

LAND TITLES (STRATA) ACT
(CHAPTER 158)

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

STB No. 79 of 2007

In the matter of an application under Section 84A of the Land Titles (Strata) Act in respect of the Development known as CAIRNHILL HEIGHTS (Strata Title Plan No. 1041) comprised in Land Lot. No.751M of TS 27

Between

1. Har Mee Lee
2. Angela Linda Goutama @ Angela Linda Goutama Goh
3. Atama Singh s/o Ganga Singh @ Atma Singh

....Applicants

And

1. Sin Fook Seng
2. Yong Liew Chin
3. Jean Tsai
4. Bharat Dharmadas Kalawani (Novelty SEA Pte Ltd)

...Respondents

Coram: Mr Tan Lian Ker
President

Panel members: Mr Goh Tiam Lock
Mr Chua Koon Hoe
Dr Lim Lan Yuan
Dr Richard Tan

Counsel: Mr Foo Yew Heng
Mr Clarence Foo
(Foo & Partners for the Applicants)
Mr Jason Lim Chen Thor
(Michael Khoo, co-counsel for the Applicants)
Mr Nicholas Loh Kum Yew
Mr Patrick Ee
(Legal21 LLC for 3rd Respondent)

Background

1. Cairnhill Heights is a freehold single 12-storey development comprising 19 units of which 12 units are one bedroom (with strata area of 94 sq m and share value 3), 6 units of 2 bedrooms (with strata area of 119 sq m and share value 4) and 1 penthouse (with a strata area of 315 sq m and share value 6) built some 20 years on a small plot of land with 1,431.4 sq m. To develop the site to its permissible plot ratio of 2.8, a development charge had to be paid. A much higher development charge was originally estimated. It had come to light that a reduced development charge was payable. Owners with share values of 86.4% signed the collective sale agreement.

2. Four respondents originally objected to the collective sale. The 1st and 2nd Respondents had since withdrawn on 31 Oct 2007 and 30 Oct 2007 respectively. The Board ruled on 29th Nov 2007 that 4th Respondent, Novelty SEA Pte Ltd, being a member of the majority had no status to be a respondent. This objection is in respect of the 3rd Respondent, Ms Jean Tsai, owner of a one bedroom unit #02-01.

Grounds of Objection

3. The main contention is that the sale transaction was carried out with a lack of good faith. Several grounds of objection were raised which can be summarised as follows:

a) Failure on the part of the Sale Committee (SC) to seek the advice of the marketing agent HSR, and to conduct a second open tender exercise. Without knowing what the open market value of the property was, the SC proceeded to accept the offer from the buyer (Jewel 1) without the benefit of any valuation report;

b) At the date of the offer, the Collective Sale Agreement had still 5 ½ months to run and the SC had no urgency to accept the offer of \$44 million from Jewel 1. As a result, it lost the opportunity to consider a higher offer of \$50 million from Huttons Group; and

c) The overall consequence is that the sale was transacted at below market value.

The Facts

4. The enbloc sale was considered as early as August 2006. An offer of \$38 million was received on 29 January 2007 from Orchard-Cairnhill (apparently related to Novelty SEA Pte Ltd which owned 4 units in Cairnhill Heights).

5. A public tender was called on February 2007 but no bids were received when the tender closed on 26 Feb 2007. Since then several offers were received prior to the actual sale at \$44 million. They were as follows:

- Offer of \$38.25 million on 28 March 2007 from Novelty SEA Pte Ltd;
- Offer of \$38.5 million on 3 April 2007 from Oxley Group;
- Offer of \$38.6 million on 14 April 2007 by Orchard-Cairnhill; and
- Offer of \$38.8 million on 14 April 2007 by Land Resources Group.

No 2nd public tender

6. The Board will now deal with the various issues raised by 3rd Respondent. When the two latest offers were received, the owners convened an EOGM on 14 April 2007 to discuss the matter. The 3rd Respondent argued that at the EOGM, it was agreed that a 2nd public tender would be called and the marketing agent HSR agreed to do so. This was not done and therefore the SC did not have the benefit of knowing the market value of the site.

7. The Applicants, however, explained that the SC had in fact asked HSR to proceed with the public tender and to provide a comparative market analysis to the SC by 23 April 2007. However, HSR did not proceed with the public tender as they had received 3 letters from Legal 21 LLC (on behalf of Novelty SEA Pte Ltd) on 25 April 2007 not to proceed with the public tender; on 27 April 2007 to proceed with the tender; and again on 14 May 2007 not to proceed with the public tender. HSR also did not provide the SC with any comparative market analysis but instead gave them a brief update of the property market on 7 May 2007, the gist of which was to advise the SC to pitch the sale price as high as possible over the reserve price of \$38 million.

8. Mdm Har Mee Lee (AW2) and Mrs Christine Sng Mechtler (AW3) who testified for Applicants said the SC would have taken into consideration the comparative market analysis from HSR if it were provided in assessing any target price. The brief market update was not useful and did not recommend a target price. AW3 further added that she understood HSR's market update as pessimistic and to mean "don't expect too much".

Offer of Jewel 1

9. Meanwhile an offer of \$44 million from Jewel 1 was received on 8 May 2007. The SC met on 10 May 2007 to consider the offer and resolved unanimously to accept the

offer. The Option to Purchase was granted on 17 May 2007 to Jewel 1 which was exercised on 23 May 2007.

10. The 3rd Respondent argued that the SC had 5 ½ months to consider the sale but instead decided to accept the offer on 10 May 2007, and hence, missed the higher offer of \$50 million from Huttons Group. The Applicants countered that the offer from Huttons Group was made 3 weeks after the Option had been issued to Jewel 1, and it was already public knowledge that Cairnhill Heights had been sold.

11. The Applicants further argued that the SC had to use its own judgement when considering the offer, and making a "judgement call" was different from a decision not made in good faith. The Board agreed that under the circumstances, the SC needed to make a decision either way. By agreeing the sale at \$44 million which was the highest offer then, it could not be said that the SC had acted not in good faith unless the sale price was substantially below market value bearing in mind that the reserve price was \$38 million.

Valuation

12. To consider whether the sale was transacted at market value, the Board heard the evidence of the Applicants' valuer, Mr Liaw Hin Sai (AW4) from United Premas and the 3rd Respondent's valuers, Mr Kelvin Ng (RW2) from Colliers and Mr Gregory Teo (RW3) from Allied Appraisers. AW4's valuation was \$44 million and after taking into consideration the reduced development charge, he adjusted his valuation to \$47 million. The 3rd Respondent's valuations were \$60 million (RW2) and \$63 million (RW3).

13. The wide disparity between the Applicants and 3rd Respondent's valuations appears to be due to the different comparables and factors used by the valuers.

14. The Board further asked valuers of both the Applicants and 3rd Respondent to include the sales evidence used by the opposing valuers, and to rework their valuations. The Applicants' valuer arrived at a valuation of \$48 million whereas the 3rd Respondent's valuer RW2 produced a valuation of \$53 million as opposed to his original valuation of \$60 million. When questioned by the Board what was his final valuation, he gave a figure of \$58-59 million. It should be noted that the 3rd Respondent's valuer RW3 was not cross-examined by the Applicants. RW3 was asked by the Board to give his revised valuation. He offered a figure of \$55 million without much analysis which the Board felt was too cursory.

15. Considering the above, the Board is of the view that Applicant's valuer had been consistent in his approach. Taking into account his adjusted valuation of \$47 million and revised valuation of \$48 million, the sale price of \$44 million was not considered unreasonable within the acceptable range. In addition, the Board notes that the highest offer received on 8 May 2007 was \$44 million from Jewel 1, and the next highest offer received up to 14 April 2007 was \$38.8 million from the Land Resources Group.

Evidently, the highest offer price of \$44 million provides the best indication of the market value for this development site. Accordingly, the Board is satisfied that the sale was not one made in bad faith.

Board's Decision

16. As reiterated in recent Court of Appeal's decision in Phoenix Court, the purpose of the collective sale scheme is to facilitate and not to place unnecessary obstacles in the way of collective sale. The Board should not allow objection to frustrate the wishes of the majority owners when the minority has suffered no prejudice whatsoever from the sale. The Board believes that in this case, considering the manner in which the sale had been transacted, there is no bad faith in the process. Having heard the evidence, the closing submissions, the reply submissions and the authorities cited by counsel for both parties, and after due deliberation, the Board hereby dismisses the objection, and approves the order for sale.

Costs

17. On the issue of costs, Counsel for the Applicants submitted that costs should follow the event. However, if the Board were to grant the order, the Applicants would not be asking for costs. In reply, Counsel for the Respondents would not be asking for costs too. Accordingly, the Board makes no order as to costs.

Dated this 30th day of April 2008

MR TAN LIAN KER

President

Strata Titles Boards

MR GOH TIAM LOCK

Member

Strata Titles Boards

MR CHUA KOON HOE

Member

Strata Titles Boards

DR LIM LAN YUAN

Member

Strata Titles Boards

DR RICHARD TAN

Member

Strata Titles Boards