

LAND TITLES (STRATA) ACT
(CHAPTER 158)

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

STB No.89 of 2007

In the matter of an application under section 84A
of the the Land Titles (Strata) Act in respect of
the development known as Regent Court (Strata
Title Plan No. 866) comprised in Land Lot No.
Mukim 17-5574T

1. Mohamed Amin Bin Mohamed Taib
2. Foo Chuan Kee
3. Chin Thean Seong

... Applicants

AND

1. Tan Lay Lek/Lim Siew Leong (withdrawn)
2. Lim Choon Thye/Lau Puay Huang @ Lau
Phuay Huang
3. Tan Kong Hock
4. Lim Kim Yau/Lim Wee Thiam
5. Khin Maung Tin
6. Kailash Nath Rai/Vijay Kumar Rai
7. Seah Chin Kong/Ee Ah Choo

... Respondents

Coram:

Dr Philip Chan
Deputy President

Panel Members:

Mr Lee Keh Sai
Mr Tan Ee Ping
Mr Teo Pin
Dr Richard Tan

Counsel:

Mr Christopher Yong
Mr Patrick Ee
(Legal21 LLC for the Applicants)

Mr Ranvir K Singh
(Unilegal LLC for the 2nd, 3rd, 4th and 5th
Respondents)

GROUNDS OF DECISION

Introduction

1. The Applicants are Mohamed Amin, Foo Chuan Kee and Chin Thean Seong who represent the subsidiary proprietors of the development known as Regent Court who have signed a sale and purchase agreement and are making an application for a collective sale order. The development comprises one block of 10-storey apartments with 49 units and is located at Serangoon Road.
2. An application was filed by the Applicants with the Strata Titles Board pursuant to section 84A(1) of the Land Titles (Strata) Act (Cap 158) ("the Act"). There were seven sets of subsidiary proprietors who filed objections. The First Respondents comprising Tan Lay Lek and Lim Siew Leong subsequently withdrew their objection. The Second, Third, Fourth and Fifth Respondents are represented by Unilegal LLC. The Sixth Respondents comprising Kailash Nath Rai and Vijay Kumar Rai is represented by Vijay Kumar Rai. The Seventh Respondents appear in person.
3. The Board was constituted without any objection. However, the constitution of the Board was varied with one panel member, Chong Kim Chang, being replaced by another panel member, Richard Tan. This replacement was also not objected to.
4. Mediation was conducted on two occasions, namely, 6 and 13 September, which did not result in the withdrawal of all the objections. Accordingly, dates were fixed for hearing. It is to be noted that on 6 September, the Board had to address an attempt by some subsidiary proprietors who are represented by the Applicants to file objections. The applications to file objections were rejected as the Act only allowed those who did not agree to the sale to file objections.
5. On 3 and 4 December 2007, the Board had to deal with certain preliminary matters and was not able to commence with the first witness. It came to the Board's attention through the Applicants' opening statement and the Seventh Respondents' objection that the Seventh Respondents' objection is essentially a claim of financial loss under section 84A(7) and that the two amounts were not disputed, namely, the amount of proceeds to which the Seventh Respondents are entitled and the amount of money paid by the Seventh Respondents for the purchase of their unit. The Board was also informed in the Applicants' opening statement that the purchaser of the

development had given an undertaking to pay the Seventh Respondents, the amount that the Board would find as the amount of financial loss as suffered by the Seventh Respondents as defined in the Act.

6. The Board sought clarification from the Applicants as regards the relevant statements made in their opening statement that related to the financial loss objection as filed by the Seventh Respondents. The Board noted that the Board has no power to ascertain the amount of financial loss as defined in the Act for the purpose of the purchaser to make payment to the Seventh Respondents in order to avoid the consequences of a finding by the Board that there is financial loss suffered by the Seventh respondents, which natural consequence would be a dismissal of the application. The Board further noted that a possible interpretation of the said relevant statements would be that the Applicants are admitting to the existence of financial loss in the case of the Seventh Respondents.

7. Consequently, the Board heard the Applicants' application for leave to amend their opening statement by deleting the said relevant statements. After having the benefit of submissions from all parties, the Board decided to grant the Applicants leave to make the requested amendments.

Preliminary issue of financial loss

8. The Board then raised the possibility of dealing with the Seventh Respondents' financial loss objection as a preliminary issue with a view of disposing with the application if the Seventh Respondents were successful and if not, to proceed with the other objections if the Seventh Respondents were not successful. However, the Board said that this approach would be taken only if all the parties agree to proceed as such and if the Applicants and Respondents were able to agree to a set of facts for the Board to decide on the financial loss objection.

9. In response, all parties agreed to do so. A deadline of 4pm on Friday 7 December 2007 was fixed for the Applicants and Respondents to agree as such, failing which, the hearing would start with the Applicants' first witness on Monday 10 December 2007.

10. On Monday, 10 December 2007, the Board was informed of the terms reached by the Applicants and Respondents as set out below.

Agreed Facts in respect of 7th Respondents' claim for financial loss

A. Main Facts Agreed

Items	(a) – "Purchase price for lot"	– S\$993,000.00
	(b) – "Stamp fees and Legal Costs"	– S\$33,126.75
	(c) – "gross proceeds of sale under the collective sale"	– S\$932,191.00

are agreed between the parties.

B. Facts Not Agreed, but nature of claim clarified

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[Signature]

Item (c) – “Other costs and expenses incurred in connection with [our] purchase of the lot” is not agreed between the parties.

7th Respondents have clarified that this item relates to interest charged on the mortgage loan taken out to finance the purchase of this unit, amounting to S\$182,224.81. 7th Respondents have also provided some bank statements to the Applicants.

The applicants dispute the inclusion of this item both on principle and quantum.

The 7th Respondents agree to withdraw this item if the Board is of the view that the item is not allowed under the law.

C. Withdrawal

7th Respondents have agreed to withdraw the items (f) to (i) from their claim.

Dated this 7th day of December 2007

11. Thinking, albeit wrongly as discovered later, that the Applicants and Seventh Respondents have reached an agreement to withdraw the entire objection of financial loss pending only on the Board's decision on “Item (c)”, the Board deliberated on the matter and decided that the said item is not recognized as an item for deduction under section 84A(8) of the Act.

12. The Board then proceeded to commence the hearing of the Applicants' first witness. The witness was cross examined by counsel for the Second, Third, Fourth and Fifth Respondents, Mr Singh, and cross examined in part by Mr Rai, representing the Sixth Respondents.

13. On Tuesday, 11 December 2007, before the resumption of the cross examination of the first witness, it was brought to the Board's attention that the Seventh Respondents' objection based on financial loss was only partially withdrawn. In response, the Board gave directions for the Applicants and Seventh Respondents to address the Board on the said objection based on the agreed facts so that the Board may decide on the matter as a preliminary issue as agreed by all the parties.

14. The Applicants informed that their written submission had been prepared but needed time to bring copies of the same from their office and asked that the hearing be stood down for about 20 minutes. In the meanwhile, the Seventh Respondents confirmed that they have no submissions to be made in respect of their objection. The Board asked counsel for the Applicants whether he would need to supplement the written submission with an oral submission to which counsel for the Applicants said that he would not be making any oral submission in addition to the written submission. The Board adjourned the hearing for deliberation of the written submission in chambers.

15. Having read the written submission of the Applicants and considering the provisions of the Act and applying the law to the facts, the Board found that the Seventh Respondents had made out

a case of financial loss as defined by the Act. This was orally announced on 11 December 2007. The Board also asked for submissions by the parties as regards the award of costs.

16. The board now gives its grounds for its decision and further gives its decision as regards costs.

Reasons for Board's decision

17. The starting point in the Board's analysis of the law applicable to an objection based on financial loss would be section 84A(7)(a) read with section 84A(8)(a). These are set out below.

"Section 84A

(7) Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that —

- (a) any objector, being a subsidiary proprietor, will incur a financial loss; or
- (b) ...

(8) For the purposes of subsection (7) (a), a subsidiary proprietor —

- (a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot;
 - (b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his lot will be less than the other subsidiary proprietors."
- [Emphasis by author]

18. It must be borne in mind that the Board agreed to proceed on the basis of a preliminary point in respect of the Seventh Respondents' objection based on financial loss only if the two conditions set out below were achieved:

- (a) that all the parties agree that the Board should do so;
- (b) that the Applicants and Respondents agree to a set of facts so that the Board would decide based only on the agreed facts.

From the above account, the two conditions were achieved.

19. The main thrust of the Applicants' submission was that the Seventh Respondents would not suffer any financial loss under section 84A(7) & (8) of the Act upon the collective sale of Regent Court based on the decision of the Board in *Gong Ing San and Others v Questvest (S) Pte Ltd and Another* [2005] SGSTB 4 as applied to the fact that, "The Applicants have tendered to this Board (and served on all parties) a letter from Rajah & Tann dated 4 December 2007 confirming that the Purchaser has undertaken to pay to the 7th Respondents the sum of S\$93,935.75 so that they will receive a sum under this collective sale equal to their original purchase price. In addition, if the

board allows any further deductions in their computation which has yet to be quantified, the Purchaser has also undertaken to make good such sum(s)."

20. In *Gong Ing San*, both the First Respondent and the Second Respondent filed an objection each based on financial loss. It is interesting to note the extracts of the case as set out below:

- (a) "Both respondents claimed that they are entitled to claim financial loss as a result of loss that they suffered from "holding costs".";
- (b) "The sole issue for the Board to determine is whether holding costs as claimed by the respondents should be an allowable deduction under Section 84A(7) read with Section 84A (8) of the Land Titles (Strata) Act."

As the sole issue in *Gong Ing San* is whether "holding costs" is an allowable deduction, the case referred to by the Applicants is not helpful.

21. The Board in *Gong Ing San*, however did allude to an arrangement agreed by all the subsidiary proprietors of the development including the two respondents who filed the objections based on financial loss.

"The First Respondent, the Second Respondent Koronac Pte Ltd, a related company of the First Respondents, and all the other owners of the development entered into a "Topping Up Agreement". It was agreed that the other units would contribute such amounts (the "topping up sum") so that the gross sale proceeds for the unit owned by the First Respondent plus the top up sum will equal to the purchase price of their unit. In consideration of this, both respondents undertook to sign the SCSA and the First Respondent shall have no claim for any financial loss whatsoever."

22. It is worth noting that the "top up" arrangement has the following significant facts absent in the arrangement in the current case before the Board where the Purchaser tendered an undertaking to make good the difference as represented by the amount of financial loss.

- (a) there was an agreement which bound the two respondents and all the other subsidiary proprietors in the *Gong Ing San* case;
- (b) the other units would contribute the topping up sum;
- (c) there was an agreement that the First Respondent shall have no claim for any financial loss whatsoever.

It is noted that further details are not available but presumably, the other units in agreeing to contribute to the topping up sum, the money would come from their individual unit's proceeds from the sale.

23. Having considered the above, the Board is of the opinion that *Gong Ing San* is not helpful to advancing the Applicants' case.

24. By section 84A(8), the Board has to conclude that a subsidiary proprietor has "incurred a financial loss if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot".

25. By applying the above formula to the agreed facts as set out below:

- (a) the gross proceeds of sale under the collective sale being S\$932,191.00; and
- (b) the purchase price for lot being S\$993,000.00;

there would already be a financial loss of S\$60,809.00. This mathematical fact is not disputed by the Applicants.

26. The Applicants' position is that the Board should look at the evidence showing the purchaser's undertaking to make good any financial loss of the Seventh Respondents after the Board has made the Order under the Act. It is the Applicants' position that this arrangement would be a valid answer to the Seventh Respondents' objection based on the *Gong Ing San* case and would empower the Board to dismiss the Seventh Respondents' objection based on financial loss.

27. The Board is not persuaded by the Applicants for the following reasons:

- (a) the Board should not look at the said evidence relating to the purchaser's undertaking as the Board is limited to looking at the set of facts agreed between the Applicants and the Seventh Respondents since this procedure had been agreed by all the parties;
- (b) even if the Board is not so limited, the Board should not look at the said evidence relating to the purchaser's undertaking as the Board is bound to look at what have been prescribed by section 84A(8), that is, the proceeds of the sale, any deduction allowed and the price paid by the Seventh Respondents for their lot and the amount that the purchaser has undertaken to pay does not fall into any one of the prescribed categories;
- (c) even if the Board is to stretch the meaning of section 84A(8) as interpreted by the Applicants relying on the *Gong Ing San* case, the Board should not look at the said evidence relating to the purchaser's undertaking as, unlike the topping agreement in the *Gong Ing San* case which is enforceable by the respondent when the Board was making its decision in that case, the purchaser's undertaking in this case is not in the form of an agreement and is therefore neither enforceable now nor after the Board has made its decision. However, to ensure that this observation is not misconstrued, the Board is not saying one way or the other the outcome of the Board's decision had the purchaser entered into an agreement with the Seventh Respondent instead as this question is not before the Board.

28. Accordingly, the Board finds that the Seventh Respondents, as a matter of fact, has incurred financial loss as defined in section 84A(8) of the Act based on the facts as agreed by the Applicants and Seventh Respondents.

29. The Board therefore dismisses the Applicants' application and makes no order as to costs.

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Hain

Dated this 24th day of December 2007

DR PHILIP CHAN

Deputy President
Strata Titles Boards

MR LEE KEH SAI

Member
Strata Titles Boards

MR TAN EE PING

Member
Strata Titles Boards

MR TEO PIN

Member
Strata Titles Boards

DR RICHARD TAN

Member
Strata Titles Boards