LAND TITLES (STRATA) ACT

(CHAPTER 158)

BUILDING MAINTENANCE AND STRATA MANAGEMENT

(STRATA TITLES BOARDS) REGULATIONS 2005

STB No. 65 of 2007

In the matter of an application under Section 84A of the Land Titles (Strata) Act in respect of the development known as AIRVIEW TOWERS (Strata Title Plan No. 1844) comprised in the Land Lot No. 444C of Town Subdivision 21

Between

Tan Siew Tian, Colin Yeo Teck Lee and Ong Wen Hui
... Applicants

And

Lee Khek Ern Ken ... Respondent

Grounds of Decision

1. This was an application under Section 84A (1) b) of the Land Titles (Strata) Act Cap. 158) ("the LTSA") prior to its amendment by the Legislature on 4 October 2007. The relevant portion reads as follows:-

> "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) .....
>
> (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....."

2. The application was for the Board to approve the sale of the development known shortly as Airview Towers to a company named Bukit Sembawang View Pte. Ltd at the price of $202,168,000.00 and on the other terms and conditions of an agreement dated 30 March 2007.

3. The Board exercised its power under Section 84A (5) (a) of the LTSA to mediate between the applicants and the Respondent but the parties could not reconcile their differences and the application was fixed for a full hearing.

4. The Board comprised Messrs Gan Hiang Chye (presiding), Chua Koon Hoe, Kong Mun Kwong, Tan Ee Ping and Teo Pin.The persons who made the application ("theApplicants") were represented by Messrs Michael Chia, Justin Wee and Sankar. The Respondent appeared in person.

5. On 31 October 2007, at the end of the hearing and after hearing submissions by Counsel Mr. Michael Chia, the Board dismissed the application for the reasons which are set out hereinafter.

6. Persons who apply under Section 84A (1) (b) must satisfy two mandatory conditions before they can qualify to do so:

First, as provided by Section 84A(1)(b) itself, they must be subsidiary proprietors of the lots with not less than 80% of the share values who have agreed in writing to sell; and

Secondly, they must prove that they have satisfied the provisions of the Schedule (as it was then prior to its amendment by the Legislature on 4 October 2007) to the LTSA, specifically Paragraph 1 (a) (i) which reads:

"1. Before making an application to a Board, the subsidiary proprietors referred to in section 84A (1) ... 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 or 84FA, all the lots and common property in a strata title plan; ..."

7. The prescribed "permitted time" is 12 months from the date that the requisite collective sale agreement is first signed by a subsidiary proprietor.

8. Several objections were raised by the Respondent, but the Board found that it was sufficient to dismiss the application on the ground that the Applicants had not fulfilled these requirements under Section 84A (1) (b) read with Paragraph 1 (a) (i), in that the subsidiary proprietors of Airview Towers who could rightfully be counted as qualifying to make this application did not reach the requisite 80%.

9. Airview Towers comprises 100 lots with an aggregate of 404 share values.

10. The collective sale agreement in this case ("the CSA") was presented to the subsidiary proprietors of Airview Towers ("SPs") on 1 April 2006 and on that day some SPs signed the CSA.

11. Clause 8.1.2 (i) of the CSA effectively provided that the CSA would expire 12 months from the date that the first of the SPs signed the CSA unless the SPs of the lots with not less than 80% of the share values ("the 80% Majority") had signed the CSA. This was in line with the mandatory prescribed time in Paragraph 1 (a) (i).Thus, if the 80% was not achieved as at the commencement of 1 April 2007, the CSA would have expired. All parties agreed that 1 April 2007 was the expiry date.

12. The above mentioned sale agreement with Bukit Sembawang View Pte. Ltd was signed on the same day that the sale committee was satisfied that the 80% Majority had signed the CSA, which was 30 March 2007.

13. This application was filed on 13 June 2007 on the basis that it was made by the SPs of the lots with 84.9% of the aggregate share values for the whole of Airview Towers. This figure of 84.9% (made up of a total of 343 lots) included the share values of the lots of SPs who had signed the CSA after 1 April 2007.

14. The Respondent raised the question whether as at 1 April 2007 the number of the SPs who had signed the CSA had or not reached the 80%. In view of Paragraph 1 (a) (i) of the Schedule to the LTSA, it was important to determine this issue at the threshold.

15. The Applicants' case was that as at 30 March 2007 (in fact up to 1 April 2007) 80.96% had signed the CSA. However, on the Applicants' own case, this figure of 80.96% included 2 lots known as Unit 12-10 and Unit 04-06 and doubt was cast by the Respondent on whether these 2 Units were rightly included in the count.

16. On 1 April 2006 when signing of the CSA first commenced, the SPs who owned Unit 12-10 were Tan Soon Lai and Wee Shirley ("the Tans") who signed the CSA on that day. However, despite having signed the CSA, on 24 July 2006 the Tans contracted to sell the Unit to a company named Stream Peak International Pte Ltd ("Stream Peak"). The sale was completed on 2 October 2006 and Stream Peak replaced the Tans in the land register as the SPs of the Unit. Up to 1 April 2007 Stream Peak did not sign the CSA or sign any memorandum in writing at all to show their agreement to sign the CSA.

17. Thus, on the one hand the Tans' signature of the CSA had become invalid for the purposes of determining the percentage of the lots whose owners had signed the CSA as the Tans no longer were SPs and no longer had any proprietary rights over or interests in the Unit and on the other hand Stream Peak who had taken over such

proprietary rights and interests had not signed the CSA or signed any memorandum in writing at all to show their agreement to be joined as a party to the CSA.

18. Similarly on 1 April 2006, the SPs who owned Unit 04-06 were Nio Toh Nee and Lam Yee Ling ("the Nios") who signed the CSA on 1 and 4 April 2006 respectively. However, despite having signed the CSA, on 29 September 2006 the Nios contracted to sell the Unit to Nirrav Sharma and Sharma Savita ("the Sharmas"). The sale was completed on 27 December 2006 and the Sharmas replaced the Nios in the land register as the SPs of the Unit. Up to 1 April 2007 the Sharmas did not sign the CSA or sign any memorandum in writing at all to show their agreement to be joined as a party to the CSA.

19. The expression "subsidiary proprietors" in Section 84A (1) is defined in Section 3 of the LTSA as follows:-

> 'subsidiary proprietor' means –
>
> (a) the registered subsidiary proprietor for the time being of the entire estate in a lot...'

20. The word "registered" means registered in the land register kept under the Land Titles Act (Cap. 157). Well before 1 April 2007 Stream Peak and the Sharmas had become registered - and conversely the Tans and the Nios had become de-registered - as the subsidiary proprietors of the Units in question. In the Board's view, in each of these cases it was wrong to continue to include these two Units in the counting of signatures garnered for the CSA once this change-over had taken place.

21. Of course, this is not to say that the definition in Section 3 must without exception be construed inflexibly to require actual "registration". Applying the purposive approach which is mandatory under the Interpretation Act for the construction of all Singapore statutes , if, for example, a sale has been completed by the action of the vendor in executing and delivering the transfer and the certificate of title to the purchaser and the transfer has been lodged by the purchaser at the Singapore Land Authority for registration, there would be no useful reason in refusing

to categorise the purchaser as a subsidiary proprietor for the purposes of Section 84A (1) just because it may be a few days more before the Singapore Land Authority can complete the formalities of registration and enter the purchaser's name into the land-register. But the purchaser must already have signed the applicable collective sale agreement or at least a memorandum stating unequivocally his agreement to be bound by the collective sale agreement if the wish is for the purchaser to be considered as a Section 84A(1) subsidiary proprietor before his name is actually endorsed in the land register as the subsidiary proprietor.

22. To get around the problem that the only party who had the right to have their signature counted for Unit 12-10 was Stream Peak who indisputably had not signed, the Applicants filed an affidavit by Stream Peak on 2 October 2007 stating that when they entered into their purchase agreement with the Tans, they (Stream Peak) knew that their vendor had signed the CSA and it was always their intention to take their vendor's place as a party to the CSA. Stream Peak also executed under seal a power of attorney on 18 October 2007 appointing the Tans as their attorneys in respect of the signing of the CSA and purported to ratify the Tans' signing on 1 April 2006.

23. Similarly the Applicants filed an affidavit by the Sharmas on 18 June 2007 stating that when they entered into their purchase agreement with the Nios, they (the Sharmas) knew that their vendor had signed the CSA and it was always their intention to take their vendor's place as a party to the CSA. Again, as in the case of Stream Peak , the Sharmas also executed under seal a power of attorney on 18 October 2007 appointing the Nios as their attorneys in respect of the signing of the CSA and purported to ratify the Nios' signing on 1 and 4 April 2006 respectively.

24. Counsel for the Applicants drew the attention of the Board to Clause 6.1.3 of the CSA which reads as follows:-

> "6.1 Each of the Sellers hereby represents, warrants, covenants and/or irrevocably agrees (as the case may be) as follows:-
>
> 6.1.1. ...

6.1.2. ...

6.1.3 not to do any of the following from the date of execution of this Agreement by Each of the Sellers in respect of His Unit:-

(a) grant an option to purchase

(b) sell

(c) agree or contract to sell

(d) assign or transfer by whatever means;

unless third party/parties having such benefit thereof shall also, subject to the Sale Committee's Approval, join as a party to this Agreement by signing the same forthwith (notwithstanding that the Agreement shall only bind such person(s) after completion thereof); Provided that that particular Seller shall indemnify the other Sellers for any claims, losses, damages, and/or otherwise arising therefrom;"

25. Counsel submitted that:-

(a) the Tans were obliged to procure Stream Peak to be a party to the CSA;

(b) therefore the Tans could be taken to have signed the CSA as the agent of Stream Peak if Stream Peak authorised the Tans to do so;

(c) Stream Peak could even as at 18 October 2007 do so by ratifying what the Tans had done;

(d) ratification could have retrospective effect; and

(e) therefore once Stream Peak ratified, even though Stream Peak had as at 1 April 2007 never signed the CSA, and on such evidence as had been adduced before the Board had never signed any memorandum to even hint that they agreed to join in the CSA, they could ride on the signatures by the Tans.

26. Counsel made essentially the same submission for the case of the Sharmas.

27. The Board found the submission unacceptable.

28. A collective sale agreement, such as the CSA, is basically a contract inter se those subsidiary proprietors who sign it. As at 1 April 2007, the CSA had died and

there was no longer any contractual relationships amongst the SPs who had originally signed the CSA. Along with all the rest of the other SPs' signatures to the CSA, the signatures of the Tans/the Nios had as at 1 April 2007 become mere squiggles with no legal significance, save perhaps in connection with claims for antecedent breaches. What signatures, then, after 1 April 2007 were there surviving for Stream Peak/the Sharmas to ratify on 18 October 2007?

29. Moreover, as Counsel conceded, the principle of ratification which was the foundation of his submission is locked to the law of agency. To apply the concept, there must first of all be a relationship of principal and agent or a relationship which, if not so ab initio, is capable of being converted to one of principal and agent. The applicable situation is where A contracts to sell to X the property of P or makes a contract with X purportedly on behalf of P when in actuality A either does not have any authorisation at all from P to do so or A had acted beyond the limits of whatever authorisation P had given to him. In these circumstances P would not be bound or entitled to the benefits of the contract between A and X. But if P elects to "ratify" the act of A in selling/contracting on P's behalf, then P would be bound to X and vice versa on the contract which A had entered into with X. Essentially A has to have professed to act on behalf of P, whether or not P's identity was disclosed to X, in order for P to be able to ratify A's act.

30. In this light, the notion of ratification is wholly inapplicable to the instant case. Since the signing in April by the Tans was well before the Tans contracted to sell the Unit to Stream Peak on 24 July 2006 it would be unreal to argue that when the Tans signed the CSA the Tans were pledging to the collective sale not their own property but the property of Stream Peak or that they were signing the CSA not as their own masters but as proxies for Stream Peak.

31. The same analysis applies to the case of the Nios and the Sharmas. It would be very forced to say that when the Nios signed the CSA they were professing to act for the Sharmas and not for themselves.

32. It is also very pertinent to note that Clause 6.1.1 of the CSA in effect provides that a purchaser from a subsidiary proprietor who has already signed the CSA must "join as a party to this Agreement (i.e. the CSA) by signing the same forthwith" and even that has to be "subject to the Sale Committee's Approval".

33. Each of these two Units had a share value of 4, making a total of 8 or 1.98%. There was no quarrel over the mathematics. It was common ground that if these two Units were excluded, as at 1 April 2007 the percentage achieved up to that point, which was thought to be 80.96% was in fact only 78.98%. The upshot was that with the rightful exclusion of these 2 Units, the 1 April 2007 deadline for achieving the 80% was not met and the CSA accordingly died unfulfilled.

34. As mentioned, the SPs who made up the Applicants at the time of the filing of this application on 13 June 2007 represented 84.9% but this figure included SPs who signed the CSA after 1 April 2007 when on the facts narrated above the CSA had already expired because of the shortfall. If the CSA had already expired as at 1 April 2007, then there would be no CSA for these latter SPs to sign.

35. There was another lot, namely Unit 10-02 which Counsel also addressed the Board on. This Unit was registered in the name of Mdm Khoo Fek Juan. Mdm Khoo had passed away intestate on 28 January 2006. Two of her children signed the CSA on 3 and 4 April 2006 respectively. They had commenced an application in the Subordinate Courts for a grant of letters of administration. On 26 September 2006 the Court gave an order in terms of their application. However, it was not until after 1 April 2007, specifically on 21 April 2007 that the grant was extracted, the grant in this context being a formal instrument issued by and under the seal of the court.

36. If the Board understood Counsel correctly, Counsel had said that the grant was extracted on 21 April 2006 (see the Applicants' Opening Statement under the entry of 23 October 2007), but that this Unit had not been included as part of the 80% Majority as until 23 October 2007 (after this application had been filed) the sale committee had not been furnished with evidence that a grant had been issued. On 23 October 2007 the law firm which acted for the 2 children in the application for the grant of letters of

administration produced to the sale committee a copy of the grant. Counsel said that with the rightful inclusion of this Unit, as at 1 April 2007 the 80.96% would be pumped up to 81.93%.

37. On the view that the Board had taken, namely, that with the exclusion of the Units of Stream Peak's and of the Sharmas' there was less than 80%, the inclusion or exclusion of the late Mdm Khoo's Unit was not really a material consideration. However, in deference to Counsel as he had put himself to the effort of bringing it up for the Board's consideration, the Board needs to state the Board's decision on the point.

38. It is established law that in the case where the deceased died intestate, the administrators of the estate have no power to sign any contract on behalf of the estate, notwithstanding that the Court may have made an order approving the application to appoint the administrators, for so long as the grant is not extracted and issued to the administrators.

39. The case authority for this proposition is the Singapore Court of Appeal decision of Tacplas Property Services Pte Ltd v. Lee Peter Michael (administrator of the estate of Lee Chong Miow, deceased) reported in [2000] 1 SLR 637.

40. At paragraph 40 of the report of the judgment, Chao Hick Tin JA said :-

"In the case of intestacy, the estate of the deceased would, by virtue of s 37 of the Probate and Administration Act (Cap 251) and, until the grant of administration, rest in the Public Trustee...On the grant of administration, the property of the estate would vest in the administrator(s). However, such vesting of the property in the administrator(s) does not confer on the latter the authority to deal with those assets until the administrator(s) extract the order of the grant... (In) *Chay Chong Hwa* v *Seah Mary*..., a decision of this court which was affirmed by the Privy Council... LP Thean J (as he then was)...explained...'The mere vesting of such property by operation of law does not authorise an administrator to deal with the same. He must proceed to extract the grant of letters of administration and only upon such grant being extracted is he

clothed with the authority and power to deal with the property of the deceased. Under s 2 of the Probate and Administration Act letters of administration means *a grant under the seal of the court issuing the same* authorising the person or persons named therein to administer an intestate's estate in accordance with the law.'"(Emphasis added).

41. Therefore when the 2 children/administrators of Mdm Khoo first signed the CSA, as they not been issued the extracted grant under the seal of the court their signatures had no power to bind the estate .and the estate did not become a party to the CSA

42. In the Techplas case the doctrine of relation back was explained by Chao Hick Tin JA; by this doctrine, upon the grant being made the administrator's title would relate back to the time of death. Chao Hick Tin JA further explained that this doctrine is applied to render valid dispositions of the deceased's property made before the grant when it is shown that those dispositions are for the benefit of the deceased's estate, or have been made in the due course of administration

43. If, indeed the grant in the case of the late Mdm Khoo's Unit was extracted and issued under the seal of the court on 21 April 2006, upon the issue of the grant the doctrine of relation back could arguably have applied to validate retrospectively the signing by the 2 children. But it is clearly stated in the copy of the grant provided to the Board that the court issued it on 21 April 2007. (21 April 2007 has to be the correct date because the Schedule of Property annexed to the grant is dated 15 February 2007) In that case, by 1 April 2007 there was no longer any CSA and no act of signing of the CSA by the administrators to which the doctrine could be applied.

44. Accordingly, for the reasons given, the Board dismissed the application.

Dated this 12th day of November 2007.

MR GAN HIANG CHYE
Deputy President
Strata Titles Boards

MR CHUA KOON HOE
Member
Strata Titles Boards

MR KONG MUN KWONG
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