

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

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

STB No. 90 of 2007

In the matter of an application under Section 84A of the Land Titles (Strata) Act in respect of the development known as **Spottiswoode Apartment** (Strata Title Plan No. 626) comprised in Land Lot No TS23-465A

Between

- 1 **Thurairatnam Kirupakaran**
- 2 **Lee Yaw Loong**
- 3 **Seow Sai Aun**

(representing the Majority Owners of Spottiswoode Apartment)

... Applicants

And

1. **Wong Juan Tiang/ Lee Lai Kew**
2. **Phuah Gaik Kheng**
3. **Chan Chow Kim**
4. **Amarjit Kaur/ Jasmeer Kaur d/o Atma Singh**
5. **Tan Guan Hui/ Lim Bee Lin Elsie/ Tan Guan Cheong/ Ho Hwee Lan**
6. **Chee Bee Siang**
7. **Lim Cher Chai**
8. **Biehl Lam Muoi**
9. **Lee Yin Chin**
10. **Kuladeva s/o Kulathungam**

... Respondents

Coram: **MR TAN LIAN KER**
President

Panel Members: **DR LIM LAN YUAN**
PROF LYE LIN HENG
MR EDWIN CHOO
MR CHNG BENG GUAN

Counsel: **MR DAVID DE SOUZA**
MR KEVIN DE SOUZA
(M/s De Souza Tay & Goh for the Applicants)

MS FOO SOON YIEN
MS EVANGELINE POH
(M/s Harry Elias Partnership for the 6th and 7th Respondents)

GROUND OF DECISION

BACKGROUND

1 The Spottiswoode Apartment is a single block of 24-storey with 92 units comprising 26 units of 1 bedroom, 40 units of 2 bedrooms (2 types), and 26 units of 3 bedrooms. The Sale Committee (SC) consists of 7 subsidiary proprietors (SP) who owned a 1-bedroom unit, 4 2-bedroom units and 2 3-bedroom units. There are a total of 10 objectors with 5 owning 1-bedroom unit, 3 owning 2-bedroom units and 2 owning 3-bedroom units. Except for 6th and 7th Respondents who are represented by Counsel, the rest of the objectors argued in person. 6th Respondent owned a 1-bedroom unit and 7th Respondent owned a 2-bedroom unit. Each of the objectors has his/her own grounds of objections while others have similar grounds.

MAIN GROUNDS OF OBJECTIONS

- 2 The various grounds of objections may be grouped into 3 main grounds as follows:
- a) The 80% minimum requirement was not achieved when the tender was called.
 - b) The transaction was in bad faith because the sale price is below market value.
 - c) The transaction was in bad faith because the apportionment method is unfair and inequitable.

THE 80% REQUIREMENT

3 The issue is that when the tender was called on 27 February 2007, 80% of the minimum requirement was not achieved. The reason given by Applicants is that only 1 of the 2 joint

owners of unit #18-72 had signed the Collective Sale Agreement ("CSA"), and the unit should therefore not have been taken into consideration in computing the percentage. This was subsequently rectified and as at 3 April 2007, the date of the close of the tender when the offer of \$79.5 million was accepted, and also when the application to Strata Titles Boards ("STB") was made on 19 July 2007, the 80% was achieved.

4 Counsel for 6th and 7th Respondents argued that as clause 14.1 of the CSA provides that the agreement shall only be effective if the number of SPs holds 80%, and since this has not been achieved, the SC has no authority to act by launching the tender. Counsel for Applicants countered that a tender launch does not constitute a sale by tender. It is merely an invitation to treat. In addition, the relevant time before the amended Land Titles Strata Act ("the Act") to have 80% is the date of filing of the application.

5 The Board considered the arguments put forth and taking into account that when the decision to sell the site as well as when the application to STB was received, 80% has been achieved, and as no one from the majority has objected to the discrepancy, it is satisfied that discrepancy is not fatal to the entire enbloc process. As reiterated in the Court of Appeal's judgment in *Ng Swee Lang and Another v Sassoon Samuel Bernard and Others* [2008] SGCA 7 ("the Phoenix Court case"), the purpose of the collective sale scheme is to facilitate and not to place unnecessary obstacles in the way of collective sales. The court should not allow technical objections to frustrate the wishes of the majority owners when the minority have suffered no prejudice whatsoever from the technical omission. The Board believes that in this case, the minority has not suffered any prejudice even when 80% was not achieved before the call of the tender. It should be noted that 80% was achieved when the decision to award the tender was made on 3 April 2007 and also at the point of application to the STB which was the requirement under S.84A.

SALE PRICE

6 The original reserve price was fixed at \$50 million on 18 June 2006. This was subsequently revised a few times from \$51 million on 10 July 2006 to \$68.8 million on 31 January 2007. The tender was called on 27 February 2007. Much marketing and promotional efforts were made to interest buyers. At the close of the tender on 3 April 2007, 5 bids and 2 expressions of interest ("EOI") were received. UOL Development ("UOL") submitted the highest bid at \$79.5 million subject to various conditions, followed by Sim Lian Asia ("Sim Lian") at \$78 million. The SC invited Sim Lian to increase its bid but it declined. UOL Development was requested to remove its conditions which it agreed provided its bid of \$79.5 million was accepted on the same day. The SC accepted the offer on 3 April 2007.

7 Counsel for 6th and 7th Respondents argued that there was no urgency for the SC to accept UOL's offer within 5 hours of discussion on the same day of the close of tender, and that the sale price was below market value. Evidence was provided by two valuation experts, Mr Teo Yik Weng for the 6th and 7th Respondents, and Ms Goh Seow Leng for the Applicants. The valuations of both expert witnesses are as follows:

- i) Mr Teo's valuation is \$88,700,000 reflecting \$8,776 per m² per plot ratio.

- ii) Ms Goh's valuation is \$76,700,000 reflecting \$7,584 per m² per plot ratio.
- iii) The subject site was sold at \$79,500,000 reflecting \$7,860 per m² per plot ratio.

8 The difference in both valuations is about 15% due to the different adjustment factors and comparables used by both valuers. Mr Teo's valuation is about 11.5% higher than the sale price whereas Ms Goh's valuation is about 3.6% lower than the sale price.

9 The Board observed that although both valuers have used 3 comparables each, 2 of the comparables are the same. These two comparables are:

- i) Oakswood Heights sold in May 2007 at \$132,000,000 reflecting \$7,963 per m² per plot ratio
- ii) Fairways sold in May 2007 at \$224,300,000 reflecting \$7,845 per m² per plot ratio.

10 Considering the comparable sales used by both valuers and their individual valuations, the Board is of the view that the sale price of \$79.5 million achieved in April 2007 was not unreasonable. The intended sale was properly publicized in the market place, and \$79.5 million was the highest price achieved from the property players who have shown interest. Hence, the Board is satisfied that the sale is not one made in bad faith.

METHOD OF DISTRIBUTION

11 The apportionment method in the CSA was 70% by strata area and 30% by share value. Counsel for 6th and 7th Respondents argued that the 70/30 method fails to give sufficient weight to the fact that the common property is more than 50%, the footprint area being 85% and the share value of all units being equal. She contended that a fairer and more equitable method is the method proposed by her valuer Mr Teo. Mr Teo argued for the use of 50% share value and 50% strata area, and for his valuation and share value method which he tendered when giving his oral evidence.

12 Applicants explained that the 70/30 method was adopted because all the units have 1 share value but the strata areas are different. According to this method, the 1-bedroom units would receive approximately 23% more per square foot than the 3-bedroom room units. If the 50/50 method is adopted, the 1-bedroom units would get 40% more per square foot than the 3-bedroom units. If Mr Teo's "valuation and share value" method is adopted, the 1-bedroom units would get even higher than 40%.

13 The sales proceeds received by each room type according to different distribution methods are given below:

Area/share value	1 bedrm 592 sf 26 units	2 bedrm 861 sf 20 units	2 bedrm 872 sf 20 units	3 bedrm 1141 sf 26 units
50/50	\$727,265	\$861,446	\$866,814	\$1,000,995
70/30	\$672,518	\$860,373	\$867,887	\$1,055,741

14 The Board noted the difficulty in arriving at a fair method of apportionment. There is a need to strike a balance between the interests of the various room types. A 50/50 method would favour the 1-bedroom units at the expense of 3-bedroom units. At the proposed 70/30 method, it has already favoured the 1-bedroom units by some 23%. There can be many computations for arriving at the distribution of the sale proceeds. It should be noted that the 1st and 2nd Respondents who own a 3-bedroom unit each have no objection to the 70/30 method and had stated that they would not support the 50/50 method. Having considered the arguments put forth, the Board is satisfied that the proposed 70/30 method has not been arrived at in bad faith bearing in mind that the Chairman of the SC himself owns a 1-bedroom unit.

DECISION

15 Taking cognisance of the purpose of the collective sale legislation to facilitate rather than to place obstacles in the way of collective sale, and the Court of Appeal's decision in Phoenix Court that the objectors must not have suffered any prejudice, the Board is of the view that there is no bad faith in the enbloc process, and hereby dismisses the objections, and approves the order for sale.

COSTS

16 On the issue of costs, the Board has deliberated carefully on the matter. In its opinion, the objections raised by the Respondents were not frivolous or groundless. Some of the issues raised pertaining to technical non compliance with the Act are novel and merited consideration notwithstanding that they were not upheld by the Board. Accordingly the Board makes no order as to costs.

ORDER BY THE STRATA TITLES BOARD

17. **PURSUANT** to Section 84A(7) of the Land Titles (Strata) Act and on the basis of facts available to the Board, the Board not being satisfied that:-

- (1) the transaction is not in good faith after taking into account only the following factors:-
 - (i) the sale price for the lots and the common property in the Strata Title Plan No. 626;
 - (ii) the method of distributing the sale proceeds; and
 - (iii) the relationship of the purchaser to any of the subsidiary proprietors;

- (2) the sale and purchase agreement would require the subsidiary proprietors who have not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the Strata Title Plan No. 626;

the Board hereby approves the application and orders:-

- (1) That all the units in the development known as **Spottiswoode Apartment** (Strata Title Plan No. **626**) comprised in Land Lot Nos. **TS23-465A** be sold collectively to **UOL Development Pte Ltd** (the "Purchaser") under the terms and conditions as agreed in the Sale and Purchase Agreement dated 3rd day of April 2007.
- (2) That all subsidiary proprietors including those who have not signed the Collective Sale Agreement ("the Minority Owners") be bound by and comply with the terms and conditions of the Collective Sale Agreement dated 14th day of February 2007 and the Sale and Purchase Agreement dated 3rd day of April 2007 as if they are parties thereto;
- (3) That all the subsidiary proprietors of the Development including those Minority Owners do forthwith: -
- (i) execute sign seal and deliver and perfect all acts and deeds and 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) as are required by the Inland Revenue Authority of Singapore or the Purchaser; and
 - (iii) 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) That all costs and disbursements (including the Majority Owners' solicitors' costs), fees and disbursements of and in connection with this application be borne by all the subsidiary proprietors (including the Minority Owners) in accordance with the terms of the Collective Sale Agreement dated 14th day of February 2007.

Dated this 2nd day of April 2008

MR TAN LIAN KER

President

Strata Titles Boards

DR LIM LAN YUAN

Member

Strata Titles Boards

PROF LYE LIN HENG

Member

Strata Titles Boards

MR EDWIN CHOO

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