

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 86

Civil Appeal No 134 of 2018

Between

Low Kwang Tong

And

... *Appellant*

(1) Karen Teo Mei Ling
(2) Ng Wei Xiang Stanley
(3) Lim Siew Ming

... *Respondents*

EX TEMPORE JUDGMENT

[Land] — [Strata titles] — [Collective sales]

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Low Kwang Tong
v
Karen Teo Mei Ling and others

[2018] SGCA 86

Court of Appeal — Civil Appeal No 134 of 2018
Tay Yong Kwang JA, Belinda Ang Saw Ean J, Quentin Loh J
29 November 2018

Tay Yong Kwang JA (delivering the judgment of the court *ex tempore*):

1 This appeal concerns an application under s 84A of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) (“the Act”) by the collective sale committee of an industrial complex known as Citimac Industrial Complex (“Citimac”), which is located at the junction of MacPherson Road and Paya Lebar Road. Citimac comprises 110 units. The appellant owns unit #01-18 on the first level. It was previously a showroom but in 2009, an application was made for change of use to a canteen. The application for change of use was approved and this has not changed to date.

2 The trial Judge in the High Court considered the relevant statutory provision set out in s 84A(9) of the Act and the principles enunciated in the decision of the Court of Appeal in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener)* and another appeal [2009] 3 SLR(R) 109 at [32] to [37] of his Grounds of Decision (“GD”) (published as *Teo Mei Ling Karen and others v Low Kwang Tong and*

another [2018] SGHC 186) and we are satisfied that he has made no error of law in doing so. In our opinion, an applicant under s 84A of the Act complies with his duties under the law if he has complied with all relevant statutory requirements for collective sales and has spelt out all relevant facts which show purported compliance with his duties and nothing untoward appears on the face of the record. It is then for any objector to point out by credible evidence that some or all of the stated facts are inaccurate or even false or that there are some other facts which will demonstrate that the transaction is not in good faith within the meaning of the Act. The applicant will have to respond to these assertions and the Court will make its determination of the facts and express its view on whether the transaction is or is not in good faith on the facts.

3 The main contention before us is that the collective sale committee's valuation report dated 23 February 2016 prepared by Mr Tan Keng Chiam of Jones Lang LaSalle Property Consultants Pte Ltd ("the TKC valuation report") was obviously erroneous or even fundamentally flawed on its face. The first level units were to be valued as individual units. The TKC valuation report valued unit #01-18 as a showroom instead of as a canteen or eatery without explanation.

4 The trial Judge heard oral testimony and cross-examination of the relevant witnesses on the TKC valuation report and the other valuation reports put up by the two objectors before him and considered this issue at length in his GD. The appellant is the only objector before us. The trial Judge did not find the appellant's valuation report dated 27 December 2017 prepared by Mr Low Fook Kiong of George Low Company to be helpful. We have not heard compelling arguments to persuade us to depart from his findings. We therefore see no reason to disagree with the trial Judge's conclusions.

5 As noted by the trial Judge at [37] of his GD, the appropriate method of apportionment of the collective sales proceeds was not in dispute. It was to be 90% valuation and 10% share value. That method was adopted in computing the entitlement of the units to the collective sale proceeds. Like the trial Judge, we see nothing to satisfy us that the collective sale transaction was not in good faith and therefore there was no reason for the Court not to approve it.

6 We will however make a few observations on the TKC valuation report. We note that the trial Judge said at [78] of his GD that the TKC valuation report did not explain the reasons for the individual valuation of each first level showroom unit as the valuer was not asked by the collective sale committee to provide explanations for his valuation of the units but was asked only to value all the units in Citimac. The TKC valuation report at paragraph 1 states that the instruction for the valuation report was “to determine the market value for their existing use of the selected units” in Citimac. The words “existing use” appear again at paragraph 12 where the unit rates in Singapore dollars per square foot for all the units were listed. In paragraphs 8 and 12 of the TKC valuation report, the appellant’s unit #01-18 was stated to be a “showroom” under “Type”. It was acknowledged by the valuer that he was also instructed to value the units on the first level as individual units.

7 Given this background, it would be apparent that questions will arise because the “existing use” of unit #01-18 was a canteen or an eatery, the owner having obtained approval of change of use some years ago and it was no longer a showroom. To the credit of the collective sale committee, it did ask the marketing agent to check whether the valuer had taken into account #01-18’s change of use in his valuation. The valuer’s assurance to the

marketing agent that he had done so was then conveyed to the collective sale committee. If the TKC valuation report had included a sentence or two that unit #01-18 was approved for use as a canteen but the valuer decided to value it as a showroom because that was the best use in the circumstances and therefore the highest value, that would have obviated the clarification and perhaps dispel the appellant's suspicion that the subsequent explanations were all afterthoughts to try to cover up a mistake.

8 In the result, we are satisfied that the trial Judge was entitled to arrive at the conclusions that he did and that he was correct in approving the application and in granting the collective sale order. We therefore dismiss this appeal.

9 After considering the parties' submissions on costs, we order the appellant to pay the costs of this appeal fixed at \$35,000 (inclusive of disbursements) to the respondents. This amount includes the costs of the application for an expedited appeal. We also make the usual consequential orders.

Tay Yong Kwang
Judge of Appeal

Belinda Ang Saw Ean
Judge

Quentin Loh
Judge

Adrian Tan Gim Hai, Ong Pei Ching and Yeoh Jean Ann
(TSMP Law Corporation) (instructed) and Ng Siew Hoong
Linus and Ngaim Ruo Ling (Donaldson & Burkinshaw
LLP) for the appellant;
Jason Lim Chen Thor, Kevin De Souza and Geena Liaw Jin
Yi (De Souza Lim & Goh LLP) for the respondents.