

**LAND TITLES (STRATA) ACT
(CHAPTER 158)**

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

STB NO 6 OF 2007

In the matter of an application under section 84A of the Land Titles (Strata) Act in respect of the development known as Phoenix Court (Strata Title Plan No. 287) comprised in Land Lot No 559X Town Subdivision 21

Between

- 1 SAMUEL BERNARD SASSOON**
(NRIC No S [REDACTED])
- 2 CHONG KOK BOON**
(NRIC No S [REDACTED])
- 3 CHONG YAN CHIN**
(NRIC No S [REDACTED])

(representing the Majority Owners of Phoenix Court)

... Applicants

And

- 1 NG SWEE LANG**
(NRIC No S [REDACTED])
- 2 YIP HOI THONG**
(NRIC No S [REDACTED])

... Respondents

Coram: MR ALFONSO ANG
Deputy President

Panel Members: DR LIM LAN YUAN
MR KONG MUN KWONG
MR CHNG BENG GUAN
MS LEE LAY SEE

Counsel: MR CHRISTOPHER YONG SHU WEI
(M/s Legal 21 LLC for the Applicants)

MR LOW CHAI CHONG
MR MELVIN SEE
MS JOANNA YEO
(M/s Rodyk & Davidson for the Respondents)

GROUND'S OF DECISION

FACTS

1. The subject is a 13-storey residential development known as the Phoenix Court located at 70 St Thomas Walk on a freehold site. It comprises 44 apartments with three sizes of 164m², 169m² and 173m², and 3 penthouses on 13th storey with sizes of 169m², 173m² and 336m² (merged from two units #XXX and #XXX). All apartment units and penthouses have a share value of 1 each. A majority of 47 units (consisting of 97.92%) signed the Sale & Purchase Agreement. The only objector, the Respondents, own #XXX which has a floor area of 169m² and a share value of 1.
2. A public tender was conducted in mid-2006 for the sale of the development. No bid was offered. Thereafter, a sale and purchase agreement ("S&P Agreement") was entered into with Bukit Panjang Plaza Pte Ltd ("the Purchaser") on 27 October 2006 at a sale price of \$88.1 million.
3. The Respondents objected to the enbloc sale on the following grounds:
 - (a) no valid collective sale agreement ("CSA") between the subsidiary proprietors comprising no less than 80% of the share values of the development.
 - (b) no valid S&P Agreement with the Purchaser.
 - (c) the Applicants were not appointed by the subsidiary proprietors as their authorised representatives in connection with the application before the Board and one of the Applicants (Samuel Bernard Sassoon) is not a validly appointed sale committee member.
 - (d) the transaction is not in good faith having regard to the sale price, the method of distribution and that the valuation report obtained by the Applicants is defective.
4. Pending the hearing of the Respondents' application before the Board, the Respondents had in the meanwhile, changed three (3) sets of lawyers (not counting the late Mr Tan Chin Hoe who had sadly passed away), and had also on 20 April 2007, entered into a contract to sell his unit to one Vivi Novianti Pontororing, without informing their buyer that the unit is a subject of collective sale and who according to the Respondent (Yip Hoi Thong) had not viewed the unit at all.

5. The Respondents had also objected to the hearing by the Board on the basis that the Board had no jurisdiction to hear the Application, in particular on the issue of the validity of the CSA and the S&P Agreement. The Board had rejected the Respondents' objection. The Respondents then applied to the High Court for an injunction to restrain the hearing by the Board. The application to the High Court was dismissed.
6. Samuel Bernard Sassoon, Chong Kok Boon, and valuer Daniel Ee testified for the Applicants, and Yip Hoi Thong testified for the Respondents.

ISSUES

7. On the issue of no valid CSA

- (a) Counsel for Respondents argued that the CSA has terminated by virtue of Clause 13 of CSA and that Clause 13 of CSA must be given its literal meaning.
- (b) The Board does not agree with this as a literal meaning would lead to absurdity. In the light of there being a sale contract, it must be the intention of the parties that the CSA is not to terminate while a sale contract is subsisting.

8. On the issue of no valid S&P Agreement

- (a) Counsel for Respondents argued that the S&P Agreement has terminated as at 27 April 2007 by virtue of Clause 3 of the S&P Agreement (ie, that the STB Order is not obtained within six (6) months after the date of the S&P Agreement) and that the Sale Committee has no authority to extend the date.
- (b) Counsel for Respondents argued that the Sale Committee has no express power under the CSA to extend time for the S&P Agreement and enter into the Supplemental Agreement dated 25 April 2007.
- (c) Counsel for Respondents further argued that in any event, the CSA had terminated by the time the extension was given. Therefore, the Sale committee no longer had the authority to enter into the Supplemental Agreement.
- (d) The Board does not agree. The Board notes that Clause 2.5 of the CSA, in particular Clause 2.5.5, gives full authority and discretion to the Sale

Committee to deal with all matters relating to negotiating, approving and amending the terms of the S&P Agreement. In view that the CSA is found to be valid (see paragraph 7 above) and in the light of the express powers given to the Sale Committee, the Board is of the view that the Sale Committee is empowered to enter into the Supplemental Agreement dated 25 April 2007.

- (e) The important point to consider is whether the action of the Sale Committee as been taken in good faith. It is vital to note that Samuel Bernard Sassoon ("Sassoon") in his testimony, mentioned that when considering whether to extend, the Sale Committee has sought legal advice, and also called a meeting to ascertain the views of the majority. As he has testified, "if 80% of the share values instructed the Sale Committee to extend, the Sale Committee would do so. If 80% of the share values instructed the Sale Committee not to extend, the Sale Committee would not do so. If 80% could not be obtained, as long as there was a majority who attended who voted in favour, the Sale Committee would exercise its discretion to extend." At that meeting, 21 of the 30 owners voted for the extension. The Board is of the view that the Sale Committee has been given powers and discretion under the CSA to negotiate with the Purchaser and to do the necessary to conclude the sale, including the need to extend the time. The Board is also of the view that the Sale Committee had acted in good faith when making the decision.

9. **On the issue that Applicants were not the authorised representatives and one of the Applicants is not a validly appointed sale committee member**

- (a) Counsel for Respondents argued that Sassoon and Chong Kok Boon ("Chong") were not the appointed representatives under the CSA. It is noted that the CSA provides for change in the members of the Sale Committee. Sassoon testified that he and Chong had been duly authorised at a general meeting on 10 December 2006 and that this had also been discussed at a Sale Committee meeting on 26 September 2006. Counsel for Respondents argued that the appointment was not authorised by the majority owners as only 15 subsidiary proprietors attended the meeting. Be that as it may, Section 84A(2) states that the subsidiary proprietors shall appoint not more than 3 persons from among themselves to act jointly as their authorised representatives. Even if Sassoon and Chong did not qualify (which the Board does not concur) a third member of the Sale Committee, Chong Yan Chin (one of the Applicants), has been a member

of the Sale Committee throughout the entire enbloc sale process as well as one of the original named representatives.

10. **On the issue of the transaction not in good faith having regard to the sale price, the method of distribution and that the valuation report obtained by the Applicants is defective**

- (a) Counsel for Respondents argued that the sale price was not the best possible price and the method of distribution of the sale proceeds was not fair.
- (b) The Board has only the valuation report of Daniel Ee from Savills (Singapore) Pte Ltd to rely on. The Respondents have not tendered any alternative valuation report to contradict the evidence presented by Daniel Ee.
- (c) Counsel for Respondents argued that the valuation report was defective for two reasons:
 - (i) First, the date of the valuation was 6 December 2006 whereas the value of the subject development site should be determined as at 27 October 2006, the date of the S & P Agreement.
 - (ii) Second, when using the Direct Market Comparison method, sale evidence after the date of the valuation should not be taken into account. Daniel Ee has used three comparables including the Eng Tai mansion site, which was transacted in November 2006 (after the material date of 27 October 2006).
- (d) On the First point, the regulations require that a valuation report is to be submitted and shall not be more than 3 months old of the application. Hence, the valuation carried out on 6 December 2006 is not erroneous. When asked for his view, Daniel Ee testified that in his professional opinion there was no substantial difference in value between the two dates of 27 October 2006 and 6 December 2006. Respondents have not tendered any alternative valuation evidence to contradict this.
- (e) On the Second point, the valuer has carried out his valuation on 6 December 2006. Hence the use of the sale of Eng Tai mansion site (transacted in November 2006) was not inappropriate. Counsel for Respondents was wrong to conclude that professional valuers do not use comparable sales after the material date in their valuations. In fact, in a

rising market, sales which are available close to the material date of valuation either before or after the date, can in fact provide an invaluable guide to the market trend and assist valuers in their value determination. In any case, Daniel Ee has used two other sales in addition to the Eng Tai mansion sale in his valuation. Counsel for Respondents has not tendered any evidence to show Daniel Ee's valuation of \$87.5 million was not fair and reasonable.

- (f) On the method of distribution of sale proceeds, Counsel for Respondents argued that Applicants have relied on the report by Bernard Valuers who has recommended that "the 13th storey units be apportioned an additional entitlement for the accessory lots based on the difference in the market values between a typical unit and a 13th storey unit." The method of distribution used for the enbloc sale was based on 50% share value and 50% floor area and has not provided for an additional value to the accessory lots of the 13th floor unit owners. Counsel for Respondents therefore argued that the method is not fair and reasonable. This view is, in fact, contrary to the testimony of Respondent Yip Hoi Thong who said that he would not agree to the 13th floors owners receiving more. It is pertinent to note that the Respondents live on the 7th floor and the 13th floor owners have not lodged any objection to the sale. The Board is of the view that the proposed method using share value and floor area is not an unreasonable method.

BOARD'S ORDER

- 11. On the basis of the facts available to the Board, 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 the lots and the common property in the Strata Title Plan No. 287;
 - (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 party to any arrangement for the

development of the lots and the common property in the Strata Title Plan No. 287.

12. The Board hereby, under Section 84A(7), approves the application and orders:
 - (a) that all the strata units in the Development be sold collectively to Bukit Panjang Plaza Pte Ltd (the Purchaser) under the terms and conditions as agreed in the Sale and Purchase Agreement dated 27 October 2006 and the Supplemental Agreement dated 25 April 2007;
 - (b) that all subsidiary proprietors including the Minority Owners, namely, the Respondents and subsidiary proprietors of the unit known as #XXX , be bound by all the terms in the Collective Sale Agreement dated 16 April 2006 and in the said Sale and Purchase Agreement and the Supplemental Agreement, as if they are a party thereto;
 - (c) that all the costs and disbursements in connection with and incidental to his application be borne by all subsidiary proprietors (including the said Minority Owners) equally on a full indemnity basis and that such costs be deducted from their respective shares of the sale proceeds;
 - (d) 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 purposes of effecting or perfecting the collective sale; and
 - (e) with liberty to apply.
13. In view that the Board finds the Respondents' conduct and actions in requesting for several adjournments arising from the change of lawyers and the sale of their unit on 20 April 2007 (about six (6) months after the S&P Agreement has been entered into) pending the hearing of their application before the Board, not beyond reproach. Furthermore, by their own act, the Board does not see any prejudice suffered by the Respondents and even if the sale to their buyer is frustrated by the collective sale order (as so argued by the

Respondents' Counsel) the Respondents have only themselves to blame. In any event, just as the Respondents are entitled to have their application before the Board heard (they being the legal owners), they would therefore be entitled to transfer their unit to the buyer. The Board has also taken note of Counsel for Applicants less than vigorous conduct of the proceedings and therefore in determining the cost against the Respondents, has awarded the Applicants less than the requested indemnity cost and disbursements.

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

Dated this 8th day of August 2007

MR ALFONSO ANG
Deputy President
Strata Titles Boards

DR LIM LAN YUAN
Member
Strata Titles Boards

MR KONG MUN KWONG
Member
Strata Titles Boards

MR CHNG BENG GUAN
Member
Strata Titles Boards

MS LEE LAY SEE
Member
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