

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

**BUILDING MAINTENANCE AND STRATA MANAGEMENT ACT 2004  
(NO. 47 OF 2004)**

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

**STB NO. 68 OF 2006**

In the matter of an application under Section 84A of  
Land Titles (Strata) Act in respect of the development  
known as Waterfront View (Strata Title Plan No.  
2625) comprised in Land Lot Nos. 6182W and 6183V  
of Mukim 28

Between

1. TAN YEW LEE KEVIN
2. YU MANG HSIA
3. WANG TONG WEE

...Applicants

And

1. WEE BENG & CHEW SOR TENG
2. BARRY DOUGLAS DELANEY & MARIA AI  
KOK DELANEY
3. HAN FOUN TEE & YEO BEE YIAN
4. ANG SOON HO & NG SU KIM
5. PNG BEE BENG & TAN HEOK CHOO
6. NG LEE YONG & TEO BOON HUAT  
PATRICK
7. WOO PAU & CHAN LAI MENG
8. HO YUE TAK & CHEAH PHAIK LAY
9. MUTHU KUMARAN S/O MUTHU  
SANTHANA KRISHNAN & SUPPULECHIMI  
SOMALINGAM-KUMARAN
10. YEO LOO SAN & TEO CHIEW CHAIN
11. YEO LOO KENG & CHERYL LIM PUI YEW
12. TAN CHIAT PHANG & HOO FUNG CHIT
13. JOHN TONY S/O CHEMMANOR  
VERGHESE ANTONY & JOCELYN E.  
LLANILLO @ MRS JOCELYN ANTONY
14. TAN KIM YONG & CH'NG EE TIAT
15. TEO GEOK LIN & ONG KUAT CHING
16. MARK POH GEONG YEOW & CHUA PECK  
HOON
17. PHOON LYE CHAN

...Respondents

- Coram:** Mr. Alfonso Ang  
Mr. Lee Keh Sai  
Mr. Kong Mun Kwong  
Mr. Michael Ng  
Mr. Tay Kah Poh
- Counsel:** Mr. Michael Kuah  
Mr. Ow Yong Thian Soo  
Mr. Matthew Saw  
(M/s Lee and Lee for the Applicants)
- Mr. Leong Yung Chang  
(M/s Veritas Law Corporation for the 10<sup>th</sup> & 11<sup>th</sup> Respondents)

### GROUPS OF DECISION

#### **Waterfront View**

1. Waterfront View is a 99-year leasehold property located at Bedok Reservoir Road. The Housing and Development Board built it in 1984 as a Housing Urban and Development Corporation estate until it was privatised in 2002.
2. Waterfront View consists of 13 blocks of flats with a total of 583 lots with all having the same share value. The flats vary in size from 156m<sup>2</sup> to 174m<sup>2</sup>. More than half of the lots are 159 m<sup>2</sup> each.

#### **The Collective Sale Agreement ("CSA")**

3. On 4 March 2006, the subsidiary proprietors commenced signing of the CSA for the collective sale of Waterfront View, at the minimum price of \$370 million (inclusive of a compensation fund of \$2 million for financial loss cases). The subsidiary proprietors of each lot would receive the minimum gross sale proceeds of \$634,648.37.
4. By 17 April 2006, 467 subsidiary proprietors owning not less than 80% of the share value had signed the CSA.

#### **The Sale and Purchase Agreement**

5. By a Sale and Purchase Agreement dated 23 May 2006, the Sale Committee sold the Waterfront View to FCL Peak Pte Ltd for the price of \$385 million. The sale price was \$15 million above the minimum price of \$370 million. With the increased price, the subsidiary proprietors of each lot would receive the gross sale proceeds of \$660,377.35.

### **The Application to the Strata Titles Boards ("the Board")**

6. On 15 August 2006, an Application under Section 84A of the Land Titles (Strata) Act ("the Act") was filed with the Board seeking an order that all units at the Waterfront View be collectively sold under the terms and conditions as agreed in the Sale and Purchase Agreement dated 23 May 2006 and that all subsidiary proprietors be bound by and comply with the terms and conditions of the Collective Sale Agreement. 17 objections to the Application were subsequently filed.

### **Mediation**

7. By the first hearing of the Board on 18 September 2006, the 3<sup>rd</sup> Respondents had withdrawn their objection to the Application. At the hearing on 18 September 2006, the Board met all parties to achieve a resolution of the dispute, adjourned the hearing to 10 October 2006 and directed the parties to mediate amongst themselves in the meantime.
8. Pursuant to the Board's direction, the Applicants met all of the remaining 16 Respondents. The 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> Respondents withdrew their objections before the adjourned hearing on 10 October 2006.
9. At the 2<sup>nd</sup> hearing on 10 October 2006, the Board directed the Applicants and the remaining 7 Respondents to file and exchange Affidavits of Evidence-in-Chief by 31 October 2006. The Board subsequently fixed the Application to be heard on 14 November 2006.
10. At the hearing on 14 November 2006, the 4<sup>th</sup> Respondents withdrew their objection. The 8<sup>th</sup> Respondents were absent, and the 11<sup>th</sup> Respondents who were present proceeded with the hearing.

### **The 11<sup>th</sup> Respondents' preliminary objection**

11. At the start of the hearing, the 11<sup>th</sup> Respondents raised for the first time an objection that the Applicants did not comply with the provision of Section 84A(3) of the Act in that the Applicants failed to annex to their Application a separate valuation report and a separate report by a valuer on the proposed method of distributing the proceeds of sale under the Sale and Purchase Agreement.

### **Issues raised at the hearing**

12. At the hearing, Kevin Tan Yew Lee, a member of the Sale Committee gave evidence as did Tang Wei Leng, a director of DTZ Debenham Tie Leung (SEA) Pte Ltd ("DTZ") who was the marketing agent for the Collective Sale. Tan Keng Chiam, a national director and head of the valuation advisory services for Jones Lang LaSalle Property Consultants Pte Ltd ("JLL"), who prepared the Valuation Report, also gave evidence. The 11<sup>th</sup> Respondents, Yeo Loo Keng, gave evidence on behalf of his wife and himself.

13. At the conclusion of the hearing, the following issues were to be determined by the Board:
- (i) Did the Applicants comply with Section 84A(3) of the Act, in particular clause (vii) of Paragraph 1 of the Schedule which requires "a report by a valuer on the proposed method of distributing the proceeds of the sale due under the Sale and Purchase Agreement."
  - (ii) Did the 11<sup>th</sup> Respondents suffer financial losses under Section 84A(7) and 84A(8) of the Act.
  - (iii) Did the Applicants act in bad faith in the transaction, thereby contravening Section 84A(9) of the Act.
14. The Board considered all the evidence adduced during the arbitration hearing and the written submission by both parties, and now gives its reasons.

#### Valuation Report

15. Although it was at a very late stage of the proceedings that this preliminary issue was raised, the Board nevertheless considered the objection.
16. Section 84A(3) of the Act is clear and is not in dispute by parties. It is also not in dispute that the Board will dismiss an application where it finds that there was non-compliance with the Schedule.
17. The only issue before the Board is whether the Applicants complied with the Schedule and provided a report by a valuer on the proposed method of distributing the proceeds of the sale due.
18. The complaint of the 11<sup>th</sup> Respondents is that Annex 8 of the Application contained only a Valuation Report prepared by JLL with a paragraph entitled "COMMENTS". The Valuation Report states that:
- " We have been informed that the distribution of the sale proceeds is by way of share value only i.e. each unit is entitled to 1/583 of the sales proceed. We are of the opinion that the method as recommended by DTZ Debenham Tie Leung (SEA) Pte Ltd is not unreasonable, taking into consideration the composition of the units within the development."
19. The 11<sup>th</sup> Respondents argued that the Valuation Report is at best merely an opinion expressed by JLL that the distribution by share value is not unreasonable given the composition of the units. The 11<sup>th</sup> Respondents also argued that the Valuation Report did not comply with the Valuation Standards and Guidelines prepared by the Singapore Institute of Surveyors and Valuers.
20. The Board examined the Valuation Report that was prepared by JLL and concluded that the objections raised by the 11<sup>th</sup> Respondents were without merit. Although the relevant portion of the Valuation Report on the distribution was titled as "COMMENTS", it was nevertheless in substance a report containing the valuer's

opinion on the method of distribution adopted by the majority of the subsidiary proprietors. The fact that the Valuation Report did not conform squarely to the recommendation issued by the Singapore Institute of Surveyors and Valuers does not detract that it was nevertheless a report.

21. The Board noted that the report on the proposed method of distribution was not the best report prepared and that it fell short of the high standard expected especially when involving a project of this size. The report should have given a sufficiently reasoned conclusion.

#### Financial Loss

22. The 11<sup>th</sup> Respondents submitted that they had suffered financial losses and enumerated the loss as follows:

S/n	Description	Amount
01.	Gross proceeds of sale (taking the Purchase Price of the development at \$385 million) pursuant to clause 2 of the Sale and Purchase Agreement ("S&P")	\$660,377.35
02.	Less: The Ex-Gratia payment of \$3 million pursuant to clause 3(1) of the S&P	\$ 5,145.80
03.	Less: Clients' contribution to the Compensation Sum pursuant to clause 8.4 of the Collective Sale Agreement	\$ 0
04.	Less: DTZ's fees	\$ 5,547.17
05.	Less: Lee & Lee's fees	\$ 2,054.93
	<b>Nett proceeds</b>	<b>\$647,629.45</b>
06.	Less: Outstanding mortgage loan as at 11.10.06	\$341,118.90
07.	Less: Legal and stamp fees at purchase	\$ 18,683.07
08.	Less: Privatisation cost	\$ 19,535.43
09.	Less: Outstanding CPF principal amount and accrued interest	\$407,598.82
		<b>-\$139,306.77</b>

23. The 11<sup>th</sup> Respondents argued that there would be a financial loss to their CPF accounts because the net proceeds are insufficient to fully repay the outstanding bank loan and fully refund their CPF monies withdrawn for the purchase of the property.
24. The main thrust of their argument is that outstanding CPF amounts should be an allowable deduction by the Board under Section 84A(8)(a) of the Act. The CPF Board had written to them on 13 November 2006 and confirmed that "if the sale proceeds after deducting the outstanding housing loan owing to the mortgagee M/s DBS Bank Ltd is insufficient to fully refund the principal amount withdrawn and accrued interest to both your CPF accounts, the CPF Board does not require both of you to make good the shortfall to your CPF account in cash. Instead, only the net sale proceeds (i.e. the selling price less outstanding home loan) is required to be refunded to your CPF account." The CPF Board treated the shortfall between the total CPF used plus the accrued interest and the net sale proceeds as a financial loss to their CPF accounts.

25. The Act as drafted spells out clearly how the Board is required to deal with the issue of financial losses. Section 84A(7) of the Act states that the Board shall approve the sale unless, having regard to the objections, it is satisfied that any objector will incur a financial loss.
26. Section 84A(8)(a) of the Act states that a subsidiary proprietor "shall be taken to have incurred a financial loss if the proceeds of the sale for his lot, after deduction allowed by the Board, are less than the price he has paid for his lot."
27. From the 11<sup>th</sup> Respondents' own calculations, it is clear that there was no financial loss as the proceeds of sale less allowable deductions are not less than the price they had paid for their lot.
28. The Board also found that there is no basis to agree with their view that the "net proceeds of the sale are insufficient to redeem our mortgage and CPF charge" and this amounted to a financial loss. This objection can only be properly made under Section 84A(7)(b) of the Act. Applying this Section and in view of the CPF Board's letter that they will allow the redemption, the 11<sup>th</sup> Respondents could with the proceeds of sale redeem the mortgage and discharge the charge. The Board is satisfied that the 11<sup>th</sup> Respondents' objection does not come within the ambit of Section 84A(7)(b).
29. The 11<sup>th</sup> Respondents' claim that they suffered financial losses does not fall within the ambit of Section 84A of the Act and the Board therefore dismissed their objection.
30. The Board also re-examined the issue of what should constitute a deduction allowable under Section 84A(8)(a). Of particular concern to us is the issue of the sum of \$19,535.43 being the costs of conversion paid by the 11<sup>th</sup> Respondents for the privatisation of Waterfront View. Although the 11<sup>th</sup> Respondents in their written submission did not argue this, the Board is of the view that the costs of the privatisation fee, being an expense, should be an allowable deduction. This is a cost that has to be paid to convert the lease under the Land Titles Act to the Land Titles (Strata) Act. This process of converting the title is a necessary expense without which the Waterfront View will not be eligible for a collective sale.
31. The 11<sup>th</sup> Respondents also claimed that the penalty they paid to the bank should also be a deduction. The Board's view is that this should not be an allowable deduction as it is a private contractual matter between the bank and the 11<sup>th</sup> Respondents. It is also totally unrelated with the price they had paid for their lot.
32. Other deductibles concerning issues on interests and renovation costs have been dealt with by previous decisions of the Boards and they have been disallowed. The costs of the legal fee and stamp duty at the time of the purchase of the property have always been allowed as a deduction. This Board adopts the decisions of previous Boards.
33. The 11<sup>th</sup> Respondents do not suffer a financial loss based on the net proceeds of sale less the allowable deductions – legal costs and stamp duty at the time of purchase and the costs of privatisation. The 11<sup>th</sup> Respondents purchased the lot in



1977 for the price of \$573,000.00 and will receive a gross sum of \$660,377.35 from the collective sale. They had not suffered any financial loss even if deductions allowable are taken into account.

#### Good Faith

34. The 11<sup>th</sup> Respondents urged the Board not to approve the Application, as the transaction is not in good faith. The law in issue is not in dispute. The Board has to determine on the evidence adduced if the Application was not in good faith.
35. The 11<sup>th</sup> Respondents said that the transaction was not in good faith as the Sale Committee should have seen the tender process through to the end instead of switching to a sale by private treaty, the estate was not sold at a fair price, and the method of distribution was inequitable.
36. The Board heard the witnesses and examined their evidences and could not find reason to accept the 11<sup>th</sup> Respondents' contention that the transaction was not in good faith.
37. It is not disputed that the Sale Committee had initially embarked on a tender exercise for the sale of Waterfront View but subsequently switched to a sale by private treaty. In STB No 19 of 2000, the same issue arose before that board. In that case it was decided that it was not compulsory under the Act that every collective sale must be by way of public tender. Where there is a change from public tender to private treaty, what is important is for the Board to examine the circumstances that brought about this change. In any case, the overriding principle that must apply is whether it was in good faith.
38. The Board has examined the circumstances and the reasons that led to the change and is satisfied with the reasons given by the Applicants. The unchallenged evidence is that more than 20 property consultants and developers were invited to make an official proposal for the purchase of Waterfront View. On 2 August 2004, 4 property consultants submitted proposals for a tender exercise, that would take 5 to 7 months whilst 1 declined to make a proposal, and advised against a collective sale.
39. Of the 4 property consultants, 3 informed the management council that they were unable to find a purchaser to make an in principle offer. DTZ proposed that they be appointed an exclusive agent to obtain a non-binding expression of interest ("EOI exercise") from potential buyers. DTZ was engaged on this basis.
40. DTZ received a verbal offer of \$380 million from Lippo Group on the condition that the EOI exercise be stopped to which the management council disagreed. At the close of the EOI, there was only one written offer at the price of \$190 million for one of the two parcels of land that were offered.
41. On 4 March 2006, DTZ recommended a minimum selling price of \$370 million and a CSA was prepared. After achieving 80% of the share value of the subsidiary proprietors, a tender exercise was launched.

42. On 19 May 2006, DTZ received a verbal offer from a joint venture company comprising of Frasers Centre Point Ltd and Waterfront View Pte Ltd to purchase Waterfront View for \$382 million on the condition that the tender that was due to be closed on 26 May 2006 be withdrawn. Negotiations took place between the parties and on 23 May 2006, the Sale Committee was given an offer valid up till midnight to accept \$385 million as the sale price. The Sale Committee accepted the offer.
43. We have examined the circumstances and reasons why the Sale Committee took this course of action. We accepted the reasons given by Kevin Tan as to why the offer was accepted. The reasons which are valid and unchallenged included that few companies had the financial capacity for such a large purchase. More importantly, the offer was \$15 million above the reserve price. The nearest concrete offer was made in 2005 by Lippo Group and for a sum of \$380 million.
44. The Board cannot find any reason to hold that changing the sale from a tender to a private treaty was not in good faith under the circumstances. The 11<sup>th</sup> Respondents have failed to convince us that there was anything amiss in the dealing.
45. In respect of the issue that the property was not sold at a fair market value, we conclude that there is no evidence before us to uphold their view. The valuation given by Mr Tan Keng Chiam was subjected to cross-examination by counsel for the 11<sup>th</sup> Respondents. Although he was at times hesitant in his reply, we cannot find any reason why his valuation should be rejected more so in the absence of an alternative valuation report that ought to have been given by the 11<sup>th</sup> Respondents. We have no reason to reject his valuation report as there was no evidence that it was flawed or that she had not acted in good faith.
46. On the last issue that the method of distribution was unfair, the Board reiterates that it will not approve the collective sale if it is satisfied that the transaction is not in good faith.
47. The 11<sup>th</sup> Respondents submitted that a distribution taking into account valuation is more equitable. This is because of the different sizes and types of the apartments in Waterfront View. They suggested that a distribution by share value is unfair as it enhances the proceeds of the lower-floor units at the expense of higher-floor units or those with better facing which were purchased at a premium.
48. The method of distribution is a very difficult and complex issue as each and every owner would view their own as being better than the next, more so when it comes to sharing a common fund. There is no simple solution to this complex problem. The method of distribution is an issue for the subsidiary proprietors to decide and the Board will not impose its subjective views on them. As the law stands, the Board will examine and will not approve the Application if the Board is satisfied that the method of distributing the proceeds of sale is not in good faith.

#### Conclusion

49. The 11<sup>th</sup> Respondents have not adduced any evidence that will assist the Board in coming to a decision that they desire and neither can the Board on its own accord find any reason to allow their objections.



50. For these reasons, the objections raised by the 11<sup>th</sup> Respondents are dismissed. As the 8<sup>th</sup> Respondents did not appear at the hearing, the Board also dismissed their objections.
51. The Board therefore grants the following orders:
- (1) An order that all the units in the development known as Waterfront View ("the Development") be sold collectively to the FCL Peak Pte Ltd ("the Purchaser") under the terms and conditions as agreed in the Sale and Purchase Agreement dated 23 May 2006
  - (2) An order that all the subsidiary proprietors of the Development be bound by and comply with the terms and conditions of the Collective Sale Agreement dated 17 April 2006 and the Sale and Purchase Agreement dated 23 May 2006 as if they are parties thereto.
  - (3) An order that all the subsidiary proprietors of the Development do forthwith:
    - (a) 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;
    - (b) Execute and furnish to the Purchaser or other relevant parties such Statutory Declaration(s) as required by the Inland Revenue Authority of Singapore or the Purchaser; and
    - (c) Do all acts, things and sign and execute all documents as may be necessary or expedient for the purposes of effecting or perfecting the collective sale.
  - (4) An order that there be liberty to apply.

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

Dated this 5<sup>th</sup> day of February 2007

**MR ALFONSO ANG**

Deputy President  
Strata Titles Boards

**MR LEE KEH SAI**

Members  
Strata Titles Boards

**MR KONG MUN KWONG**

Members  
Strata Titles Boards

**MR MICHAEL NG**

Members  
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**MR TAY KAH POH**

Members  
Strata Titles Boards