyond the 2 recent cases that were decided in the High Court of Singapore namely the *Horizon Towers* and the *Phoenix Court*.

23. In the *Horizon Towers* and the *Phoenix Court* decisions, Choo J and Ang J respectively in very considered judgments spelled out the role of the Board in dealing with non-compliance of the Act.

90% or 80%

24. In the *Horizon Towers'* case, Choo J said that the purpose of an application under section 84A of the Act is to "ensure that all legal requirements necessary for an en-bloc sale are fulfilled." In his judgment he also said that "if the application was incomplete or contained errors or omissions of facts, the effect of those errors would be precisely the matter that the Board has to hear and determine. If an error or omission has caused prejudice to the minority, the Board may, in my opinion, in the exercise of its discretion dismiss the application. If it does not, the Board is, in my opinion, empowered to allow the amendment or correction so that the record is clear."

25. Choo J went on to say that "it is the duty of the Board to consider whether there was any error that was sufficiently material or substantive to affect its decision whether to grant or refuse the application."

26. It is clear from the judgment of Ang J in *Phoenix Court* that the modern approach in Singapore when it interprets the Act is to look at the "whole scheme and purpose of the Act and by weighing the importance of the particular requirement in the context of that purpose and by asking whether the legislature would have intended the consequence of a strict interpretation, having regard to the prejudice to private rights and the claims of the public interest (if any)." Ang J further elaborated that the "procedures were not built in as absolute obstacles to be surmounted on pain of the Board being precluded from exercising jurisdiction if any of the procedural requirements were not met, regardless of whether and to what extent the interests of the minority were affected." Like any case, each objection must be examined on its own fact and the particular requirement breached set against the "overall purpose of the legislation." The instances where the Board may strike down an application is limited to the provisions spelt out in section 84A(7) to (9) of the Act. The instances where the Board may disallow an application may be few, bearing in mind the overall objective and scheme of the legislation. However, it must follow common sense that the application must have as a start the requisite percentage before the Board can approve the sale.

27. Does the Application have the requisite percentage? It is clear to the Board, and parties do not disagree, that Gillman Heights was once a HUDC estate. Gillman Heights was exempted from the statutory requirements of the issuance of a TOP or CSC under section 5 of the Building Control Act 1973 and the regulations made thereunder before purchasers can move in.

28. The age of Gillman Heights must commence from the date that purchasers were allowed to move in and occupy their premises in 1984. Since moving in, owners of Gillman Heights are free to sell their units (subject to restrictions that may be imposed on some owners who purchased it under certain approved government schemes). Gillman Heights being a 99 year leasehold property had used up some of its lease period when it was privatised in 1996. It was in the process of the privatisation of Gillman Heights that certain works had to be carried out to comply with safety and fire requirements for which a CSC was issued. After the privatisation, the owners on their own accord chose to build a clubhouse and a swimming pool for which a TOP was issued.

29. The Board is of the view that the issuance of the TOP and the CSC did not affect the age of the estate. The CSC was issued on privatisation as the owners were now required to comply with the requirements such as fire safety. A TOP was specifically issued when the clubhouse and swimming pool were built. With or without the last amendment to the Act, the Board is of the view that the age of the development cannot be re-set back to year zero merely because parties had built a structure which required a TOP or a CSC to be issued. The "birth date" of the development cannot be rejuvenated merely because some structure is built which required a TOP or a CSC. Not every single shed or toilet built for the common good of all would restart the time line. Gillman Heights which was initially exempted from complying with the requirements of the Building Control Act or the regulations, the date in which owners were permitted to occupy the premises must be the start time from which the Board will calculate the years whether the estate falls within section 84A(1)(a) or (b). The Board must disregard the TOP for the construction of the clubhouse and swimming pool and CSC for the privatisation for the estate issued to Gillman Heights as being the time reference to calculate whether it was above or below 10 years.

30. The Board has to give effect to Parliament's intention and that is to redevelop estates above 10 years old if they have 80% support and if they are below 10 years old, 90% support. At the second reading of the Land Titles (Strata) (Amendment) Bill on 31 July 1998 (Parliament No. 9, Session 1, Vol. 69, Col 602 [TAB 4]), Associate Professor Ho said:-

> "Let me now highlight the key features of the proposed scheme.
> Firstly, Government will not decide which developments are ready or ripe for en-bloc redevelopment. The owners will decide that for themselves. There are too many factors at play, such as the age and state of repairs of the development, market conditions, sentiments of the owners and the relationship amongst them. As announced previously, what the Bill will do is peg the required majority consent to the development's age – the majority owners must account for at least 90% of the share values for developments less than 10 years old, and 80% for developments 10 years or more. This approach will facilitate the redevelopment of older buildings ..."

31. In arriving at this decision, the Board disregarded the letter issued by the BCA to the Applicants' solicitors confirming the BCA's view that they considered the date of completion of the building as equivalent to the TOP. It is for the Board to make this decision and it cannot accept the BCA's decision without itself looking into the issue. Likewise, the Board also did not rely on the Explanatory Statements to the latest amendment of the Act for the purpose of interpreting an earlier Act.

32. The Board will also deal with the argument made during the closing submission that it can be inferred that Parliament never intended the Act to apply to ex-HUDC estates and that this lacuna was only resolved when Parliament passed the new section 84A(1)(a) or (b) to apply to ex-HUDC estates. We dismiss this objection as totally invalid. Section 84A applies to all developments so long as they are registered under the Act and there is no exclusion, express or implied.

Affixing of the 8 weeks notices

33. In coming to a decision, the Board is again mindful and guided by the decisions in *Horizon Towers* and *Phoenix Court* cases. The sole issue before this Board is whether the failure to affix the 8 weeks notices on the physical buildings of the 5 maisonette blocks, were irregularities that warranted the Application being dismissed.

34. If a strict literal interpretation is adopted as suggested by the Respondents, it must follow that the Application must fail. The notices were not affixed on "the building" and the issue whether it was a conspicuous part of the building did not arise. The Applicants in the course of the hearing attempted to justify that one of the reasons for not affixing on the building was because there was no notice board affixed to the 5 blocks and that the MCST had refused permission for them to affix on the building. The other blocks that were not in issue had notice boards affixed onto the blocks.

35. In our opinion, there was a failure to comply with the strict wordings of the Act. However, we find as a fact that this provision was quite incapable of extreme strict compliance. The Board visited the site and examined the buildings in question. We have described the configuration of the blocks in paragraph 5 of our decision. It was clear to us and we find that it was not possible to have a conspicuous place to bring the notices to the attention of all the

owners residing in these blocks as each staircase serves 4 units. Affixing on any one of the staircases would only mean that the notices would be conspicuous and brought to the attention of the 4 owners using that staircase. To affix the notice on any part of the block other than the staircase would probably result in all the owners not even knowing that such a notice was affixed. The 5 blocks are elongated with no focal point that could be considered conspicuous for everyone.

36. We find that the Applicants had complied with the spirit of the Act by affixing the notices on the notice boards which is the usual place for all residents to read notices, if they choose to do so.

37. We heard evidence by some Respondents that they do not read such notices as they only usually drive past the notice boards. It must also follow that they would not have read the notice if they had not walked to a particular part of the building even if the notice had been affixed.

38. Other than the vehement protests that there was no strict compliance, no evidence was adduced that anyone had suffered as a result of the non-compliance.

39. The Board is of the opinion that it has to interpret the Act in a purposive manner and that is the notice ought to be affixed in a manner that would bring it to the attention of the subsidiary proprietors. Where a suitable place on the physical building is not available or is not conspicuous for all, then so long as the Applicants had affixed the notice which substantially complied with the Act and there was no detriment suffered, the Board will disregard the non-compliance. Parliament cannot possibly legislate provisions in the Act to cater for every configuration of buildings that had been built and may be built so that the 8 weeks notices can be complied with to the letter.

40. The Board view this ground of objection as one which is clearly without merit and accordingly dismiss this objection.

The validity of the Collective Sale Agreement

41. The Respondents challenged that the Application must fail because there was not a valid CSA.

42. The chronology of the main events concerning the CSA and the SCSA was summarised by the Applicants as follow:

(i)	18 February 2006	-	First signature of the CSA
(ii)	23 June 2006	-	Date of the CSA (82.43% achieved)
(iii)	5 February 2007	-	Date of Sale and Purchase Agreement ("SPA") signed
(iii)	10 March 2007	-	Date of SCSA signed. (86.71% signed)
(iv)	3 May 2007	-	Application to the Board for approval of the sale

43. The CSA which was dated 23 June 2006 and the SCSA dated 10 March 2007 substituted Clause 11(c) by extending the Strata Titles Board's ("STB") approval under Clause 10 to 5 February 2008. Clause 11 reads:

11. PERIOD OF VALIDITY OF THIS AGREEMENT

As from the Date of this Agreement, all terms, covenants, conditions, representations and undertakings herein shall remain in full force and effect and be binding on the Vendors and this Agreement shall be determined only on occurrence of any of the following events:-

(a) The conclusion and the performance of all obligations by all parties in this Agreement and the Contract for Sale.

(b) The permitted time referred to in Clause 1A of the Act (Amendment of Fourth Schedule) Order 2004 in relation to this CSA has lapsed.

(c) The STB's Approval under Clause 10 shall not be issued within twelve (12) months from the Date of this Agreement.

(d) No binding agreement for sale and purchase (whether conditional or otherwise) is made between all the Vendors and any purchaser for the sale and purchase of the Strata Units within twelve (12) months from the Date of this Agreement.

(e) The Contract for Sale is rescinded by either the Vendors or the Purchaser and either:

(i) remedies of both the Vendors and the Purchaser as against each other have been resolved fully and finally; or

(ii) all rights and remedies of both the Vendors and the Purchaser as against each other are exhausted or no avenue for appeal to any court having jurisdiction remain.

44. Paragraph 1 (a) of the Act (Amendment of Fourth Schedule) Order 2004 reads:

"1. Before making an application to a Board, the subsidiary properties referred to in section 84A(1) or the proprietors of flats referred to in section 84D(2) or 84E(3), as the case may be, shall –

a. execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell –

(i) in the case of an application under section 84A, all the lots and common property in a strata title plan; or

(ii) in the case of an application under section 84D or 84E, all the flats and the land in a development to which section 84D or 84E, as the case may be, applies;"

45. The Respondents' case was that the CSA expired on the 17 February 2007 upon the expiry of the one year after the date of the 1st signature of the CSA on 18 February 2006 or in the alternative on 22 June 2007 (1st anniversary of achieving 80% or more of the subsidiary proprietors' consent). They contended that the SCSA was ineffective in extending the dateline of 5 February 2008. Further the SCSA cannot operate as an agreement for variation of the CSA because not all the original signatories of the CSA signed the SCSA and there were signatories to the SCSA who did not sign the CSA.

46. The Applicants' responded to these challenges in the following manner. Firstly, the Respondents were not parties to the CSA and had no locus standi to enforce the terms of the CSA which specifically excluded the rights of third parties under Clause 17.2 of the CSA. They drew a distinction between the contractual rights under the CSA and the statutory rights to object only in respect of the statutory rights under the Act.

47. Secondly the Applicants contended that "permitted time" referred to in Clause 1A of the Act (Amendment of Fourth Schedule) Order 2004 must be read in conjunction with Clause 1. In summary they argued that the permitted time must be read in the context of the purpose of the execution of a collective sale for an application when the requisite level of support needed for a collective sale had been achieved.

48. Thirdly the Applicants submitted that the extension by way of the SCSA was valid in that Clause 1.8 of the CSA allowed the "amendment, supplement or modification" of the CSA. Further Clause 13 of the CSA allowed "any resolution decision or matter herein, shall be effective only if approved by Vendors holding not less than eighty percent (80%) of the Share Value". Hence by virtue of Clause 13, Vendors representing 84.24% had effectively approved the extension by agreeing to substitute Clause 11(c) of the CSA which extended the time for obtaining the Board's approval to 5 February 2008. The Applicants went further and argued that the 19 owners who did not sign the SCSA had already given the mandate to sign the SPA as well as to file the Application with the STB.

Decision of the Board

49. If there is no valid CSA, there is no basis for any application before the Board. The Respondents thrust is that as the CSA must be interpreted strictly and that on strict construction the CSA must expire either on 18 February 2007 or 22 June 2007.

50. The Board does not agree with the Respondents' interpretation of Clause 11(b) of the CSA which refers to Clause 1A of the Act (Amendment of Fourth Schedule) Order 2004. The Schedule's scheme of arrangement was that the relevant majority owners referred in section 84A(1), 84D(2) or 84E(3) must be achieved not later than 12 months from the first execution of the CSA by a flat owner. Thereafter the relevant majority must find a purchaser and obtain the STB's approval within 12 months of successfully getting the CSA executed by the minimum required number of owners to make up the relevant majority. In our view, time had not lapsed. In any event, there was a specific agreement to extend the specific time frame to obtain the Board's approval under Clause 11(c) of the CSA.

51. It is the Board's view that the CSA and the SCSA were contractual agreements that must be viewed from a contractual viewpoint. These were not statutory instruments. Such agreements may be amended or varied under Common Law and specifically by agreement.

52. Was the CSA determined by operation of Clause 11(c)? In Clause 11(c) of the CSA, the STB's approval shall be obtained within 12 months from the date of the CSA dated 23 June 2006, the expiry date for such approval was 22 June 2007. On 5 February 2007, the subsidiary proprietors entered into a SPA with Ankerite Pte Ltd. Under Clause 6.2.1 of the SPA, "the Vendors shall apply to the STB for an order approving the sale. The said Order shall be obtained on or before 12 months from the date of this agreement, which is 5 February 2008". To comply with the provisions of the SPA, the SCSA was signed on 10 March 2007 whereby Clause 11(c) of the CSA was deleted and substituted with the following "the STB's Approval under Clause 10 shall not be issued by 5 February 2008." The Board is of the opinion that the Applicants are entitled to amend the CSA to extend the date for seeking the Board's approval.

53. The connected issue is whether all the original signatories must sign on the SCSA for it to be valid. The answer to this question must surely be inferred from the CSA. We accept the Applicants' argument on the issue of rights of third party i.e. the Respondents were not entitled to enforce the terms of the CSA when they were not parties to the CSA. Even if this is not so, it must follow that the Clause 1.9 of the CSA permitted Registered Proprietors who had not signed the CSA to sign the CSA or a supplemental agreement on or after the Date of the CSA. The Clause went so far as to state that Vendors (those who had executed the CSA and any SCSA) shall not be required to execute the SCSA. Clause 1.9 is reproduced.

Clause 1.9 of the CSA

> "1.9 Nothing herein contained shall prevent the Registered Proprietors who have not executed this Agreement from executing this Agreement or executing a supplemental agreement (in the form set out in Schedule 6 or in such other form as the Marketing Consultants and the Solicitors shall advise) ("Supplemental Agreement") agreeing to or joining in or consenting to the Collective Sale on or after the Date of this Agreement. The Vendors shall not be required to execute the Supplemental Agreement."

54. Whatever the permutation, there was no evidence that the requisite majority was not obtained when the CSA and SCSA were signed. We do not agree with the submission that there was no mechanism or power in the CSA which allowed for any variation other than its original signatories. The CSA and the SCSA are not 2 separate agreements but one.

Lack of good faith – Valuation

55. The Respondents submitted that the sale price was well below the market value as at 5 February 2007. Both the Applicants and the Respondents solicitors examined extensively all the 4 valuation reports that were submitted to the Board.

56. The Applicants relied on two valuation reports prepared by Tay Gek Hoon ("Tay"), a Licenced Appraiser from Lock Property Consultant dated 16 March 2007 and Tan Keng Chiam ("Tan") from Jones Lang LaSalle dated September 2007. Both used February 2007 as the reference date for valuation, where Tay valued Gillman Heights at $530 million and Tan's valuation was $545 million.

57. The Respondent relied on 2 valuation reports prepared by Yick Keng Hang ("Yick") who was previously the chief valuer for Overseas Union Bank ("OUB"). Yick prepared a valuation report on Gillman Heights on 18 May 2007 and valued the property at $580 as at 5 February 2007. In his second report undated in September 2007 he revised the valuation of Gillman Heights at 5 February 2007 to $660 million dollars.

58. The Board had the benefit of having seen and heard all 3 witnesses who were subjected to rigorous cross-examinations by opposing counsel. We examined the basis and the methodology adopted in arriving at the valuations. We heard arguments on methods of valuation both direct and residual. We also heard opposing evidence as to the estate that Gillman Heights should be compared with as a basis of valuation. Opposing evidence was also adduced as to whether Gillman Heights is better located compared with other HUDC estates such as Pine Grove and Farrer Court and private estates such as Leedon Heights and the Metropolitan. Both parties also raised the issue of whether the rising property prices in 2007 were anticipated. Every conceivable reason as to why Gillman Heights should command a higher value as expounded by Yick was raised just as every reason why the valuation by the Applicants was correct was also brought up.

59. The Board recognises that valuation of property is not an exact science. Certain fundamental principles are used, and factors such as the tenure of the land, the location, the prospect for redevelopments are considered.

Decision of the Board

60. Having heard all the witnesses we conclude that the valuation of Gillman Heights is more likely to be in the region stated by Tay, Tan and the first report of Yick. All 3 reports are valid in their own right. This was despite inconsistencies in all the evidence of the 3 witnesses. However the Board finds that Yick's evidence is more unreliable especially his 2nd valuation report. We do not find him an unblemished witness as argued by some of the Respondents.

61. Yick had shown himself to be given to hyperbole. In his evidence he claimed that he could predict property prices without difficulty. Yet there was such a vast difference in the 2 valuation reports that he prepared. His explanation as to why there was such a big difference defies belief. He explained that he had little time to prepare the 1st valuation as it was done on an urgent basis and that with the benefit of more time being given to him he could properly assess the estate and thereby revising the valuation from $580 million to $660 million, a substantial difference of $80 million.

62. The Board having seen and heard him does not believe his explanation. A review of his evidence would show that he was shifty and self-serving whenever it suited him. His contradictions were so material and we cannot accept his evidence on his second report. We also find that the valuation of Gillman Heights was more likely to be in the range given in the 3 valuation reports (including Yick's 1st valuation report) and there is no evidence before us to conclude that the valuation adopted by the Applicants was not in good faith.

63. The sale price was $20 million above the reserve price and within the range of the three valuations presented to the Board. The Board cannot find that this was not done in good faith.

Method of Distribution

64. The method of distribution adopted was based on 50% strata area and 50% share value. The Respondents were aggrieved that based on this method of distribution, the owners of maisonette units were disadvantaged as it favoured the owners of apartments because the maisonette owners had paid a high price based on area per square foot and yet will receive a lower price based on area at the collective sale. It was also brought to the Board's attention that the NUS which owned 49.84% of all units in Gillman Heights would be the main beneficiary of this method of distribution as they owned the apartments.

Decision of the Board

65. The Board is not satisfied that the method of distribution was not in good faith. We find that this method was an acceptable method of distribution which took into consideration 2 common factors – strata area and share value. This is not an unreasonable method of distribution.

66. The Board is very mindful that the NUS was the majority owner and carefully examined whether NUS had been favoured in any way. No evidence was adduced to the Board that the NUS was favoured or the method of distribution was chosen so that NUS as the majority owner would be induced to vote in favour of the sale. In fact, NUS did not take part in any of the proceedings other than agreeing to abide by the decision of the majority of the other owners of Gillman Heights whether to sell or not to sell. The Applicants had acted properly in dealing with the NUS and the NUS had acted properly when they agreed to abide by the majority decision and not playing any part in the collective sale process. No favour was sought by NUS and no favour was given to NUS. This objection is without merit and must be dismissed.

Financial loss

67. The Board will deal with the complaint of financial loss by the 21st Respondent and others.

68. The 21st Respondent's late wife purchased the unit under a Civil Service Scheme in 1985.When she resigned in 1992, she was required to pay a penalty of $15,091. This amount was paid in 1997.

Decision of the Board

69. This amount should not be considered as a deductible for the purpose of computing financial loss. The payment of the penalty is a contractual issue between his late wife and the Civil Service. There were other Respondents who alleged financial loss in that they had incurred renovation costs. The Board does not find any evidence of financial loss and hence dismiss such objections.

70. The permissible objections are clearly spelt out in the Act and the Board cannot take into account emotional reasons and the replacement costs into consideration. The Board therefore dismissed all such objections.

Conclusion

The Board is satisfied that the Application complied with the Act and accordingly approved the collective sale of Gillman Heights. The Board will hear the issue of costs.

Dated this 21st day of December 2007

MR ALFONSO ANG
Deputy President
Strata Titles Boards

MR CHUA KOON HOE
Member
Strata Titles Boards

MR LEE COO
Member
Strata Titles Boards

MR MICHAEL NG
Member
Strata Titles Boards

MR TAN EE PING
Member
Strata Titles Boards