Tan Siew Tian and Others v Lee Khek Ern Ken
[2008] SGCA 25

Case Number : CA 46/2008

Decision Date : 24 June 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Chao Hick Tin JA; V K Rajah JA

Counsel Name(s) : Harry Elias SC, Foo Soon Yien and Toh Wei Yi (Harry Elias Partnership) and Chia Soo Michael and Wee Siew Ping Justin (Sankar Ow & Partners LLP) for the appellants; respondent in person

Parties : Tan Siew Tian; Colin Yeo Teck Lee; Ong Wen Hui — Lee Khek Ern Ken

Land – Strata titles – Collective sales – Application – Share value – Subsidiary proprietor – Whether threshold share value requirement had been met – Whether party was a subsidiary proprietor for purposes of determining whether threshold share value requirement had been met – Whether subsidiary proprietor had to sign collective sale agreement within permitted period – Sections 3, 84A(1), 84A(1)(b), 84A(3), 84A(15), Schedule paras 1 and 1A Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Statutory Interpretation – Definitions – "Subsidiary proprietor" – Whether party was a subsidiary proprietor for purposes of determining whether threshold share value requirement had been met – Sections 3, 84A(1), 84A(1)(b), 84A(3), 84A(15), Schedule paras 1 and 1A Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Words and Phrases – "Subsidiary proprietors" – Sections 3, 84A(1), 84A(1)(b), 84A(3), 84A(15), Schedule paras 1 and 1A Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Words and Phrases – "Successor in title" – Section 84A(15) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

24 June 2008

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal against the decision of the High Court judge ("the Judge") in Originating Summons No 1748 of 2007 (*Tan Siew Tian v Lee Khek Ern Ken* [2008] 3 SLR 64, hereafter referred to as "the Judgment") where the Judge dismissed an appeal against the decision of the Strata Titles Board ("STB") in Strata Titles Board No 65 of 2007. The STB, in its decision, had rejected an application for the collective sale of a condominium development known as Airview Towers ("the Development") pursuant to s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA").

2 We heard the appeal on 24 April 2008 and allowed it. We ordered that the decisions of the High Court and the STB be set aside and remitted the matter to the STB for further consideration. We now give the grounds for our decision.

Preliminary observations

3 It should be noted at the outset that the relevant law governing this matter was the LTSA applicable immediately prior to the amendments of 4 October 2007. Accordingly, all references to

provisions in the LTSA will be to the provisions of the LTSA which were in force prior to 4 October 2007 unless otherwise stated.

4 That having been said, the relevant provisions of the LTSA applicable to the issue at hand (with emphasis placed on the germane parts), would be the following:

> **84A**.—(1) An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by —
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> (*a*) …
>
> (*b*) *the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit* on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,
>
> *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).
>
> …
>
> (3) No 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 Schedule* and provided an undertaking to pay the costs of the Board under subsection (5).
>
> **THE SCHEDULE**
>
> **REQUIREMENTS UNDER SECTION 84A, 84D or 84E**
>
> **1.** Before making an application to a Board, the subsidiary proprietors referred to in section 84A(1) … shall —
>
> (*a*) execute within the *permitted time* but in no case more than *12 months before the date the application is made*, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —
>
> (i) in the case of an application under section 84A, all the lots and common property in a strata title plan; …
>
> …
>
> …
>
> **1A.** For the purposes of this Schedule —
>
> (*a*) the permitted time in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in section 84A(1) … means a

period —

(i) *starting from the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and*

(ii) *ending not more than 12 months after the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement;* and

(*b*) *the collective sale agreement shall be regarded as executed notwithstanding that it is executed on separate copies thereof and at different times.*

[emphasis added]

5 Obviously, these statutory provisions are an encroachment on the property rights of minority condominium owners to the extent that they are bound by the decision of a qualifying majority of the condominium owners to sell the entire development by way of a collective sale. The LTSA originally provided that a collective sale could only take place if *all* the subsidiary proprietors of a development had consented to such a sale. However, this rule of unanimity posed considerable practical difficulties. A single subsidiary proprietor could thwart the will of the vast majority and impede the implementation of the government policy of urban renewal to enable old apartment blocks to be redeveloped by the private sector. These problems were alluded to by the Minister of State for Law in 1999 when he made the second reading speech which introduced amendments to the LTSA (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at cols 601–602 (Assoc Prof Ho Peng Kee)):

> The current position is that a single owner, for whatever reason, can oppose and thwart the [collective] sale. 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 the older ones, could have been rejuvenated through the en-bloc process.
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> …
>
> The current requirement of unanimous consent is untenable. The case of Kim Lin Mansions which was recently highlighted in the press brings this out clearly. Community living, which is the heart of living in a condominium, all but disappears when owners have to drag out their disagreement in court, incurring huge financial outlays in the process. There is uncertainty; there is delay; there is acrimony. Also, as more developments age and incur large upgrading and repair bills, opting for en-bloc sale will increasingly become a viable option. But the existing law which requires unanimous consent makes it extremely difficult, if not impossible, to realise en-bloc sales.

6 The difficulties mentioned led the Government to relax the then existing strict rules by enacting the Land Titles (Strata) Amendment Act (Act 21 of 1999) which enables the prescribed majority of the subsidiary proprietors (based on the prescribed share values) of a development, depending on the age of the development, to have the entire development sold off notwithstanding the opposition of some subsidiary proprietors. (The rationale of this policy has been explained by this court in *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR 597.) We should add that further amendments to the LTSA were subsequently enacted by Parliament in 2004 but those amendments

were not relevant to the issues raised in the present appeal. Recently, as mentioned earlier (see [3] above), further amendments were made to the LTSA. However, these amendments also had no application to the present case as they came into force after the initiation of the collective sale of the Development. Nonetheless, they were of some assistance to us in confirming the legislative intent (see [35] below) as to the scope of s 84A and the Schedule (*viz*, the provisions set out at [4] above).

Background facts

7 The Development is a freehold residential development located at St Thomas Walk off River Valley Road. It comprises 100 units with a total share value of 404.

8 In early 2006, certain subsidiary proprietors of the Development undertook steps to initiate a collective sale of the Development. This resulted in the formation of a sales committee ("the Sales Committee") and the engagement of the services of a property consultant, DTZ Debenham Tie Leung ("DTZ"), as well as a firm of solicitors, M/s Sankar Ow & Partners.

9 On 1 April 2006, the terms of the proposed collective sale agreement for the Development ("the CSA") were presented and explained to all the subsidiary proprietors of the Development. At the conclusion of the presentation, the CSA was signed, for the first time, by some of the subsidiary proprietors.

10 It would be apposite for us to point out, at this juncture, that the date on which the CSA was signed for the first time, *ie*, 1 April 2006, is of significance (particularly for the purposes of this appeal). This is because para 1A of the Schedule to the LTSA (see [4] above) requires the subsidiary proprietors of the lots supporting the proposal to have signed the collective sale agreement in question within the period of one year from the date on which the collective sale agreement was first signed by a subsidiary proprietor. Any subsidiary proprietor of a unit who signs the collective sale agreement after this period will have his or her share value disregarded for the purposes of determining whether the prescribed share value percentage under s 84A has been met (pursuant to s 84A(3) as can be seen at [4] above). In the context of the present case, this would mean that the last day on which a subsidiary proprietor of the Development, who wished to support the collective sale of the Development and be reckoned for the purposes of determining the prescribed share value percentage, had to sign the CSA was 31 March 2007 (the period up to 31 March 2007 within which the CSA had to be signed will hereafter be referred to as "the Permitted Period").

11 On 22 March 2007, following notification by DTZ that the subsidiary proprietors holding 80.9% of the share values in the Development had signed the CSA before the expiry of the Permitted Period, the Sales Committee sent out a notice to all subsidiary proprietors informing them that tenders would be invited for the purchase of the Development as a whole. Only one tender was received, which was from Bukit Sembawang View Pte Ltd, and the price offered was $202,168,000. This offer was accepted by the Sales Committee.

12 On 13 June 2007, the appellants, on behalf of all the consenting subsidiary proprietors, applied to the STB for an order to approve the collective sale. By that date, which fell outside the Permitted Period, the subsidiary proprietors of six other units in the Development signed the CSA. The application to the STB was made on the basis that the share values of these six units were included amongst the consenting majority. By 31 October 2007, the date of the hearing of the application, the sole objector to the collective sale was the respondent.

13 The share values of two particular units were initially excluded from the application and it was

these two units which ultimately turned out to be critical. The two units were #12-10 and #04-06. As of 1 April 2006, the commencement of the Permitted Period, the subsidiary proprietors of #12-10 were Tan Soon Lai and his wife Shirley Wee ("the Tans") and those of #04-06 were Nio Toh Nee and his wife Lam Yee Ling ("the Nios"). The Tans signed the CSA on 1 April 2006 and the Nios on 1 April and 4 April 2006, during the early stages of the Permitted Period. On 2 October 2006, unbeknownst to the Sales Committee, the Tans transferred their unit to a company, Stream Peak International Pte Ltd ("Stream Peak"), which Tan Soon Lai had incorporated and in which he was a director and majority shareholder. The Tans did not inform the Sales Committee of this change because they thought this arrangement was purely internal and there was really no change in the ownership of the unit. On 27 December 2006, the Nios sold their unit to a couple ("the Sharmas") and duly informed the Sales Committee. The Sharmas bought the unit with knowledge of the fact that the Nios had executed the CSA and had, themselves, been agreeable to signing the CSA. The Sales Committee accordingly instructed DTZ to liaise with the Sharmas for them to sign the CSA. Due to an oversight, this was not done. By the time this oversight was discovered, and the significance of the transfer of unit #12-10 to Stream Peak was realised, the Permitted Period had expired.

14 On 18 June 2007, both Stream Peak and the Sharmas sought to regularise or rectify the position by signing the CSA. Both Stream Peak and the Sharmas later signed letters and statutory declarations confirming that they had always had the intention of affirming the CSA. The Sharmas also filed an affidavit stating that they knew that the Nios had signed the CSA and it had always been their intention to take the Nios' place as a party to the CSA.

15 On 31 October 2007, the STB dismissed the application filed by the appellants. On 19 March 2008, the appellants' appeal to the High Court (in Originating Summons No 1748 of 2007) was also dismissed. This led to the appeal before us. In the proceedings below, it was not disputed that the Development was a condominium of more than ten years of age, as reckoned from the date of the issue of the temporary occupation permit, and that the required minimum share value for an application to be made was 80%. It was also common ground that the share values of the six lots (mentioned at [12] above) could not be reckoned for the purposes of determining whether the prescribed threshold minimum of 80% of the share value of the Development had been met as the subsidiary proprietors of those lots had only signed the CSA after the Permitted Period. With the exclusion of the six lots, the percentage of the majority would be reduced to 78.96%. With the inclusion of the two units (mentioned at [13] above), the percentage of the majority would rise above the threshold to 80.96%. Thus, whether the share values of the two units could be included became vital. Only with their inclusion would the threshold be met. This was the central issue before all three fora: the STB, the High Court, and also this court.

The decision below

16 In the High Court, the Judge, like the STB, held that the two units could not be taken into account in determining whether the threshold share value of 80% had been met and accordingly upheld the ruling of the STB that the proposed collective sale could not be sanctioned. The decision was based on the following four main reasons.

17 First, relying on the definition of the term "subsidiary proprietor" set out in s 3 of the LTSA, which states that the term means the "subsidiary proprietor for the time being", the Judge held that the subsidiary proprietor referred to in s 84A(1) must be the subsidiary proprietor at the time of the making of the application to the STB and not the subsidiary proprietor at any earlier period (see [15] of the Judgment). Following from this view, the share values of the two units owned by Stream Peak and the Sharmas respectively could not be taken into account as the owners had not executed the CSA within the Permitted Period.

18 Second, the Judge held that s 84A(15), which states that "subsidiary proprietor" includes "a successor in title" for the purposes of s 84A, was of no assistance to the determination of the issue as Stream Peak and the Sharmas were the subsidiary proprietors and not the successors in title (see [16] of the Judgment).

19 Third, the Judge noted that the statutory scheme, which in effect constituted a derogation of the property rights of a subsidiary proprietor to his strata title unit, also provided certain safeguards to ensure that such rights could not be willy-nilly overridden by a majority of those who wished to effect a collective sale without observing fair and due process (see [21]–[22] of the Judgment). Thus, both substantive and procedural safeguards had been incorporated in the legislative scheme and it was imperative that they should be properly complied with. Accordingly, the relevant provisions should be interpreted in a manner which would promote greater certainty and achieve the objective of the scheme (see [25]–[26] of the Judgment).

20 Fourth, while the Judge recognised that Stream Peak and the Sharmas were more than willing to sign the CSA, and did sign the CSA on 18 June 2007, the fact of the matter was that they did not do so within the Permitted Period. This was not a mere technicality that could be glossed over as it related to an essential condition which went to the very heart of the statutory scheme for collective sale (see [33]–[37] of the Judgment).

21 As can be seen, the first two reasons are concerned with the question as to whether there was compliance *vis-à-vis* the share value percentage requirement in s 84A(1) of the LTSA. The latter two reasons are concerned with the question as to whether non-compliance with the relevant statutory provisions would be fatal.

Whether there was compliance

Construction of the term "subsidiary proprietor"

22 The issue of whether or not there was compliance with the share value percentage requirements would turn on the scope of the phrase "subsidiary proprietors" in the context of s 84A(1) of the LTSA. Section 84A(1) provides that certain "subsidiary proprietors" would be allowed to apply to the STB for approval of a collective sale, and s 84A(3), read with paras 1 and 1A of the Schedule, would require the "subsidiary proprietors" mentioned in s 84A(1) to have signed the collective sale agreement in question within the period of one year from the date on which the collective sale agreement was first signed by a subsidiary proprietor (this period being referred to as the "Permitted Period" in the context of the present case, see [10] above). If the Tans and the Nios could be considered to be "subsidiary proprietors" for the purpose of s 84A(1), the requirements of s 84A(3) read with paras 1 and 1A of the Schedule would have been satisfied as they had signed the CSA within the Permitted Period (*ie*, between 1 April 2006 to 31 March 2007). Thus, the proper construction of the scope of the term "subsidiary proprietors" in s 84A(1) in relation to the Tans and the Nios would clearly be critical.

23 As mentioned earlier (see [17] above), the Judge was of the opinion that in relation to a unit in a strata title plan, the subsidiary proprietor who should have executed the collective sale agreement in question was the subsidiary proprietor on the date on which the application was made to the STB and not a party who was the subsidiary proprietor at an earlier point in time but was no longer the subsidiary proprietor at the time the application was made to the STB. He took the view (at [15] of the Judgment) that the "reference point in s 84A is the making of the application to the STB" and thus the date of application to the STB was the relevant date. In coming to this view, the Judge was very much influenced by the definition of the term "subsidiary proprietor" in s 3 of the

LTSA where it is defined to mean the subsidiary proprietor "for the time being". In the context of the present case, this view would effectively mean that the signatures of the Tans and the Nios to the CSA had become invalid or void on account of the transfer of ownership of the two units.

24 With respect, the Judge had misconstrued the term "subsidiary proprietor". The definition set out in s 3 was clearly included in the LTSA to acknowledge the fact that the ownership of a unit can change from time to time, such as when an owner sells his unit to another person or an existing owner dies and a descendant takes over. The definition given in s 3 would only mean that, unless the context otherwise requires, when a provision in the LTSA arises for consideration in relation to a particular matter, the reference to a "subsidiary proprietor" is a reference to the subsidiary proprietor or owner at the time in question and not to any prior subsidiary proprietor. The ensuing question would then be what that particular time in relation to the present matter should be. The Judge had, of course, said that the time should be the date of the application to STB (at [15] of the Judgment):

> Read with the definition of subsidiary proprietor in s 3 as being "the subsidiary proprietor for the time being", *there is no question that the references to subsidiary proprietor in s 84A are to the [subsidiary proprietor] at the time of the application to the STB* and not a predecessor [subsidiary proprietor]. [emphasis added]

25 In our view, the correct answer is provided in s 84A(1) itself, which for clarity, will be set out in full as follows:

> An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by —
>
> (*a*) the subsidiary proprietors of the lots with not less than 90% of the share values where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later; or
>
> (*b*) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,
>
> *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).*
>
> [emphasis added]

It is clear, on a plain reading of the provision, that the "subsidiary proprietors" referred to would be those "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". Such a subsidiary proprietor would include any subsidiary proprietor who has signed a collective sale agreement, which would be an agreement in writing to sell all the lots and common property in a strata title plan. He would be a "subsidiary

proprietor" for the purposes of s 84A(1) (and consequently s 84A(3) and paras 1 and 1A of the Schedule).

26 On this interpretation, *ex hypothesi*, the Tans and the Nios, who had signed the CSA, would be considered to be "subsidiary proprietors for the purposes of s 84A(1) (and consequently s 84A(3) and paras 1 and 1A of the Schedule). This would, accordingly, also mean that there was compliance with the requirements of paras 1 and 1A of the Schedule (and therefore s 84A(3) as well) as the Tans and the Nios had signed the CSA within the Permitted Period and when they were the subsidiary proprietors of their units (see [13] above). On this interpretation, whether or not Stream Peak or the Sharmas had also signed the CSA within the Permitted Period would be irrelevant. Moreover, the fact that Stream Peak and the Sharmas, rather than the Tans and the Nios, formed part of the shareholder consensus would also be a non-issue as s 84A(15) provides that for the purposes of s 84A, "subsidiary proprietor" includes "a successor in title", to which provision we will now turn.

Section 84A(15)

27 As mentioned earlier (see [18] above), the Judge held that s 84A(15) of the LTSA was irrelevant to the issue because (at [16] of the Judgment):

> Stream Peak and the Sharmas are the [subsidiary proprietors] who are required to execute the CSA. The Tans and the Nios are not their successors in title but are in fact their predecessors in title. Hence they are not, for the purposes of s 84A, "subsidiary proprietors".

The subsection provides that for the purpose of that section (*ie*, s 84A) "subsidiary proprietor" would include a "successor in title". There was, of course, no doubt that Stream Peak and the Sharmas were the successors in title of the Tans and the Nios since the Tans had transferred their unit in the development to Stream Peak and the Sharmas had purchased their unit from the Nios. In *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 223, Browne J explained the meaning of the expression "successor in title" (at 250) as follows:

> I think the phrase "successor in title" … would in its ordinary meaning be wide enough to include anyone who has succeeded to the property or the claim by any of the ordinary methods, including death or assignment, but not, I think, a merely equitable assignee.

The question therefore is whether Stream Peak and the Sharmas were the successors in title of the relevant subsidiary proprietors contemplated by s 84A(1). The question is not whether Stream Peak and the Sharmas were the subsidiary proprietors who had to sign the collective sale agreement. The Judge applied the definition of "subsidiary proprietor" in s 84A(15) in the manner he did because he erroneously thought that "subsidiary proprietor" meant the subsidiary proprietor at the time the application for approval was made to the STB. On that premise, Stream Peak and the Sharmas would be the subsidiary proprietors and not the Tans and Nios; consequently Stream Peak and Sharmas could not be the successors in title of the Tans and Nios.

28 In our view, the Judge's conclusion that s 84A(15) was irrelevant is wrong. The purpose of the definition in s 84A(15) is to make it unnecessary for a successor in title to sign the collective sale agreement once his predecessor in title has signed the agreement. It should be noted that the definition of "subsidiary proprietor" is expressly provided for the purpose of s 84A(1) and for no other section. We have already concluded (see [24]–[26] above) as a matter of statutory construction that the subsidiary proprietors for the purpose of s 84A(1) were the Tans and the Nios. It follows that their successors in title were Stream Peak and the Sharmas.

Further reasons

29 We will now set out some further reasons as to why the Judge's interpretation is unsustainable. To begin, we will restate the effect of ss 84A(1)(*b*) and 84A(3) and paras 1 and 1A of the Schedule to the LTSA. In order for a prescribed majority of the subsidiary proprietors of a strata title plan to be able to make an application to the STB, it is necessary that those subsidiary proprietors must all have signed a collective sale agreement during the permitted time (as defined in para 1A of the Schedule) and the application to the STB must be made within 12 months thereafter ("the qualifying period"). If the permitted time requirement is not observed by any subsidiary proprietor in affixing his signature to a collective sale agreement, that consent, as was the case with the consents in relation to the six other units in the Development mentioned at [12] above, will not be counted for the purpose of determining whether the threshold requirement of 80% of the share values has been met. Similarly, if the application to STB is not made within the qualifying period, everything that has been done for the purpose of effecting a collective sale would have lapsed.

30 There are practical and sensible reasons why the permitted time requirement and the qualifying period are prescribed in the statutory scheme. The Legislature obviously recognised that, unlike the sale of a single property, a longer period of time is required to allow the sales committee to obtain the requisite signatures of the qualifying majority owners to effect a collective sale. Yet, there must be some closure in the process of finalising a collective sale so that there is legal certainty as to whether or not a collective sale has qualified for approval by the STB. This is also in the interest of the purchaser. But certainty can only be achieved if all subsidiary proprietors who have signed a collective agreement are not allowed to resile or withdraw from it. To allow them to do so would mean that there would be no certainty at any time as to whether the prescribed condition (in the present case, 80% or more of the subsidiary proprietors in terms of share values having signed and agreed to the collective sale) could ever be met within the permitted time. Accordingly, it was necessary for Parliament to establish a legislative framework within which subsidiary proprietors who have signed the collective agreement may not withdraw their consent to the collective sale. Parliament has, under the LTSA, set out what are considered reasonable timelines in this regard. If, for any reason, the prescribed timelines cannot be complied with but the subsidiary proprietors are still keen to proceed with the collective sale, they can try again by starting the process *de novo*.

31 There is another compelling, but related, reason why a subsidiary proprietor who has signed the collective sale agreement should not be allowed to resile from his commitment. Apart from the problem of uncertainty alluded to above, which it would undoubtedly cause, it could also lead to other undesirable practices, such as where an unscrupulous subsidiary proprietor extracts advantages exclusively for himself on the sideline by being difficult or making unreasonable demands of the purchaser. Indeed, the entire statutory scheme could be thrown into chaos if a subsidiary proprietor were permitted to opt out at any time after having signed the agreement.

32 Accordingly, once the prescribed requirements in terms of the percentage of the share values of the condominium have been met, nothing done thereafter by individual subsidiary proprietors who have signed the collective agreement should affect the application to be made to the STB. However, the fact that a subsidiary proprietor has signed a collective agreement does not mean that he may not sell his unit. He has the right to do so but his purchaser will be bound by the collective agreement. The subsidiary proprietor cannot sell his unit free from the collective sale which he has signed. His purchaser will become the new subsidiary proprietor but, for the purpose of s 84A(1), he is the successor in title of his predecessor in title by virtue of the definition of "subsidiary proprietor" in s 84A(15).

33 There is another reason why the Judge's construction cannot be sustained and will give rise

to considerable practical difficulties. That construction would mean that an exiting subsidiary proprietor who has executed a collective sale agreement could opt out of that commitment by merely effecting a sale or making a gift of it to another person (possibly a nominee). The whole statutory scheme could thereby become uncertain and possibly be rendered unworkable or extremely burdensome to implement. While it is conceivable that these potential problems can be addressed by express terms in a collective sale agreement, it is unthinkable that a point as important as this would have been left by the Legislature to be dealt with in contract.

34 Reverting to the circumstances of the present case, we were also conscious that cl 6 of the CSA, which the subsidiary proprietors of the Development signed, provided as follows:

> Each of the Sellers hereby represents, warrants, covenants and/or irrevocably agrees (as the case may be) as follows:-
>
> 6.1.1 …
>
> 6.1.2 that as at the date of execution of this Agreement by Each of the Sellers, His Unit is not the subject of any option to purchase, sale, agreement or contract to sell or any assignment or transfer by whatever means;
>
> 6.1.3 not to do any of the following from the date of execution of this Agreement by Each of the Sellers in respect of His Unit:-
>
> (a) grant an option to purchase
>
> (b) sell
>
> (c) agree or contract to sell
>
> (d) assign or transfer by whatever means;
>
> unless third party/parties having such benefit thereof shall also, subject to the Sale Committee's approval, join as a party to this Agreement by signing the same forthwith (notwithstanding that the Agreement shall only bind such person(s) after completion thereof); Provided that that particular Seller shall indemnify the other Sellers for any claims, losses, damages and/or otherwise arising therefrom;
>
> …

What this clause provides is that a subsidiary proprietor who has signed the CSA shall not sell or dispose of his unit to another person without getting that person to sign the CSA as well, failing which he has to indemnify all the other subsidiary proprietors who have signed the CSA in the event that they suffer any loss. This clause was obviously drafted to avoid any potential difficulties that might arise in the event that the purchaser or transferee refuses or fails to sign the CSA. In our view, this clause is not inconsistent with the statutory scheme. In any case, it cannot be construed to confer any rights on either the vendor or the purchaser contrary to the legislative framework in Pt VA of the LTSA. To the extent that it purports to allow the purchaser to opt out of the CSA, it would have no effect. It seemed to us that the object of these clauses is to reiterate the important aspects of the statutory scheme and to highlight to each subsidiary proprietor that once he executes the collective sale agreement, he is bound by it, along with anyone to whom he may have transferred the property. Thus the subsidiary proprietor is required to obtain the purchaser's or transferee's

agreement to sign the CSA, including his agreement to subscribe his name to it. Again, we did not think that just because cl 6.1.3 requires the successor subsidiary proprietor to sign the CSA it should mean that, but for this obligation, the successor subsidiary proprietor will not be bound by the CSA. It would be reasonable to assume that this obligation was inserted out of an abundance of caution by the draftsman because he was unsure whether or not it would be necessary for the purchaser to sign the CSA afresh.

Subsequent amendments to the Schedule

35 It would be relevant and appropriate to mention one of the amendments made in 2007 to the provisions in the Schedule to the LTSA. This amendment provides for a cooling-off period for a subsidiary proprietor who has put his signature to the collective sale agreement in question so that within five days thereafter (excluding Saturday, Sunday or a public holiday), that subsidiary proprietor may rescind his agreement to be a party to the collective sale agreement by serving the prescribed notice on the advocate and solicitor of the sales committee. The significance of this amendment is its implication that, under the previous law (which is the law governing the present case), a subsidiary proprietor was bound by a collective sale agreement once he had signed it.

Presence of compliance

36 To restate our opinion (see [24]–[26] above), the signatures of Stream Peak or the Sharmas to the CSA were unnecessary once the Tans and the Nios had signed the CSA within the Permitted Period (see [13] above). They were the "subsidiary proprietors" for the purposes of s 84A(1) (and consequently s 84A(3) and paras 1 and 1A of the Schedule). There was compliance with the requirements of paras 1 and 1A of the Schedule read with s 84A(3) and, therefore, with the threshold share value requirement in s 84A(1)(*b*) as well.

Whether non-compliance is fatal

37 In the light of our decision on the question of whether there was compliance with the requirements of the LTSA, there is no need for us to address the further issue, *viz*, assuming that it was legally necessary for Stream Peak and the Sharmas to execute the CSA, whether, in the circumstances, the non-compliance would be fatal to the application to the STB when it was clear beyond any doubt that Stream Peak and the Sharmas fully supported the collective sale.

Conclusion

38 For the foregoing reasons, we decided that the execution of the CSA by the Tans and the Nios was sufficient to meet the requirements laid down in s 84A(1)(*b*) of the LTSA even though, subsequent to the execution (but within the Permitted Period), they transferred ownership of their units to Stream Peak and the Sharmas respectively. As such, the appeal was allowed with costs here and below (both the High Court and STB proceedings) and with the usual consequential orders. The decisions of the High Court and the STB were set aside and the matter was remitted to the STB for further consideration.