

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

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

STB NO 97 OF 2007 & 55 OF 2008

In the matter of an application under Section 84C of the Land Titles (Strata) Act in respect of the development known as **Rainbow Gardens** (Strata Title Plan No.1175) comprised in Land Lot No 4636A of Mukim 5

And

In the matter of 2 interlocutory applications under Section 98(3) of the Land Titles (Strata) Act by the Respondents

And

In the matter of an interlocutory application by the Applicants for the joinder of a third party

Between

- 1 **Goh Kok Hwa Richard**
 - 2 **Soh Liang Liang**
 - 3 **Lee Choon Kum Beatrice**
- (representing the majority owners of Rainbow Gardens)

... Applicants

And

- 1 **Lim Choo Suan Elizabeth**
- 2 **Lim Lilian/ Lim Poh Heng/ Lim Molly/ Lim Mui Wah**
- 3 **Tan Peck Kheng/ Koh Hock Chuan**
- 4 **Tan Kok Yang/ Koh Lee Boon**
- 5 **Chong Han Hua @ Chiyong Ah Hun/ Ho Bee Fon**
- 6 **Goh Tiew Eng/ Soh Boon Tin**
- 7 **Ang Chin Du/ Ang Chin Peng**

- 8 Wok Cho Me/ Chuah Seok Huah
9 Chee Weng Kheong Andrew

...Respondents

Coram: MR TAN LIAN KER
President

Panel Members: MR SENG KWANG BOON
MR TANG TUCK KIM
MR TAY KAH POH
MR CHNG BENG GUAN

Counsel: MR EDWIN LEE
MS HAZEL TANG
(Rajah & Tann LLP for the Applicants)

MR DAVID LIEW
(M/s DSH Law Corporation for the 1st to 3rd Respondents)

4TH RESPONDENTS - IN PERSON

GROUND OF DECISION

1. These are 4 applications before the Board. The 1st application was filed by the authorised representatives ("the Applicants") of Rainbow Gardens ("the development") on 17 July 2008 by way of STB 55 of 2008 asking the Board to appoint them to deal with all the matters in connection with the sale of the development under section 84C of the Land Titles (Strata) Act ("LTSA"). The 2nd and 3rd applications are interlocutory applications filed by the 1st to 3rd Respondents and the 4th Respondents on 17 July 2008 asking for the execution on the order of the Strata Titles Board ("STB") under STB 97 of 2007 dated 18 April 2008 to be stayed pending determination of the appeal of the Applicants against the said order to the High Court in OS No. 664/2008T. They further prayed that the application for an order by STB under section 84C be similarly stayed pending determination of the said appeal ("stay applications"). The 4th application is an interlocutory application filed by the Applicants on 21 July 2008 asking the Board for an

order that Premier Land Development Pte Ltd ("the Purchaser") be added as a 3rd party in this proceeding ("joinder application").

2. As there are 4 applications which are inter-related, the Board originally decided to hear the joinder application first, followed by the stay applications, and lastly, the application for an order under section 84C of the LTSA. However, the Applicants stated that they will withdraw the joinder application should the Board dismiss the stay applications. Accordingly, the Board proceeded to hear the stay applications.

Background

3. Briefly, the chronology of events is:-

- (a) On 18 April 2008, STB granted an order for the collective sale of the development;
- (b) On 13 May 2008, by way of OS No. 646/2008/R, the 4th Respondents filed an appeal against the decision of STB;
- (c) On 15 May 2008, by way of OS No. 664/2008/T, the 1st, 2nd and 3rd Respondents filed an appeal against the decision of STB;
- (d) On 3 July 2008, by way of Summons No. 2922/08/T, the 1st, 2nd and 3rd Respondents made an application to the High Court for a stay of execution of the STB order pending determination of their appeal;
- (e) On 10 July 2008, by way of Summons No. 3038/08/Z, the 4th Respondents also made an application to the High Court for the execution of the STB order be stayed pending determination of their appeal;
- (f) On 17 July 2008, the applications for stay of execution were heard by the Honourable Justice Kan Ting Chiu but no order was made; and
- (g) On 17 July 2008, the 1st, 2nd, 3rd and 4th Respondents filed interlocutory applications to the STB for the execution of STB order to be stayed. They further prayed that the application by the Applicants for an order by STB under section 84C be similarly stayed pending determination of the appeals in the High Court against the said order in OS No. 646/2008/R and OS No. 664/2008/T.

4. The 1st to the 4th Respondents' grounds of application are, *inter alia*, stated as follows:-

- (a) they have filed an appeal against the order of the STB on 13 May 2008 and 15 May 2008 to the High Court in OS No. 646/2008/R and 664/2008/T respectively;
- (b) The STB erred in law in granting the collective sale on the following grounds:
 - (i) The Order was contrary to Section 84A(3) of the LTSA;
 - (ii) The Order was contrary to relevant regulations in the LTSA and in the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 ("BMSMR") under the Building Maintenance and Strata Management Act 2004 ("BMSMA");
 - (iii) The Order was contrary to Section 84A(1)(b) of the LTSA in that there was no valid collective sale agreement ("CSA") between the subsidiary proprietors ("SPs") comprising not less than 80% of the share values of the development;
 - (iv) The transaction was not in good faith;
 - (v) STB made wrong findings of fact;
 - (vi) STB has no jurisdiction to order the minority owners who have not signed the CSA dated 30 March 2007 to be bound and comply with its terms and conditions; and
- (c) In the event that the order of the STB is set aside, and the sale to the Purchaser is completed, there will be confusion and complication with regard to re-conveyance of legal titles to all the owners.

5. The Applicants, however, objected to the interlocutory applications. Their grounds of objection are, *inter alia*, as follows:-

- (a) As early as 13 and 15 May 2008, the 1st to the 4th Respondents had filed an appeal against the STB order by way of OS No. 646/2008/R and 664/2008/T;
- (b) For almost 2 months the said Respondents did not apply for stay of proceedings despite knowing that completion of the sale was scheduled to take place on 21 July 2008. They served the application only on 8 July 2008 which is less than 2 weeks before the completion;
- (c) As completion could not take place on 21 July 2008, the purchaser's solicitors served on the Applicants a 21-day notice to complete, which would expire on 11 August 2008;

- (d) Once the sale is withdrawn, it would affect 58 SPs. The harm caused to them is irreparable;
- (e) The granting of a stay is at the discretion of the Board. It should not exercise its discretion in favour of a party who is clearly in defiance and contempt of the STB order;
- (f) Should the said Respondents succeed in their appeal, they can claim damages. However, should a stay be granted and the purchaser walks away from the deal, the majority SPs have no remedy. The exercise of discretion should therefore lean in favour of the majority SPs;
- (g) Granting a stay would be playing directly into the said Respondents' scheme to scuttle the sale as the last day for completion is now 11 August 2008 and the hearing has been fixed for 12 August 2008. The Applicants wrote to the High Court on 22 July 2008 to bring forward the hearing date but the Respondents objected; and
- (h) A stay of proceeding should only be granted in exceptional circumstances. The said Respondents have not raised any significant or strong issues of law. Accordingly no stay of proceeding pending appeal should be granted.

Decision

6. The Board has heard the submissions put forth by counsel for all the parties and the 4th Respondent in person and the authorities cited. The Board is of the opinion that there is no compelling reasons or special circumstances which warrant the Board to grant the stay of execution of the Board's order of 18 April 2008. Accordingly, the stay applications are dismissed with costs. The Board will hear the issue on costs at a later date if parties are unable to agree.

7. With the Board's dismissal of the stay applications, all the SPs are bound by section 84B(1)(b) of the LTSA to sell the lots and common property in accordance with the sale and purchase agreement. The section 84C application is to now give effect to the Board's order for the sale of the development by applying for authorised representatives to be appointed to deal with all matters in connection with the sale of the lots. This includes the execution of all relevant documents referred to in section 84C(2) of the LTSA and the payment of moneys into court under section 62 of the Trustees Act.

8. After hearing submissions by all parties, the Board has decided to grant the Applicants' application for Richard Goh Kok Hwa, Soh Liang Liang and Lee Choon Kum Beatrice to be appointed jointly and severally as the authorised representatives pursuant to section 84C, with no order as to costs.

Dated this 31st day of July 2008

MR TAN LIAN KER

President
Strata Titles Boards

MR CHNG BENG GUAN

Member
Strata Titles Boards

MR SENG KWANG BOON

Member
Strata Titles Boards

MR TANG TUCK KIM

Member
Strata Titles Boards

MR TAY KAH POH

Member
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