Ng Swee Lang and Another v Sassoon Samuel Bernard and Others
[2008] SGCA 7

Case Number : CA 145/2007

Decision Date : 29 February 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Michael Hwang SC and Fong Lee Cheng Jennifer (Michael Hwang), Yip Shee Yin and Leong Why Kong (Ascentia Law Corporation) for the appellants; Christopher Yong Shu Wei and Joshua Chai Kok Keong (Legal21 LLC) for the respondents

Parties : Ng Swee Lang; Yip Hoi Thong — Sassoon Samuel Bernard; Chong Kok Boon; Chong Yan Chin

Administrative Law – Statutory requirement that method of distribution of sale proceeds be stated in sale and purchase agreement – Non-compliance with requirement – Whether application to Strata Titles Board for approval incompetent and whether Board having jurisdiction to hear application for collective sale

Contract – Contractual terms – Collective sale agreement expressed to terminate within period of validity of sale and purchase agreement – Whether agreements operating independently or sequentially

Land – Sale of land – Section 6(d) Civil Law Act (Cap 43, 1999 Rev Ed) – Price of individual unit not specified in sale and purchase agreement – Whether sale and purchase agreement valid

Land – Strata titles – Collective sales – Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) – Strata Titles Board – Omission to specify in sale and purchase agreement proposed method of distribution of sale proceeds under s 84B(1)(b) – Whether sale and purchase agreement valid

Statutory Interpretation – Construction of statute – Purposive approach – Definitions – Purposive interpretation of s 84A(1) read with s 84A(3) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

29 February 2008 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

1 This appeal concerns the collective sale of the freehold condominium development (comprised in Land Lot No 559X TS 21 under Strata Title Plan No 287) at 70 St Thomas Walk known as Phoenix Court which comprises three penthouses on the highest floor and 44 apartment units on the lower floors.

2 The application for the collective sale of Phoenix Court ("the Application") was made pursuant to a sale and purchase agreement dated 27 October 2006 ("the S&P Agreement") entered into between the owners of 46 out of the 47 residential units in Phoenix Court ("the Majority Owners") and Bukit Panjang Plaza Pte Ltd ("the Purchaser"). The Application was approved by the Strata Titles Board ("the Board") despite the objections of the appellants, who are the joint subsidiary proprietors of unit No 07-70. The appellants' appeal against the Board's decision to the High Court in Originating Summons No 1089 of 2007 was dismissed by Andrew Ang J ("the Judge") in *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 1 SLR 522 ("the GD").

3 The Application was made by the respondents in this appeal on behalf of the Majority Owners, who hold 97.92% of the total share value of Phoenix Court ("the Share Value"). The

appellants, who are also the sole dissenting owners, hold 2.08% of the Share Value. The total area of the lots held by the Majority Owners well exceeded 80% of the total area of the lots in Phoenix Court.

4 In this appeal, the appellants contend that the decision of the Judge is wrong on a number of grounds, which may be summarised as follows:

(a) the respondents had no *locus standi* to make the Application to the Board as the S&P Agreement did not specify the proposed method of distributing the proceeds of sale ("the distribution method"), in violation of s 84A(1) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act");

(b) the S&P Agreement was not valid and/or enforceable as, the distribution method not being stated therein, the price in respect of each lot in Phoenix Court could not be ascertained;

(c) the respondents had no *locus standi* to make the Application as they were not the authorised representatives of the Majority Owners for the purposes of s 84A(2) of the Act; and

(d) there was no valid collective sale application for the Board to approve as the S&P Agreement was extended only after the termination of the collective sale agreement entered into among the Majority Owners ("the CSA") (see [10] below) and therefore, or alternatively, the S&P Agreement had terminated pursuant to cl 3 thereof.

The policy on collective sales

5 Before we deal with these grounds of appeal, we should understand the policy considerations applicable to the collective sale of condominiums and flats in Singapore. The collective sale, under which all the units and the common property in a condominium development or a block of flats ("subject property") may be sold if a sufficient number of subsidiary proprietors agree to it (for ease of exposition, we will refer to the requisite body of consenting subsidiary proprietors as "majority owners" in this judgment), notwithstanding the objections of dissenting subsidiary proprietors ("minority owners"), is a peculiar feature of the property market in Singapore. It is a statutory construct to give effect to the Government's policy to facilitate urban renewal by enabling old apartment blocks to be redeveloped by the private sector. Initially, a collective sale could take place only if the subsidiary proprietors of all the lots in the subject property consented to the sale. However, due to rapid changes in the economic and environmental landscape of Singapore, the Government decided to modify its policy on collective sales by relaxing the strict statutory conditions applicable to such sales. At the second reading of the Land Titles (Strata) (Amendment) Bill (Bill 28 of 1998) ("the Bill") to enact these changes ("the Second Reading"), the Minister of State for Law said (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 ("*Singapore Parliamentary Debates*") at col 601):

> I had informed this House on 19th November last year [*ie*, 1997] that [the] Government would be amending the law to make it easier for en-bloc sales to take place. The current position is that a single owner, for whatever reason, can oppose and thwart a sale. [The] Government has received many appeals and feedback from frustrated owners whose desires to sell their flats or condominiums en-bloc have been so thwarted. As a result, these buildings cannot take advantage of enhanced plot ratios to realise their full development potential, which would have created many more housing units in prime 999-year leasehold or freehold areas for Singaporeans. A secondary benefit is that these developments, especially in the older ones, could have been rejuvenated through the en-bloc process.

> I said that the law would be amended to remove the need for unanimous consent. … [I]n land-scarce Singapore, such an approach was even more imperative as it would make available more prime land for higher-intensity development to build more quality housing in Singapore. … I highlighted the fact that safeguards would be put in place to protect the interests of the minority owners.

6 The new scheme outlined above was enacted by the Land Titles (Strata) (Amendment) Act 1999 (Act 21 of 1999) ("the 1999 Amendment Act"). It modified two main qualifying conditions for a collective sale. The first concerns the age of the subject property; the second concerns the proportion of the subject property's share value and the total area of the lots held by majority owners. These two conditions are reflected in s 84A(1) of the Act as follows:

> (a) if the subject property is less than ten years old, the majority owners must hold not less than 90% of the share values and not less than 90% of the total area of all the lots in the subject property;
>
> (b) if the subject property is ten years old or more, the majority owners need only hold not less than 80% of the share values and not less than 80% of the total area of the lots in the subject property.

7 The 1999 Amendment Act also introduced a large number of procedural steps and substantive safeguards to protect the interests of minority owners, such as ensuring that they are kept fully informed by the subject property's collective sale committee of the progress of the sale and any developments in relation thereto. We will consider the adequacy of these safeguards later in this judgment. The basic idea of the collective sale scheme is to enable majority owners to sell the subject property to a purchaser without the consent of the minority owners, subject to the approval of the Board. Once the Board has approved the collective sale application, the Board's order binds all the minority owners and they, together with the majority owners, are under an obligation to transfer their respective lots and the common property to the purchaser in accordance with the terms of the sale and purchase agreement (see s 84B(1)(*b*) of the Act). The sale takes effect by virtue of the Board's order, and not by virtue of the sale and purchase agreement. In short, the collective sale is not a contractual sale, but a new form of statutory sale.

8 The Act does not prescribe the form of the sale and purchase agreement to be entered into between the majority owners and the purchaser, but s 84A(1) implicitly requires it to specify the distribution method. The collective sale scheme assumes that only the majority owners are parties to the sale and that the minority owners need not be parties. The reason for this procedure is a practical one – namely, it would be virtually impossible to get a minority owner to sign the sale and purchase agreement since he is objecting to the sale. In the present appeal, there is a dispute between the appellants and the respondents as to the legal nature of the sale and purchase agreement under the collective sale scheme. The appellants argue that the sale and purchase agreement is the aggregation of all the individual sale and purchase contracts entered into between the various subsidiary proprietors and the purchaser, whereas the respondents assert that it is a single collective agreement with the purchaser. If the appellants' argument is correct, it would have an effect on the validity of the S&P Agreement. But, in our view, the argument is not correct. The legislative amendments made to the collective sale scheme in 1999 are intended to facilitate – and not to place unnecessary obstacles in the way of – collective sales, as can be seen from the ministerial speech quoted earlier (at [5] above).

9 Although the collective sale scheme is relatively straightforward, unfortunately, the legislation giving effect to it – *viz*, Pt VA of the Act – is not free from difficulty. The provisions of

Pt VA have given rise to much litigation between minority owners and majority owners, and even among majority owners themselves. In this appeal, the meaning and effect of s 84A of the Act is contested by both parties. The wording of this section has enabled the appellants to advance a plausible argument that s 84A(1) is a jurisdictional provision, and that because the S&P Agreement did not specify the distribution method, the respondents did not have *locus standi* to make the application.

The relevant facts

10 The relevant facts of this appeal, which are largely undisputed, are as follows:

(a) On 26 February 2006, an extraordinary general meeting of the management corporation of Phoenix Court was held, at which ten subsidiary proprietors were elected as members of the sale committee ("the SC") to effectuate the collective sale of Phoenix Court. At this meeting, only the third respondent was elected as a member of the SC.

(b) On 16 April 2006, the Majority Owners (who, as stated at [2] above, own 46 out of the 47 units in Phoenix Court) entered into the CSA, which set out their intention to sell their respective lots collectively and the terms on which such sale was to take place. On that day, the second respondent became a member of the SC. The appellants objected to the sale and did not sign the CSA.

(c) On 26 September 2006, the first respondent became a member of the SC.

(d) In mid-2006, the SC put out a public tender for the collective sale of Phoenix Court, but failed to attract any bids. Following this, on 27 October 2006, the Majority Owners and the Purchaser entered into the S&P Agreement. That agreement contained, *inter alia*, a termination clause (cl 3) which provided that if approval for the collective sale of Phoenix Court was not obtained from the Board within six months from the date of the S&P Agreement (*ie*, by 27 April 2007), that agreement would lapse.

(e) On 17 January 2007, the respondents made the Application to the Board. The appellants objected to the Application.

(f) On 25 April 2007, the SC, on behalf of the Majority Owners, entered into a supplemental agreement with the Purchaser ("the Supplemental Agreement") to extend the time to 27 June 2007 for the Majority Owners to obtain a collective sale order from the Board.

(g) On 4 June 2007, 21 subsidiary proprietors of Phoenix Court (holding 29.17% of the Share Value) made an application to the High Court in Originating Summons No 829 of 2007 ("OS 829/07") for the following declarations:

(i) the CSA had ceased to have effect on 16 April 2007;

(ii) the SC had no authority to enter into the Supplemental Agreement; and

(iii) the Supplemental Agreement was null and void.

The application was dismissed by the High Court on 6 November 2007 (see *Tan Joy Hon v Sassoon Samuel Bernard* [2007] SGHC 191). The appellants were not parties to OS 829/07.

(h) Pending the outcome of OS 829/07, on 13 June 2007, the appellants applied to the

Board for the hearing of the Application to be postponed until after the final determination of OS 829/07. The Board rejected the application.

(i) On 21 June 2007, the appellants applied to the High Court for an interim injunction to restrain the respondents from proceeding with the Application. The application was dismissed.

(j) On the same day (*ie*, 21 June 2007), the Board began hearing the Application. The appellants, who were represented by counsel, objected to the Application on the following grounds:

(i) there was no valid agreement among subsidiary proprietors holding no less than 80% of the Share Value for a collective sale of Phoenix Court;

(ii) the S&P Agreement was invalid;

(iii) the respondents were not "authorised representatives" of the Majority Owners for the purposes of s 84A(2) of the Act; and

(iv) the transaction was not made in good faith having regard to the sale price, the non-stipulation of the distribution method and the defective nature of the valuation report obtained by the respondents.

The Board rejected all these grounds and approved the Application.

11 The appellants appealed to the High Court to set aside the Board's decision. In addition to relying on the four grounds which had been rejected by the Board (see [10(j)] above), the appellants relied on two other grounds, namely:

(a) the Board erred in law in approving the Application as, contrary to s 84A(3) of the Act read with para 1(*e*) of the First Schedule to the Act ("the First Schedule"), notice of the Application had not been accompanied by a valid valuation report; and

(b) the Board erred in law in approving the Application as, contrary to s 84A(1) of the Act, the S&P Agreement did not specify the distribution method.

12 The Judge rejected all the above grounds comprehensively in the GD. Still not satisfied, the appellants filed the present appeal against the Judge's decision based on the same grounds (other than the ground based on bad faith) that had earlier been rejected by the Judge. We will now consider the grounds of appeal in the order set out in [4] above.

The grounds of appeal

The respondents had no locus standito make, and the Board had no jurisdiction to hear, the Application

13 The first point of law relied upon by the appellants concerns the proper construction of ss 84A(1) and 84A(2) of the Act, which provide as follows:

(1) An application to [the] Board for an order for the sale of all the lots and common property in a strata title plan may be made by —

…

(*b*) the subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots (excluding the area of any accessory lot) where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building (not being common property) comprised in the strata title plan …

who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

(2) The subsidiary proprietors referred to in subsection (1) shall appoint not more than 3 persons from the collective sale committee referred to in subsection (1A) to act jointly as their authorised representatives in connection with any application made under that subsection.

14 The appellants' argument is disarmingly simple. It is that s 84A(1) of the Act clearly provides that any collective sale application to the Board "*may*" [emphasis added] be made by majority owners pursuant to a sale and purchase agreement which specifies the distribution method. It is therefore obvious that such an application *may not* be made otherwise (*ie*, if the sale and purchase agreement in question does not state the distribution method). The appellants argue that as s 84A(1) confers an extraordinary right on majority owners to sell their units as well as the units of minority owners against the latter's wishes, it is akin to a compulsory acquisition of the lots of the minority owners. For that reason, all the statutory conditions applicable to a collective sale must be strictly observed, failing which that right cannot be exercised. In the case of Phoenix Court, since the S&P Agreement does not specify the distribution method (a point which the respondents do not dispute), it follows that the Majority Owners may not make the Application to the Board and, accordingly, the Board has no jurisdiction to hear the Application. The appellants contend that the requirements of s 84A(1) relating to the age of the subject property and the share values prescribed thereunder are fundamental – they are the terms on which acquisition of the minority owners' units takes place in a collective sale. Hence, it is argued, a breach goes to the jurisdiction of the Board.

15 Counsel also submitted that Parliament fully intended every sale and purchase agreement to state the distribution method. In this regard, he referred to the speech at the Second Reading by the Minister of State for Law, who said (see *Singapore Parliamentary Debates* ([5] *supra*) at col 603):

> [T]here will be adequate safeguards to protect the interests of minority owners. These safeguards are found in the procedures as well as in the substantive powers of the Strata Titles Board.
>
> Let me first touch on the procedures. The majority owners will first enter into a conditional sale and purchase agreement to sell to a purchaser, subject to their obtaining an order from the Strata Titles Board. … *The conditional sale and purchase agreement must state the price and method of distributing the sale proceeds*. The majority owners must then apply to the Strata Titles Board for an order of sale, enclosing the documents mentioned earlier.
>
> [emphasis added]

Jurisdictional conditions and procedural irregularities: Regina v Ashton

16 The Judge rejected the appellants' argument, and we are now required to reconsider its merits in this appeal. At the heart of the appellants' argument is the distinction which counsel has drawn between conditions which go to jurisdiction and conditions which do not. The former, if not complied with, will affect the jurisdiction of the Board. The latter, if not complied with, will merely be a procedural irregularity which the Board may take into consideration in deciding whether or not to approve a collective sale application. Counsel referred to the decision of the English Court of Appeal in *Regina v Ashton* [2007] 1 WLR 181 ("*Ashton*") in support of his argument. In *Ashton*, the court discussed the effect of non-compliance with various statutory provisions, and made a distinction between jurisdictional conditions and non-jurisdictional conditions as follows (at [4]–[6]):

> The outcome of each of these cases essentially depends on the proper application of the principle or principles to be derived from the decision of the House of Lords in *R v Soneji* [2006] 1 AC 340, together with the earlier decision of this court in *R v Sekhon* [2003] 1 WLR 1655. Indeed, these three applications [in *Ashton*] demonstrate how far-reaching the effect of those authorities is likely to be whenever there is a breakdown in the procedures whereby a defendant's case progresses through the courts (as opposed to the markedly different situation when a court acts without jurisdiction). In our judgment it is now wholly clear that whenever a court is confronted by failure to take a required step, properly or at all, before a power is exercised ("a procedural failure"), the court should first ask itself whether the intention of the legislature was that any act done following that procedural failure should be invalid. If the answer to that question is no, then the court should go on to consider the interests of justice generally, and most particularly whether there is a real possibility that either the prosecution or the defence may suffer prejudice on account of the procedural failure. If there is such a risk, the court must decide whether it is just to allow the proceedings to continue.
>
> On the other hand, if a court acts without jurisdiction – if, for instance, a magistrates' court purports to try a defendant on a charge of homicide – then the proceedings will usually be invalid.
>
> In *R v Sekhon* in the context of confiscation proceedings, this court held that "the purpose of rules of procedure is not usually to give or take away a court's jurisdiction"; rather, "procedural requirements provide a convenient and just machinery enabling the court to exercise its jurisdiction" ...

17 In *Ashton,* the court dealt with three cases. In the first two cases ("*R v Ashton*" and "*R v Draz*" respectively), judges sitting in the Crown Court had exercised the powers of a district judge to overcome certain procedural failures in magistrates' court proceedings which had been either sent or committed to the Crown Court. In the third case ("*R v O'Reilly*"), a judge of the Crown Court had exercised the powers of a district judge to deal, outside the statutory six-month time limit, with the accused on a summary offence. All three accused persons sought leave to appeal against their convictions.

18 The English Court of Appeal held that there was no indication in the first two cases that it was Parliament's intention that the procedural failures in question should affect the validity of the proceedings, provided the accused had not been prejudiced by such failures. The court found that the accused in both *R v Ashton* and *R v Draz* had not suffered prejudice or injustice as a result of the procedural failure identified. Hence, the proceedings in both cases were held to be valid. In *R v O'Reilly*, however, the application for leave to appeal was allowed on the ground that the court had no power to deal with the accused in relation to a prosecution for a summary offence brought outside the statutory time limit. Such a defect was wholly jurisdictional rather than procedural in nature. Leave to appeal was thus granted to the accused, and his conviction was quashed.

19 The Judge rejected the appellants' arguments founded on *Ashton*. The Judge held (at [47] of the GD), relying on a passage from *Ashton* at [4] (see the quote set out at [16] above), that there was nothing in Pt VA of the Act which was expressly jurisdictional, unlike s 127(1) of the Magistrates' Courts Act 1980 (c 43) (UK). The latter provision, which was considered by the English Court of Appeal in *R v O'Reilly*, states as follows:

> [A] magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose.

We agree with the Judge that the above provision is clearly jurisdictional in the sense that a magistrates' court would not have jurisdiction or power to try any information or hear any complaint which is laid outside the statutory six-month time limit – *ie*, such matters would be *ultra vires* the magistrates' courts.

20 The Judge then went on to hold that to draw a distinction between conditions which go to jurisdiction and those which do not would be to resurrect the "mandatory/directory" classification which has been held to have outlived its usefulness by the Australian High Court in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 ("*Project Blue Sky*"). In that case, it was held (at 390) that a better test for determining the validity of an act done in breach of a legislative provision was to ask whether it was the purpose of the legislation that an act done in breach of the provision in question should be invalid. In *Regina v Soneji* [2006] 1 AC 340 ("*Soneji*"), which was applied in *Ashton* ([16] *supra*), Lord Steyn said at [23]:

> Having reviewed the issue in some detail I am in respectful agreement with the Australian High Court that the rigid mandatory and directory distinction, and its many artificial refinements, have outlived their usefulness. Instead, as held in *Attorney General's Reference (No 3 of 1999)* [[2001] 2 AC 91], the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity. That is how I would approach what is ultimately a question of statutory interpretation.

21 The Judge applied this modern approach to statutory interpretation, which requires the court (see [43] of the GD):

> ... [to look] at the whole scheme and purpose of the Act and … [weigh] the importance of the particular requirement in the context of that purpose and [ask] whether the Legislature would have intended the consequences of a strict construction, having regard to the prejudice to private rights and the claims of the public interest (if any) .

This approach to statutory interpretation has been adopted in England, Australia and Canada and also by our courts (see *PP v Low Kok Heng* [2007] 4 SLR 183 and *Chai Choon Yong v Central Provident Fund Board* [2005] 2 SLR 594). It was approved in *Re Ramaschayana Sulistyo* [2005] 1 SLR 483 by V K Rajah J, who referred to it (at [24]). In *Chee Siok Chin v AG* [2006] 3 SLR 735 ("*Chee Siok Chin*"), Andrew Phang Boon Leong JA, after referring to the views of Rajah J, said at [82]–[83]:

> Indeed, this is precisely the approach that I have adopted in the present proceedings, and which, incidentally, was also the approach adopted by Lee [Hun Hoe] J in the *Chong Thain Vun* case [*Chong Thain Vun v Watson* [1968] 1 MLJ 65] (at 73). It might, nevertheless, be helpful to observe that words such as "mandatory" and "directory" are still helpful inasmuch as they assist in focusing on the *nature* of the provision concerned and (more importantly) on the *consequences* of non-compliance with it. However, such words do not, in and of themselves, aid

substantively in the *process* of ascertaining whether or not the provision concerned is indeed "mandatory" or "directory". In this regard, there is no substitute for a close analysis of the language of the provision itself set in its legislative context.

The approach just suggested also finds some support in the English Court of Appeal decision of *Ahmed v Kennedy* [[2003] 1 WLR 1820], which was referred to earlier in this judgment. In that case, Simon Brown LJ, cited (at [29]) Lord Woolf MR (as he then was) in *Regina v Secretary of State for the Home Department, Ex parte Jeyeanthan* [2000] 1 WLR 354 at 362*)*, where he described the then Master of the Rolls as observing that "[the] dichotomy [between "directory" and "mandatory" provisions] is 'only at most a first step' and that further questions then arise to help the court decide whether in any given case non-compliance ought properly to be held fatal so as to oust the court's jurisdiction in the matter". The learned lord justice then reiterated (*ibid*) the same approach which was endorsed in the preceding paragraph, as follows:

> Rather, however, than spend time circling around the ultimate question, I propose to address it directly: does this legislation on its true construction give the court a discretion to waive these petitioners' timeous non-compliance or must it be regarded as fatal to their proceedings?

[emphasis in original]

22 Before us, counsel for the appellants contended that the Judge had misunderstood the decision in *Project Blue Sky* and had confused the nature of jurisdictional conditions with the mandatory/directory nature of non-jurisdictional conditions. Counsel pointed out that *Project Blue Sky* did not discuss whether a condition was jurisdictional, but whether non-jurisdictional requirements had to be strictly complied with. Section 84A of the Act, so counsel submitted, was structured such that all the requirements therein were intended to be jurisdictional. He drew a contrast between s 84A(1) (reproduced at [13] above) and s 84A(3), which provides as follows:

> [N]o application may be made under subsection (1) by the subsidiary proprietors referred to in that subsection unless they have complied with the requirements specified in the First, Second and Third Schedules and have provided an undertaking to pay the costs of the Board under subsection (5).

He argued that if the requirements in the above-mentioned Schedules to the Act had to be complied with before majority owners could apply for a collective sale order under s 84A(1) of the Act, then, *a fortiori*, they could not make such an application if they did not comply with the requirements of s 84A(1) itself. Majority owners, so counsel submitted, must comply with s 84A(1) *in full* in order to have the standing to make a collective sale application.

23 We do not think that the Judge was wrong in drawing an analogy between the mandatory/directory classification and the jurisdictional/non-jurisdictional classification. All he meant to say was that the modern approach is to consider whether it is the intention of Parliament to invalidate any act done in breach of a statutory provision. Applying this approach to the facts of the present appeal, we should ask whether Parliament intended the non-stipulation of the distribution method in the S&P Agreement to deprive the respondents of the capacity to make the Application. We agree fully with the Judge's approach.

24 But, we can go further in determining the legislative intention in the present case by examining the structure of s 84A(1) of the Act more deeply. As Phang JA stated in *Chee Siok Chin* at [82] (see the passage reproduced at [21] above), there is no substitute for a close analysis of the

language of the provision itself set in its legislative context. On this approach, it will be shown that s 84A(1), when contrasted with s 84A(3), has the opposite effect to that contended for by the appellants.

Jurisdiction, power and locus standi

25 Before we consider the parties' arguments on the meaning and effect of s 84A(1) of the Act, it is necessary that we first clarify the meaning of the terms "jurisdiction" and "*locus standi*", which have been used rather loosely by counsel for the appellants in his submissions. The word "jurisdiction", when used in the context of a court or tribunal having the power to determine disputes arising from a particular subject matter, simply means the authority vested in that body over the subject matter. This is what is meant when we say, for example, that the High Court has jurisdiction over all admiralty matters as defined by the High Court (Admiralty Jurisdiction) Act (Cap 123, 2001 Rev Ed). Section 3(1) of this Act expressly vests jurisdiction as follows:

> The admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims [in the matters set out in the subsections following] ...

In the present case, the Board undoubtedly has jurisdiction over all collective sales under the Act, but Pt VA of the Act does not contain any *express* provision conferring such jurisdiction. What the draftsman has done is to indirectly vest jurisdiction over collective sales in the Board by conferring on it the power to hear and approve or disapprove collective sale applications made under Pt VA of the Act. These powers are set out in ss 84A(5)–84A(7) and ss 84A(9)–84A(12) of the Act. The existence of a statutory power implies the existence of jurisdiction over the subject matter in relation to which the power is exercisable. But, the existence of jurisdiction does not imply the existence of unlimited power in relation to the subject matter (see *Muhd Munir v Noor Hidah* [1990] SLR 999).

26 Sometimes, the word "jurisdiction" is also used in the narrower sense of "power". In that sense, it refers to jurisdictional power. For example, when the court says that it has no jurisdiction to issue a Mareva injunction in aid of a foreign arbitration, it does not mean that the court does not have the authority to hear applications for Mareva injunctions in respect of pending or ongoing foreign arbitration. What it means, instead, is that that kind of injunction is not a relief which the court has jurisdiction (in the sense of jurisdictional power) or power to grant in the context concerned. No confusion will arise so long as we keep in mind what is really meant when we say that a court or tribunal has no jurisdiction or power to do a certain thing or give a certain relief.

27 In the present case, the appellants contend that s 84A(1) of the Act is a jurisdictional provision in that, if the conditions prescribed therein are not complied with, the Board has no jurisdiction to hear the collective sale application in question. For example, it is argued that if the subject property is less than ten years old and the majority owners own only 80% of the share values of all the lots in the subject property, the Board has no jurisdiction to hear a collective sale application made in such circumstances; likewise if the subject property is more than ten years old but the majority owners own less than 80% of the share values of all the lots. On the appellants' analysis, the conditions relating to both the age of the subject property as well as the percentage of the share values of all the lots and the percentage of the total area of the lots held by the majority owners are jurisdictional conditions and must be complied with before the Board can hear the collective sale application in question. But what exactly does this argument mean in the context of the jurisdiction of the Board to hear that application? In our view, counsel surely did not mean to say that whether or not the Board has jurisdiction to deal with a collective sale application depends on the majority owners' compliance with s 84A(1). Such an argument would elevate the majority owners'

compliance into the source of the Board's jurisdiction, which would be a very strange proposition of law. As we pointed out earlier (at [25] above), the Board's jurisdiction over collective sales is implied from the power vested in it to hear collective sale applications, and s 84A(1) itself refers to ss 84A(6) and 84A(7) in relation to the Board's power to approve or disapprove such applications. In short, s 84A(1) itself does not vest the Board with any jurisdiction or powers at all. What it does is to prescribe the basis on which majority owners may apply to the Board for a collective sale order. On this analysis, s 84A(1) is not a jurisdictional provision.

28 Counsel for the appellants also argued that the respondents had no *locus standi* to make the Application unless there was full compliance with all the requirements of s 84A(1). As such, the failure of the S&P Agreement to set out the distribution method disqualified the respondents from making the Application. But, again, in our view, this argument is confusing as it begs the question of what a jurisdictional or *locus standi* provision is or means. Does it mean that the Board has no jurisdiction or power to hear a non-complying collective sale application or that the application does not exist in law? In our view, characterising the issue as one of *locus standi* merely complicates and confuses what the real issue is in the present case. The expression "*locus standi*" is normally used in administrative law to refer to the right of a party who does not have a personal interest in the subject matter of the dispute to be heard by the court or tribunal. In the present case, the respondents obviously have an interest in the subject matter of the Application since they act for the Majority Owners. Accordingly, when counsel for the appellants contended that the respondents did not have *locus standi* to make the Application in the present case, he obviously did not mean to say that the respondents had no *locus standi* in the administrative law sense. What he meant, instead, was that they had no statutory right or capacity to make the Application. If the argument is analysed in these terms, then the only relevant consideration is whether, as a matter of fact, the respondents are "authorised representatives" (see s 84A(2) of the Act) of the Majority Owners. The specification of the distribution method has nothing to do with the respondents' right or capacity to make the Application. If the argument is analysed in terms of the Board's jurisdiction or power to hear the Application, then it is not tenable to say that the Board lacked jurisdiction or power to hear the Application simply because the S&P Agreement did not specify the distribution method.

29 There is a principle in administrative law that corresponds or is related to that advanced by counsel in this context. It concerns what have been called "jurisdictional" or "precedent" facts in cases where an authority is vested with powers to *deprive* persons of their rights or personal liberties. Jurisdictional or precedent facts are facts, the existence of which determines whether or not a tribunal has jurisdiction to hear a matter. A helpful definition may be found in *Mak Sik Kwong v Minister for Home Affairs, Malaysia (No 2)* [1975] 2 MLJ 175, where Eusoffe Abdoolcader J said (at 177):

> There are two types of facts: facts which an authority (a term I use to include an inferior tribunal, administrative agency or other body exercising judicial or quasi-judicial functions) has undoubted power or jurisdiction to determine; and facts which must exist before an authority can exercise jurisdiction. The latter are known as jurisdictional or collateral facts, the existence of which is a condition precedent for the application of a statutory standard or the assumption of jurisdiction by an authority to decide the case on its merits. Thus, where an authority has power to requisition a vacant house, it is a condition precedent for requisitioning the house that it must be vacant which is a jurisdictional or collateral fact.

Whether this approach applies to cases where an authority is vested with powers to *confer* rights or interests on persons may need further consideration. But, even if counsel for the appellants had put his argument in these terms, the court would still need to be convinced that the specification of the distribution method is a jurisdictional or precedent fact.

30 There are two separate issues to consider with respect to the appellants' argument. The first is the distribution method itself. This must obviously be made known to all the subsidiary proprietors of the subject property as they would not otherwise know how their share values are determined and what part of the purchase consideration they will be receiving. However, these requirements are already covered by the First Schedule. The second is the specification of the distribution method. If the distribution method is required to be and has already been set out in the collective sale agreement (*ie*, the agreement between the majority owners *inter se* to sell their units collectively), a copy of which must be given to every subsidiary proprietor, there is no rational basis to suggest that a failure to specify it in the sale and purchase agreement is so crucial that it deprives the majority owners of their capacity to apply for a collective sale order. Furthermore, the Board's power to approve or disapprove a collective sale application is governed by ss 84A(6) and 84A(7) of the Act, and not s 84A(1).

31 In our view, all that s 84A(1) does is to set out the circumstances in which a collective sale application may be made. It does not imply the converse proposition (which the appellants say is obvious), *ie*, that a collective sale application may not be made in any other circumstances ("the converse proposition"), such as when the sale and purchase agreement does not specify the distribution method. The converse proposition cannot be derived from the terms of s 84A(1) simply because that subsection does not provide that it is *only if* the sale and purchase agreement specifies the distribution method that a collective sale application may be made. There is nothing in that subsection to imply or suggest the converse proposition either as a matter of logic or based on any principle of statutory interpretation. On the contrary, the meaning and effect of s 84A(1) is the opposite of that asserted by the appellants via the converse proposition. The word "may" in s 84A(1) means "at liberty to". That subsection does not say that the majority owners may not (or are not at liberty to) make a collective sale application if the sale and purchase agreement does not contain a specification of the distribution method. Taking the hypothetical scenario of a collective sale which has the consent of all the owners of the subject property, but where the sale and purchase agreement omits to specify the distribution method, it would lack logic or rationale for the Board to hold that it cannot hear the collective sale application for lack of jurisdiction. On the appellants' argument, in such a scenario, the Board has no choice but to decide that it has no jurisdiction to hear the application. This is an argument whose foundation rests on labelling every condition or fact contained in s 84A(1) as jurisdictional in nature. Yet, the modern approach to statutory interpretation is precisely to eschew from affixing a label to a condition, fact or requirement as jurisdictional or non-jurisdictional and from ascribing the opposite (*ie*, a lack of jurisdiction) by reason of a failure or an omission to comply with such a condition, fact or requirement. To paraphrase Lord Woolf MR in *Regina v Secretary of State for the Home Department, Ex parte Jeyeanthan* [2000] 1 WLR 354 at 362, we should ask: Does s 84A(1) on its true construction give the court a discretion to waive the respondents' omission to specify the distribution method in the S&P Agreement?

32 A close examination of s 84A(1), read in its proper context, makes it clear that the jurisdictional or precedent facts in this subsection (the absence of which would lead the Board to disapprove a collective sale application) are referable only to the age of the subject property as well as the share values and the total area of the lots held by the majority owners. The reference in the same subsection to specification of the distribution method, which is the nub of the appellants' argument, is redundant and unnecessary as it has already been provided for in s 84A(3) read with the First, Second and Third Schedules to the Act, the effect of which will be considered later. In our view, the reference was included *ex abundanti cautela.*

33 Before we proceed to consider the relationship between s 84A(1) and s 84A(3) and the effect of the latter provision, we would like to comment on the aforementioned statement of the Minister of State for Law in his speech at the Second Reading that the sale and purchase agreement must

specify the distribution method (see *Singapore Parliamentary Debates* ([5] *supra*) at col 603 (set out at [15] above)). It is clear that what he said was taken from cl 8 of the Bill, which introduced the current s 84A(1) of the Act. It was not necessarily an expression of legislative intent with reference to which s 84A(1) of the Act was drafted; neither was it a statement as to the legal effect of a failure to state the distribution method in the sale and purchase agreement.

34 The language of s 84A(1) may be compared with that of s 84A(3), which provides expressly that "no application may be made" under s 84A(1) by the subsidiary proprietors referred to in that subsection (*ie*, the majority owners) unless they have complied with the requirements specified in the First, Second and Third Schedules to the Act and have provided an undertaking to pay the costs of the Board under s 84A(5). In the case of s 84A(3), the converse proposition is true as a matter of logic – *ie*, a collective sale application may be made only if the majority owners have complied with all the requirements of s 84A(3). This point is crucial as, in the present case, the Application complied fully with the requirements of s 84A(3) read with the First, Second and Third Schedules to the Act. Section 84A(3) covers all the requirements in s 84A(1), other than the specification of the distribution method. If, therefore, majority owners may (in the sense of being entitled to) make a collective sale application to the Board under s 84A(3) where all the requirements of that subsection have been complied with, there would be no reason for Parliament to deprive them of the same right under s 84A(1) merely because of a failure to comply with the provision in that subsection (*ie*, s 84A(1)) that the sale and purchase agreement must set out the distribution method. In this respect, s 84A(3) is consistent with the legislative intent that the sale and purchase agreement is to be made between the majority owners and the purchaser and that the minority owners do not have to be party to the said agreement. As far as the purchaser is concerned, he is only obliged to pay the vendors (*ie*, the subsidiary proprietors of all the units in the subject property) a collective price for the entire subject property to complete the purchase thereof. The specification of the distribution method is not a relevant term of the sale and purchase agreement. It may well be that, in some collective sales, the purchaser might be prepared to pay the owners who consent to the sale their share of the sale price separately, especially where there are no minority owners. But that is not a requirement prescribed in the First Schedule.

35 We should further add that, having regard to the policy objectives of the collective sale scheme, there is no basis for this court to set aside the collective sale order made by the Board in the present case. Indeed, there is a very strong basis to uphold it in order to affirm the general principle that the courts should not allow what is, in the present case, a truly technical objection to frustrate the wishes of the Majority Owners when the appellants have suffered no prejudice whatsoever from the failure of the S&P Agreement to specify the distribution method.

36 In the court below, the Judge held that Pt VA of the Act is intended to facilitate, rather than obstruct, collective sales by expressly restricting (via ss 84A(7)–84A(9)) the grounds on which the Board may disapprove a collective sale application. In ascertaining the legislative intent of Pt VA of the Act, the Judge referred to ss 84A(7)–84A(9) and said (at [52]–[55] of the GD):

> 52 ... Inferentially, therefore, these [subsections] are the express grounds upon which objection could be made to the sale. Under s 84A(7), a minority owner can object if he will incur a financial loss or if the proceeds of sale will be insufficient to redeem any mortgage or charge (this latter objection being also available to a mortgagee or chargee). Additionally, objections could be made under s 84A(9) on the grounds that:
>
> (a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price;

(ii) the method of distributing the sale proceeds; and

(iii) the relationship of the purchaser to any of the subsidiary proprietors; or

(b) the [sale and purchase agreement] would require any minority owner to be a party to any arrangement for redevelopment of the land on which the strata lots and common property stood.

53 Unless the Board is satisfied that any of these specific grounds is made out, the Board is required to approve the sale. It should be noted that, in imperative terms, s 84A(7) provides that "the Board *shall*, subject to subsection (9) … approve the application … and order that the lots and common property … be sold unless … the Board is satisfied that" [emphasis added] any minority owner will suffer a financial loss or the proceeds of sale for any lot to be received by an objector (*ie*, owner, mortgagee or chargee) are insufficient to redeem any mortgage or charge.

…

55 At the end of the day, each objection must be examined on its own facts and the particular requirement breached set against the overall purpose of the legislation. One should then consider whether a strict construction and the invalidation of the Board's order was what Parliament would have intended, taking into account any prejudice to the rights of parties and the public interest (if any).

[emphasis in original]

37 We agree entirely with the Judge on this issue. For all of the above reasons, we conclude that the first ground of appeal (as set out at [4] above) has no merit.

Did the appellants waive the omission to specify the distribution method in the S&P Agreement?

38 During the hearing of this appeal, we sought the views of counsel for the parties on the incidental question of whether the appellants had waived their objection to the respondents' non-compliance with s 84A(1) in terms of the omission to specify the distribution method in the S&P Agreement, an issue which the appellants have pursued with such tenacity and vigour. The point arises in the context of ss 84A(1), 84A(4), 84A(6) and 84A(7) read together. Section 84A(1) provides that an application for a collective sale order is "subject to an order being made under subsection (6) or (7)". Section 84A(4) provides for objections to be made by minority owners, as follows:

A subsidiary proprietor of any lot in the strata title plan who has not agreed in writing to the sale referred to in subsection (1) … may each file an objection with [the] Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the First Schedule or such further period as the Board may allow.

Section 84A(6) provides as follows:

Where an application has been made under subsection (1) and no objection has been filed under subsection (4), the Board shall, subject to subsection (9), approve the application and order that the lots and common property in the strata title plan be sold.

Finally, s 84A(7) provides as follows:

> 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*) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.

39 It is not disputed that the appellants were served with the notice stipulated in para 1(*e*) of the First Schedule, under which the respondents had to serve, *inter alia*, a copy each of the CSA and the S&P Agreement on all the owners. In the present case, the CSA had set out not only the distribution method, but also the precise amount which each subsidiary proprietor in Phoenix Court would get. The S&P Agreement had also set out the area and the share value of each of the lots held by the Majority Owners, but not those of the unit owned by the appellants since they did not consent to the sale. However, it is not disputed by the appellants that they were aware of the distribution method and the amount they would receive with respect to their own unit as both details were set out in the CSA. The CSA was part of the materials considered by the Board when it heard the Application. The appellants did not object to the failure of the S&P Agreement to comply with s 84A(1). They also did not claim that they had been prejudiced by their omission as parties to the S&P Agreement (see [41] below).

40 In our view, the appellants' conduct before the Board has not only prejudiced the Majority Owners, but also the Purchaser. If the appellants had raised their objections earlier, the omission to specify the distribution method could easily have been rectified by the Majority Owners and the Purchaser. Instead, the appellants left it until literally the last minute to raise what the Judge correctly called a technical objection which had no merit whatsoever. In our view, given that s 84A(1) is not a provision that goes to the jurisdiction of the Board, we agree entirely with the Board in rejecting the appellants' argument regarding the non-specification of the distribution method and with the Judge in affirming the Board's decision on this point.

The S&P Agreement was not valid and/or enforceable as the price for each lot could not be ascertained

41 The appellants argue that in any collective sale, the price which a subsidiary proprietor is entitled to receive for his strata unit is an essential term of the sale and purchase agreement. If the sale and purchase agreement does not spell out the price to be paid for each unit, the owner of each unit will not know how much he will receive and, therefore, there cannot be a sale "in accordance with the sale and purchase agreement" within the meaning of s 84B(1)(*b*) of the Act. According to the appellants, where Phoenix Court was concerned, the failure to stipulate how much each subsidiary proprietor was to receive rendered the collective sale unworkable as a matter of contract and/or conveyancing law as there were 47 different transfers to be executed and 47 separate sets of completion accounts to be prepared. Moreover, as the S&P Agreement bound only the Majority Owners and as the distribution method was not specified therein, the appellants would not have any direct recourse to the Purchaser for their share of the sale proceeds in the event that the Purchaser failed to pay them their full share of the sale price. Counsel further argued, in respect of collective sales generally, that the omission to state the price of each strata unit might enable the Purchaser to

pay minority owners extra sums, without being detected, in order to procure their consent to the collective sale, thus leading to potential abuse of the collective sale procedures.

42 In short, what the appellants contend is that the sale and purchase agreement in a collective sale is the aggregation of the individual contracts between each subsidiary proprietor and the purchaser and that there is a direct contractual relationship even between minority owners who did not sign the sale and purchase agreement (like the appellants in the present case) and the purchaser. The Judge rejected this argument and held that s 84A of the Act envisaged the collective sale as one single sale and purchase transaction of the subject property as a whole between the majority owners and the purchaser. He reasoned that no individual owner could on his own enforce the sale and purchase agreement against the purchaser, who, correspondingly, could not choose to purchase some but not all of the units in the subject property. The minority owners need not be a party to the sale and purchase agreement, as is the case of the appellants in relation to the S&P Agreement. It is the order of the Board that binds the minority owners to the sale and purchase agreement, and not the sale and purchase agreement itself or the collective sale agreement. The fact that the sale and purchase agreement does not spell out the amount to be received by a minority owner is not a material omission as the amount which that owner is entitled to be paid for his unit can be ascertained from the terms of the collective sale agreement.

43 We agree with the reasoning of the Judge on this issue. The Act does not require the appellants, as minority owners, to sign the S&P Agreement as it would not be practical to make them do so. They are not under any contractual obligation to sell their unit to the Purchaser, but they are under a statutory obligation to do so. Given the elaborate safeguards contained in Pt VA of the Act, and especially the numerous conditions that majority owners have to fulfil before they can even make a collective sale application to the Board, the arguments of the appellants are forensic constructs which have to be rejected in the context of the legislative scheme for collective sales enacted in Pt VA of the Act. As we stated earlier, the collective sale is a new kind of legal arrangement to facilitate the sale of condominiums and flats *en bloc* so as to enable urban renewal to take place and to allow majority owners to maximise the economic value of their properties. As a matter of fact, although this does not affect the legal issues in the present appeal, none of the concerns expressed by the appellants about their inability to have recourse to the Purchaser for payment of the sale proceeds, their right to sue the Purchaser for breach of the S&P Agreement and other rights which a vendor would usually have in an ordinary property transaction have actualised, or will actualise, in the present case.

44 The appellants also relied on s 6(*d*) of the Civil Law Act (Cap 43, 1999 Rev Ed), which provides that no action shall be brought against any person "upon any contract for the sale or other disposition of immovable property, or any interest in such property" unless "the promise or agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person lawfully authorised by him". It is argued that the S&P Agreement is not such a written memorandum as it does not contain the price to be paid for the appellants' unit; nor is there any formula contained therein for working out the price. As such, the S&P Agreement is not an enforceable agreement whether under the Civil Law Act or at common law.

45 In our view, this argument has no merit as collective sales are governed by Pt VA of the Act and not by s 6(*d*) of the Civil Law Act.

The respondents had no locus standito make the Application as they were not the "authorised representatives" stipulated in section 84A(2) of the Act

46 Section 84A(2) requires the majority owners to appoint not more than three persons from

among themselves to act jointly as their authorised representatives in connection with any collective sale application made under s 84A(1). The gist of the appellants' argument that the respondents were not "authorised representatives" is that the word "representatives" is defined in cl 1.1 of the CSA as the persons listed in Sched 6 of the CSA and that, since only one of the respondents was so listed when the Application was made (the other two respondents having resigned and having been replaced by two substitutes), the Application was not competently made.

47 We do not propose to address this argument as it has been adequately and fully considered by the Judge. He dismissed it as having no merit, a decision which we are in agreement with. We would simply refer to his reasoning at [94]–[109] of the GD.

There was no valid sale and purchase agreement for the Board to approve as the S&P Agreement was extended only after the termination of the CSA, and therefore, or alternatively, the S&P Agreement had terminated pursuant to clause 3 thereof

48 The appellants argued that the S&P Agreement was invalidly extended as the extension was purportedly effected (on 25 April 2007 via the Supplemental Agreement) by the SC at a time when the SC's power to do so had expired with the termination of the CSA on 16 April 2007. This argument turns on the construction of cl 13 of the CSA, which reads as follows:

> This Agreement shall remain effective and binding on each of the Owners from the date of the Owner's execution of this Agreement and shall determine on any of the following events: –
>
> 13.1 upon the expiry of twelve (12) months from the date of this Agreement; or
>
> 13.2 if no Contract is entered into twelve (12) months from the date of this Agreement; or
>
> 13.3 where a Contract is entered into: –
>
> (a) on the performance of all Owners' obligations under the Contract and this Agreement ...

49 Counsel for the appellants placed particular emphasis on the word "any" in the third line of cl 13 of the CSA in arguing that each of the events referred to in the clause is a discrete event operating independently of the others. The Judge rejected the appellants' construction of cl 13 and preferred the interpretation put forth by the respondents' counsel that cl 13 refers to alternative sequential events. Again, we do not wish to re-examine this issue since the Judge considered the issue fully and adequately at [70]–[85] of the GD. We express our full agreement with the Judge's interpretation of the intended meaning of cl 13 of the CSA.

50 We would, however, add that it is not reasonable to read the sub-clauses in cl 13 of the CSA as referring to discrete events when, having regard to the various prescribed steps that have to be taken to effect a collective sale, it is clear that those sub-clauses are intended to be read sequentially. In other words, if an event ("Event A") does not occur, then a certain consequence will result; if Event A occurs, but another subsequent event ("Event B") does not occur, then a different consequence will ensue; and if Event B occurs, but a subsequent event does not occur, yet another different consequence will result. The sub-clauses of cl 13 were drafted to track the sequence in which a collective sale is implemented under Pt VA of the Act.

51 As regards the appellants' further and alternative argument that the S&P Agreement was

invalid because the CSA did not confer on the SC authority to extend it, the Judge rejected this argument for the reasons set out in [86]–[93] of the GD. We agree with the Judge and have nothing to add to his reasoning.

Conclusion

52 For the foregoing reasons, we agree with the Judge that, on a proper construction of s 84A(1) in the light of the overall structure and scheme of the Act, the omission of the S&P Agreement to specify the distribution method did not affect the validity of the Application or the jurisdiction of the Board to consider the Application. In any case, this particular irregularity had been waived by the conduct of the appellants.

53 We therefore dismiss this appeal with costs and the usual consequential orders.