IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 202

Originating Summons No 1424 of 2019

Between

(1) Yeo Sok Hoon
(2) Seah Siang Mong
(3) Paul Go Kian Lee

… *Plaintiffs*

And

(1) Tan Thiam Chye
(2) Sin-Tai Investments Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Land] — [Strata Titles] — [Collective sales]

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v
Tan Thiam Chye and another

[2020] SGHC 202

High Court — Originating Summons No 1424 of 2019
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6 October 2020

S Mohan JC:

Introduction

1 The Realty Centre (the "Development") is a well-known commercial development situated in the Central Business District on Enggor Street. Built in the early 1970s,[1] the Development was the subject of an attempt by a majority of its subsidiary proprietors to sell the Development by way of a collective sale.

2 The sale was objected to by, *inter alia*, Mr Tan Thiam Chye, who owned two office units in the Development. This case raised issues that touched on, *inter alia*, the relevance (and prevalence) of what has been termed as the "premium variance test" in collective sales and what constitutes "common

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[1] Liaw Hin Sai's Affidavit (dated 28 February 2020) ("Liaw Hin Sai's Affidavit") at p 33.

property" as defined in various legislation relating to strata developments. There has been no appeal against my decision. However, given the potential relevance to the industry of some of the issues that arose to be decided in these proceedings, I provide the full grounds of my decision.

The parties and a summary of the procedural history

3 The plaintiffs are representatives of the collective sale committee (the "CSC") of the Development and were authorised to make the application for a collective sale order. The Development is a 12-storey commercial building comprising 36 units in total. These are made up of three retail units on the ground floor, 32 office units of four different sizes located on the 4th to 11th floors, and one food and beverage unit on the 12th floor. The details of the units (as set out in the following table) are undisputed:[2]

S/N	Type	Unit	Strata area per Unit (sm)	No of Units	Share value per unit
1	Retail	#01-01	249	1	1
2	Retail	#01-02	199	1	1
3	Retail	#01-03	179	1	1
4	Office	#04 to #11-01	106	8	1
5	Office	#04 to #11-02	95	8	1
6	Office	#04 to #11-03	121	8	1
7	Office	#04 to #11-04	112	8	1
8	F&B Unit	#12-00	170	1	1

4 The 1st plaintiff, Ms Yeo Sok Hoon, represented the owners of Unit #12-00 (the "1st plaintiff") and was the chairperson of the CSC; the 2nd plaintiff, Mr Seah Siang Mong, was the owner of Unit #01-02 (the "2nd plaintiff") and a CSC

[2] Plaintiffs' Submissions (dated 17 April 2020) ("Plaintiffs' Submissions") at para 6; Liaw Hin Sai's Affidavit at para 12.2.

member, while the 3rd plaintiff, Mr Paul Go Kian Lee, was the owner of Unit #08-04 (the "3rd plaintiff")[3] and the secretary of the CSC (collectively, the "plaintiffs").

5 On 25 July 2019, the plaintiffs applied to the Strata Titles Board (the "STB") for a sale order. As objections were taken towards the sale of the Development, and following a failed attempt at mediating the dispute, the STB issued a stop order, which in turn led to the present application in OS 1424/2019.[4] Before the STB and when OS 1424/2019 was commenced, there were two objectors, namely Mr Tan and Sin-Tai Investments Pte Ltd ("Sin-Tai"), who were named as the 1st and 2nd defendants in OS 1424/2019 respectively. By the time the hearing commenced on 31 March 2020, Sin-Tai had reached a settlement with the plaintiffs and the proceedings against it were withdrawn.[5] Thereafter, only Mr Tan (hereafter "the defendant") remained opposed to the collective sale.[6]

6 In these proceedings, the plaintiffs sought, *inter alia,* an order to allow the sale of all the lots and common property in the Development to New Vision Holding Pte Ltd (the "Purchaser") pursuant to s 84A of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) (the "LTSA").[7] The defendant objected to the sale *solely* on the basis of s 84A(9)(*a*)(i)(B) of the LTSA, *ie*, that the transaction was

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3 Yeo Sok Hoon's 1st Affidavit (dated 7 November 2019) ("Yeo Sok Hoon's 1st Affidavit") at para 13, pp 248–249, 252–253, 256.

4 Plaintiffs' Submissions at para 2.

5 HC/ORC 1169/2020 at para 1.

6 Plaintiffs' Submissions at para 3.

7 Plaintiffs' Submissions at para 1.

not in good faith taking into account the method of distributing the proceeds of sale.[8]

7 I heard OS 1424/2019 from 31 March to 3 April 2020, and at the end of the hearing, reserved judgment. I was informed by counsel that the plaintiffs had to obtain an order in respect of the collective sale by 21 May 2020.[9] Accordingly, I gave directions for written submissions to be tendered within fairly compressed timelines and delivered judgment orally on 14 May 2020. Based on the totality of the evidence adduced, I concluded that the application was properly made, that all the statutory requirements under the LTSA and the Rules of Court (Cap 322, R5, 2014 Rev Ed) (the "ROC") were complied with and that the transaction was in good faith taking into account the method of distributing the proceeds of sale. I also found that there was no credible evidence to support the defendant's assertion that there was an absence of good faith on the part of the CSC or its marketing agent in arriving at the method of apportioning the sale proceeds of the Development. I accordingly allowed the plaintiffs' application and granted the order for sale.

Background

8 The collective sale process which culminated in OS 1424/2019 began in July 2017. On 28 July 2017, the 3rd plaintiff sent an email to the then-members of the management council and representatives of various subsidiary proprietors, stating that he was of the opinion that there was a high probability of a successful *enbloc* sale. He therefore put up a requisition for a General Meeting, and attached requisition forms to the email for the other subsidiary

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8 Defendant's Submissions (dated 17 April 2020) ("Defendant's Submissions") at para 4.

9 Letter from plaintiffs to the court dated 30 April 2020 at para 2.

proprietors to sign.[10] On 14 August 2017, the 3rd plaintiff sent an email to Mr Richard Boey from HBA Group Property Consultants, which was the Managing Agent,[11] stating that he had received requisition forms from the owners of 15 units, and that the General Meeting could accordingly be arranged.[12] The collective sale was thus included as an agenda item at an Annual General Meeting held on 12 December 2017 ("AGM").

AGM and 1st CSC Meeting

9 During the AGM, the members of the CSC were elected to act on behalf of the subsidiary proprietors in the collective sale.[13] The plaintiffs and the defendant were among the 11 persons in total who were elected as members of the CSC. At the 1st CSC meeting held on 12 December 2017 after the AGM, the 1st plaintiff was unanimously appointed as chairperson of the CSC, Mr Phee Thian Chye ("Mr Phee") the co-chairperson and the 3rd plaintiff the secretary.[14]

2nd CSC Meeting

10 At the 2nd CSC meeting held on 19 January 2018, the CSC agreed to appoint Cushman & Wakefield (S) Pte Ltd ("C&W") as the marketing agent and Donaldson & Burkinshaw LLP ("D&B") as the solicitors for the collective sale.[15] It is relevant and would be helpful at this point to set out the different methods of apportionment that were raised and discussed by the CSC, how the

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10 Tan Thiam Chye's Affidavit (dated 14 February 2020) ("Tan Thiam Chye's Affidavit") at p 40.
11 Yeo Sok Hoon's 1st Affidavit at p 249.
12 Tan Thiam Chye's Affidavit at p 41.
13 Yeo Sok Hoon's 1st Affidavit at para 13, pp 253–254.
14 Yeo Sok Hoon's 1st Affidavit at p 257.
15 Yeo Sok Hoon's 1st Affidavit at para 14, p 261.

present method of apportionment came to be adopted by the CSC, and the involvement of the plaintiffs and C&W in the process.

11 At the 2nd CSC Meeting, a two-tier method of apportionment (hereafter referred to as "MOA1") was discussed in general terms as part of a general discussion on what would be an acceptable method of apportionment.[16] Under MOA1, the sale proceeds would be paid out (a) first, based on the market value of the 36 individual strata lots and (b) for the net balance of the sale proceeds to be distributed to each subsidiary proprietor in equal shares. This was on the basis of an assumption that the common property was owned jointly or severally by all the subsidiary proprietors as tenants-in-common and therefore divisible equally based on their individual share value holdings. It is relevant to point out at this juncture that the share value structure of the Development was unusual in that all subsidiary proprietors were assigned one share value, irrespective of the size of their units (see table at [3] above). As will become apparent later in these grounds, this factor was one of the main reasons contributing to the defendant's objections to the sale.[17]

12 Reverting to the facts, it was recorded in the meeting minutes of the 2nd CSC meeting that the co-chairperson Mr Phee acknowledged that the apportionment formula would be the most challenging issue to resolve. The minutes then recorded various comments and suggestions by various CSC members. For example, one unnamed CSC member commented, *inter alia*, that ultimately the premium received by each unit must be fair and equitable. The minutes also recorded, by way of a comment by another CSC member as a preliminary suggestion on an apportionment formula, that most of the CSC

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16 Yeo Sok Hoon's 1st Affidavit at p 262.

17 Yeo Sok Hoon's 1st Affidavit at p 262; Liaw Hin Sai's Affidavit at para 21.

members were familiar with MOA1 as it had been discussed in a previous unsuccessful collective sale exercise, and that it was "quite a good formula".[18] If the formula could generally be agreed on, this CSC member felt that they would have "some solid ground to start working on". Another CSC member commented that first "…we agree on an apportionment method then we shall all abide by the method and respect the professional valuation reports…". After further discussion by the CSC members, the minutes recorded the 1st Plaintiff, in her capacity as the chairperson, concluding that there was a "need to consult the professionals to see whether the apportion [*sic*] method mentioned by the CSC members is workable", to "ensure that it stands [*sic*] the scrutiny of the Strata Title Board". Lastly, the minutes recorded that Mr Albert Ching, representing The Singapore Cancer Society (the "Society") informed the rest of the CSC that the Society would not be supporting the collective sale.[19] As an aside, the Society occupied a total of six office units on the 4th and 6th floors of the Development.

3rd CSC Meeting

13 The 3rd CSC meeting held on 7 February 2018 was the first meeting with the appointed marketing agent and solicitors, C&W and D&B respectively. It was noted in the meeting minutes that "one major reason why the previous *enbloc* exercise failed was because the initial proposed Apportionment Formula was tweaked several times in trying to suit subsequent changes in valuation of some property units".[20]

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18 Yeo Sok Hoon's 1st Affidavit at pp 261–262.
19 Yeo Sok Hoon's 1st Affidavit at pp 262–263.
20 Yeo Sok Hoon's 1st Affidavit at p 265.

4th CSC Meeting

14 At the 4th CSC meeting held on 13 April 2018, Ms Christina Sim from C&W ("Ms Sim") explained to the CSC that MOA1 was "inequitable" and would "not stand up under scrutiny at the Strata Titles Board" as it resulted in a very large premium variance between the highest and smallest premiums. The minutes of this meeting recorded that after discussion and deliberation, the CSC tentatively accepted a second method of apportionment. This method was discussed and proposed during the meeting, with one abstention from Mr Albert Ching representing the Society and one objection from the defendant.[21] This second method of apportionment was based on a ratio of 70% valuation, 20% share value, and 10% strata area[22] (hereafter referred to as "MOA2"). MOA2 gave more weight to the valuation component in light of the fact that the Development was a mixed-use development comprising retail and office units.

5th CSC Meeting

15 At the 5th CSC meeting held on 18 April 2018, Mr David Mitchell of D&B ("Mr Mitchell") informed the CSC that if 100% approval from the subsidiary proprietors cannot be obtained, the owners would have to pay for an application for sale to be made to the STB and for an independent valuation commentary report on the chosen method of apportionment. Mr Mitchell also explained that the STB's role is to mediate, and if objections to a sale are not withdrawn, the STB would issue a Stop Order. Ms Sim added that the CSC must appoint a valuer, who will comment on whether the method of apportionment adopted was fair and equitable taking into account the circumstances of the

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21 Yeo Sok Hoon's 1st Affidavit at pp 268–269.

22 Liaw Sin Hai's Affidavit at para 14.

Development.[23] Ms Sim informed the CSC that based on comments from experts in other cases she was involved in, the "variance band should not be more than 20%", and that unless 100% consensus was achieved amongst all of the subsidiary proprietors, C&W will face difficulty in finding a valuer to endorse MOA2 which had a variance band which was higher than 20%. Mr Mitchell cautioned the CSC that it would be difficult for the sale to proceed if the independent valuation expert did not support whichever was the chosen method of apportionment. The chosen method had to be fair and equitable as an application to the STB would be required and there was also the possibility of an application to the High Court. Several apportionment permutations were then presented to the CSC for discussion and deliberation.[24]

16 I pause at this point to set out Ms Sim's explanation of the premium variance test which she referred to in her advice to the CSC. In a nutshell, the premium variance is the difference between the highest premium that a subsidiary proprietor would obtain and the lowest premium that another subsidiary proprietor would obtain in the same development based on a particular collective sale price and the chosen method of apportionment of the proceeds from the collective sale. In simple terms, a premium is represented mathematically as follows:[25]

$$(A-B)/B \times 100\%$$

Where:

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23 Yeo Sok Hoon's 1st Affidavit at p 272.

24 Yeo Sok Hoon's 1st Affidavit at pp 272–273.

25 Sim Li-Mei Christina's Affidavit (dated 28 February 2020) ("Sim Li-Mei Christina's Affidavit") at para 10.

A: Represents the proceeds of sale that a subsidiary proprietor would stand to receive for his unit under the collective sale by using the specified method of apportionment; and

B: Represents the valuation of that said unit

17 The concept of the premium variance test was explained by Ms Sim as follows[26]:

> The underlying principle behind the [premium variance test] is to narrow the premium variance so as to ensure that all owners gain near-similar premiums from this collective sale. A large premium variance would suggest that certain units are obtaining far more premium from the sale price than the other units, which may make it inequitable to these other units. In short, a large premium variance suggests that certain units are enjoying an advantage at the expense of others. It is a good indicator of whether the MOA chosen is fair.

This explanation is, I note, consistent with the analysis undertaken by Tan Siong Thye J in *Deorukhkar Sameer Vinay and others v Quek Chin Kheam* [2018] SGHC 171 ("*The Albracca*"), at [49]–[54]. Applying the premium variance test, MOA1 would give a premium variance of 130% based on the original reserve price of $165 million, and a premium variance of 106% based on the revised reserved price of $148 million (see [22] below). In contrast, MOA2 would result in a premium variance of 53% based on the original reserve price, and a premium variance of 48% based on the revised reserved price.[27]

6th CSC Meeting

18 At the 6th CSC meeting held on 2 May 2018, Mr Phee, the CSC co-chairperson, explained that some of the owners in the Development may be

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26 Sim Li-Mei Christina's Affidavit at para 11.

27 Sim Li-Mei Christina's Affidavit at para 17

"fixated" on MOA1 and may not agree to MOA2. He suggested tweaking MOA2 slightly to get more owners onboard. The 1st plaintiff opined that MOA1 had a "very high premium variance and the retail units may not support such a method". She also stated that it "may not be able [to] stand up to the scrutiny of the Strata Titles Board". Ms Sim added that it may be challenging to engage a third party independent valuer to provide a commentary in respect of and to endorse MOA1. After deliberation, the CSC agreed to proceed with a conditional collective sale agreement on the basis of MOA2, which agreement would require 100% consensus to be obtained from all the owners within four weeks.[28]

7th CSC Meeting

19 At the 7th CSC meeting held on 20 June 2018, Ms Sim provided an update to the CSC that only 24 out of 36 owners had signed the conditional agreement, representing 68% of strata area and 66.67% of share values. The four-week period to obtain 100% consensus had lapsed on 19 June 2018, with no unanimous consent to the conditional agreement.[29] The CSC then decided to proceed to convene an Extraordinary General Meeting ("EGM") to, *inter alia*, vote on the collective sale. It was agreed that the EGM would take place on 17 July 2018.

The EGM

20 At the EGM held on 17 July 2018, MOA2 with a reserve sale price of $165 million was put to a vote. The quorum of the meeting was reached with

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28 Yeo Sok Hoon's 1st Affidavit at pp 274-275.

29 Yeo Sok Hoon's 1st Affidavit at p 276.

owners representing 21 of the total of 36 share values present.[30] Of the votes cast, owners representing 19 out of 21 share values voted in favour, two share values voted against and six share values were void. Based on the voting results, the reserve sale price was set at $165 million and MOA2 was adopted as the method of apportionment of the sale proceeds.[31] It is worth mentioning at this point that based on the EGM minutes of meeting, no one raised any questions as to why MOA1 was not being adopted. This was despite Mr Phee's comment at the 6th CSC meeting that a number of owners were fixated with MOA1 and may not agree to MOA2 (see [18]), and his earlier email of 16 April 2018 to various CSC members that, *inter alia*, many other office unit owners may not agree to "having to discard" MOA1. More will be said about this later in these grounds.

The Development is put up for sale

21 By 7 December 2018, subsidiary proprietors making up 88.26% of strata area and 88.89% of share value had signed the Collective Sales Agreement (the "CSA"). As the requisite thresholds under the LTSA had been met, the Development was accordingly put up for sale.[32] At the close of tender on 21 February 2019, only one firm bid was received for $133 million, which was well below the reserve price of $165 million.[33]

22 At the 12th CSC meeting on 10 April 2019 (following a meeting of the subsidiary proprietors on 20 March 2019), the CSC was advised by C&W that consent had been obtained from subsidiary proprietors representing 81.17% of

30 Yeo Sok Hoon's 1st Affidavit at p 325
31 Yeo Sok Hoon's 1st Affidavit at p 327.
32 Yeo Sok Hoon's 1st Affidavit at para 19, p 335.
33 Yeo Sok Hoon's 1st Affidavit at para 21.

strata area and 83.3% of share value to enter into a supplemental agreement ("Supplemental Agreement"), agreeing to a revised reserve price of $148 million.[34] This downward revision was largely due to the fact that the one firm bid received for the Development was only for $133 million, as against an assessment by Savills Valuation and Professional Services (S) Pte Ltd ("Savills") of $132 million.[35]

23 Negotiations then ensued with a prospective purchaser, The Place Holdings Ltd ("The Place Holdings"), who eventually made an offer at the revised reserve price. On or about 16 April 2019, C&W received a cashier's order from The Place Holdings for the sum of $1.48 million, representing 1% of the purchase price.[36] On 18 April 2019, The Place Holdings informed the CSC that it had nominated the Purchaser to take over as tenderer.[37] On 22 April 2019, D&B wrote to the Purchaser, stating that they were instructed to accept the Purchaser's offer to purchase the Development at the revised reserved price, under the terms and conditions as negotiated between the parties and encapsulated in a sale and purchase agreement dated 22 April 2019.[38] At a CSC meeting on 26 April 2019, C&W advised that the Development had been sold at the revised reserve price.[39]

Application to the STB

24 At the time of the application to the STB (see [3] above), subsidiary proprietors representing 87% of the total strata area and 86.11% of the share

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34 Yeo Sok Hoon's 1st Affidavit at paras 24–25.
35 Yeo Sok Hoon's 1st Affidavit at paras 20, 22.
36 Yeo Sok Hoon's 1st Affidavit at para 26, p 363.
37 Yeo Sok Hoon's 1st Affidavit at pp 169–170.
38 Yeo Sok Hoon's 1st Affidavit at p 171.
39 Yeo Sok Hoon's 1st Affidavit at pp 351–352.

value in the Development had signed the CSA and the Supplemental Agreement.[40] The CSA utilised MOA2 as the method of apportionment of the sale proceeds.[41] As there was no unanimous consent and the STB's attempt to mediate a resolution of the dispute between the CSC and the objectors was unsuccessful, a stop order was eventually issued by the STB on 7 November 2019. OS 1424/2019 was commenced on 15 November 2019 (see [5] above).

The defendant's objection to the sale

25 In objecting to the collective sale, the defendant raised two main grounds in seeking to make out his case that the transaction was not in good faith taking into account the method of distributing the proceeds of sale under s 84A(9)(*a*)(i)(B) of the LTSA. First, he submitted that the CSC and the marketing agent C&W did not conduct themselves in good faith in the process of arriving at the method of apportionment of the sale proceeds (the "first objection"). Second, he submitted that MOA2 was not fair, reasonable or equitable (the "second objection"). I will address each of the defendant's objections in turn.

Preliminary Point – burden of proof

26 As a preliminary point, I would make a brief note on the burden of proof in applications of this nature. As stated by the Court of Appeal in *Low Kwang Tong v Karen Teo Mei Ling and others* [2018] SGCA 86 at [2] and endorsed by the same Court in *Kok Yin Chong and others v Lim Hun Joo and others* [2019] 2 SLR 46 (*"Kok Yin Chong"*) at [70]–[71]:

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40 Yeo Sok Hoon's 1st Affidavit at para 6, p 24; Plaintiffs' Reply Submissions (dated 24 April 2020) ("Plaintiffs' Reply Submissions") at para 33(c).

41 Yeo Sok Hoon's 1st Affidavit at p 60.

> In our opinion, an applicant under s 84A of the [LTSA] 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 [LTSA]. 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.

27 Thus, while the legal burden is on the plaintiffs to establish that the transaction was in good faith, the defendant has an evidential burden to point out by *credible evidence* matters which may demonstrate that the transaction was not in good faith, which evidence the plaintiffs will then have to respond to. The court would then consider the evidence and the entirety of the circumstances holistically and determine whether the transaction was (or was not) in good faith.

The first objection: Lack of good faith in the conduct of the CSC and C&W

Parties' cases

Defendant's case

28 Counsel for the defendant, Mr Denis Tan, argued that the evidence demonstrated that the 1st plaintiff misled, or colluded with Ms Sim of C&W to mislead the CSC into first, relying on the premium variance test, and second, taking the view that MOA1 would not stand up to "purported scrutiny by the STB", when the STB does not in fact scrutinise the methods of apportionment.[42]

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42 Defendant's Submissions at para 75.

According to Mr Tan, the STB only served as a mediation platform and did not scrutinise applications for collective sale.[43] The defendant asserted that the plaintiff's expert witness, Mr Liaw Hin Sai ("Mr Liaw") of Savills, confirmed that the STB's role is only to conduct mediation.[44]

29 The defendant also submitted that the majority of the subsidiary proprietors supported MOA1 when the collective sale process was commenced.[45] However, during the CSC meetings, the 1st plaintiff and Ms Sim cooperated or colluded to label MOA1 as an apportionment method that would not pass muster at the STB as it had a very high premium variance; this collusion was part of a plan to scuttle MOA1. Due to these false misrepresentations, the other CSC members had "no other alternative" but to support MOA2 instead of MOA1.[46]

30 Further, the defendant submitted that Ms Sim knowingly (or deliberately) made these false representations to the subsidiary proprietors in order to compel them to sign the CSA.[47] Against what Ms Sim had represented to the CSC, Mr Liaw testified that it was untrue that the premium variance had to be not more than 20% in order for the method of apportionment to pass the scrutiny of the STB.[48] Further, the STB had stated (in an email replying to an email sent by the defendant to the STB) that it did not issue any form of "premium test". Lastly, Mr Liaw had testified that the premium variance test did not have to be adopted mandatorily.[49] As a result of the false

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43 Defendant's Submissions at para 81.
44 Defendant's Submissions at para 81.
45 Defendant's Submissions at paras 78–80.
46 Defendant's Submissions at 82(e).
47 Defendant's Submissions at para 90.
48 Defendant's Submissions at para 86(3).
49 Defendant's Submissions at paras 86–87.

misrepresentations, Ms Sim prevented MOA1 from being discussed in any meaningful way.[50] The CSC therefore "abandoned" MOA1, and adjusted the method of apportionment in a bid to reduce the premium variance,[51] eventually adopting MOA2. The defendant also submitted that Ms Sim had not explained how the 48% variance in MOA2 would withstand the scrutiny of the STB, given her position that the premium variance should not exceed 20%.[52]

31 The defendant also asserted that the 1st plaintiff did not conscientiously carry out her duties as a chairperson and member of the CSC by making enquiries or seeking a second opinion to verify the representations made by Ms Sim. Instead, the 1st plaintiff chose to repeat falsehoods perpetuated by Ms Sim because she was the owner of one of the four large units, and thereby stood to gain personally if MOA2 were to be adopted.[53]

32 The defendant further contended that in the alternative, if the court does not draw the inference that the 1st plaintiff acted in a manner to mislead the CSC, the 1st plaintiff, 2nd plaintiff and a Mr Michael Daryanani ("Mr Daryanani"), as members of the CSC, failed in their obligations to be even-handed and did not act in the interests of the majority of the subsidiary proprietors (*ie,* collectively, the owners of the 32 smaller office units).[54] Mr Daryanani represented the owner of Unit #01-03,[55] and together with the 1st plaintiff, 2nd plaintiff and the owner of Unit #01-01, each owned units in the Development with the four biggest strata areas. The defendant asserted that they chose to support MOA2 over

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50 Defendant's Reply Submissions (dated 24 April 2020) ("Defendant's Reply Submissions") at para 2(f).
51 Defendant's Submissions at para 89.
52 Defendant's Submissions at para 90.
53 Defendant's Submissions at para 75.
54 Defendant's Submissions at para 83.
55 Yeo Sok Hoon's 1st Affidavit at p 254.

MOA1 because the former method benefited owners of larger units, and at the expense of the owners of the smaller units.[56]

Plaintiff's case

33 Mr Jansen Aw, counsel for the plaintiffs, submitted that the CSC decided on MOA2 over the course of several meetings, and also took into consideration professional advice on methods of apportionment.[57] MOA1 was only raised at the 2nd CSC meeting as a concept for preliminary discussion, and was subject to further debate; there was no agreement or consensus by the CSC or subsidiary proprietors to adopt MOA1. This was acknowledged by the defendant during the hearing.[58]

34 Mr Aw also contended that s 84A(6) LTSA requires the STB to consider whether a transaction was made in good faith under s 84A(9) LTSA even if no objection had been filed. Accordingly, the STB does not merely approve applications as a formality or simply mediate disputes.[59]

35 Further, C&W's advice to the CSC and subsidiary proprietors based on the premium variance test was grounded on its own experience and expertise in collective sale applications. As such, it was understandable and professional for C&W to give the advice that it did.[60] In any event, the CSC considered the advice rendered by C&W alongside other information. The premium variance test was a helpful tool in deciding whether a proposed method of apportionment was fair to the subsidiary proprietors. The CSC clearly exercised independent

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56 Defendant's Submissions at para 83.
57 Plaintiffs' Submissions at paras 118–119.
58 Plaintiffs' Submissions at para 120.
59 Plaintiffs' Submissions at para 128.
60 Plaintiffs' Submissions at para 127.

judgment, demonstrated by the fact that it eventually adopted MOA2, notwithstanding that it had a premium variance that exceeded the 20% threshold recommended by C&W. The CSC debated on the method of apportionment to be adopted amongst themselves and also with C&W, to ensure that the method adopted would be fair to all the subsidiary proprietors.[61]

36 The plaintiffs also submitted that the CSC had acted in an even-handed manner to safeguard the interests of all the subsidiary proprietors. The defendant's argument that the larger units would benefit from MOA2 stems from the fact that his point of comparison was MOA1. However, MOA1 was itself inequitable due to its wide premium variance, and the CSC would not have acted in good faith if they had opted for MOA1.[62]

37 Finally, the plaintiff added that the composition of the CSC reflected a fair representation of the categories of use and size across the 36 units in the Development. The majority of members in the CSC were in fact owners of smaller units, and they would not have voted for MOA2 had it been detrimental to them.[63]

Analysis and Decision

Legal principles

38 As summarised by the High Court in *The Albracca* ([17] *supra*) at [26], citing *Dynamic Investments Pte Ltd v Lee Chee Kian Silas and others* [2008] 1 SLR(R) 729 at [17] and *Ng Eng Ghee and others v Mamata Kapildev Dave and*

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61 Plaintiffs' Submissions at para 126.
62 Plaintiffs' Submissions at para 130.
63 Plaintiffs' Submissions at paras 136–138.

others (Horizon Partners Pte Ltd, intervener) and another appeal [2009] 3 SLR(R) 109 ("*Horizon Towers*") at [132], "good faith" in the context of s 84A(9) LTSA means succinctly "honesty or absence of bad faith". The Court of Appeal in *Horizon Towers* also considered that the duty of good faith requires the sale committee to "discharge its statutory, contractual and equitable functions and duties faithfully and conscientiously, and to hold an even hand between the consenting and the objecting owners in selling their properties collectively" (at [133]). The CSC's duties also include the duties of loyalty and fidelity, the duty to avoid conflict of interest and duty to make full disclosure (*The Albracca* at [27]–[28]).

39 In considering whether a sale price obtained is fair, the Court of Appeal emphasised in *Ramachandran Jayakumar and another v Woo Hon Wai and others and another matter* [2017] 2 SLR 413 ("*Shunfu Ville*") at [59] that there is "generally little to be gained in slicing up the sequence of events and attempting to argue that any one of them goes towards establishing lack of good faith; rather, it is through a holistic assessment of the entire circumstances of the transaction that the court may determine whether there is in fact an absence of good faith which would bar the sale from proceeding". An indicator of the lack of good faith in the transaction would be a want of probity on the part of the relevant parties (*Shunfu Ville* at [61(a)]). Whilst the specific issue under consideration in *Shunfu Ville* was whether the sale price was fair, the Court of Appeal's comments above are, in my view, equally applicable when a court is determining whether a transaction has been made in good faith based on any of the factors enumerated in s 84A(9)(*a*)(i) LTSA, including the method of distributing the proceeds of sale which was in issue in the present case.

Sub-issues

40 There are three sub-issues which arise from the arguments made by the parties in relation to the defendant's first objection. They are as follows:

(a) Whether the representations made by the 1st plaintiff and/or Ms Sim evidenced a lack of good faith;

(b) The effect of the representations made by the 1st plaintiff and/or Ms Sim; and

(c) Whether the 1st plaintiff, 2nd plaintiff and/or Mr Daryanani had abrogated their duties as members (in the case of the 1st plaintiff, also as chairperson) of the CSC.

(1) Whether the representations made by the 1st plaintiff and/or Ms Sim evidenced a lack of good faith

41 The crux of the representations made by Ms Sim and/or the 1st plaintiff was as follows. The method of apportionment chosen should not have a premium variance of more than 20%. However, MOA1 had a very large premium variance, which would make it difficult for C&W to find a valuer to support it, and for MOA1 to pass scrutiny by the STB.

42 The defendant vigorously disputed that the STB had any role to play in scrutinising collective sale applications. He maintained that the STB merely served as a platform to mediate disputes in the event of any objections to the collective sale. The defendant relied on his reading of the expert evidence given by the plaintiffs' expert, Mr Liaw during the hearing. Having reviewed the transcripts of the hearing, I do not think that Mr Liaw gave evidence to the effect

that the STB did not scrutinise collective sale applications.[64] His evidence was that the premium variance test was not a mandatory test. In his opinion, it was not correct that if a premium variance of 20% was not achieved, the STB would not approve the collective sale application. He did not, however, say that the STB will not scrutinise applications or that it would not consider the premium variance test in its deliberations.

43 As correctly submitted by the plaintiffs, the STB has a clear statutory duty under the LTSA (s 84A(6) read with s 84A(9) LTSA) to ensure that transactions are made in good faith, particularly when there are no objectors but no unanimous consent. There was therefore every possibility that the STB would indeed scrutinise the application and transaction in this case. This scrutiny by the STB is also implicitly acknowledged by the Court of Appeal in *Kok Yin Chong* ([26] *supra*) at [71] where after commenting on the question of burden of proof, Tay Yong Kwang JA, delivering the judgment of the court, noted that "the above seems to us to be a practical guide as to the burden of proof *before the Board* [the Board being the STB] or the High Court" [emphasis added].

44 I am therefore of the view that Ms Sim and the 1st plaintiff had correctly and legitimately raised the point to the CSC that the method of apportionment adopted would need to be able to withstand scrutiny by the STB. At that time, no one knew if 100% consensus would be achieved or whether any owner would object either to the method of apportionment put forward or to the terms of the CSA. Even if there were no objections to the collective sale but no unanimous consent, an application to the STB would still be necessary under s 84(6) LTSA.

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64 Certified Transcript (2 April 2020) at p 67 ln 25 to p 70 ln 8.

In reviewing the application, the STB would consider the factors set out in s 84A(9) LTSA. As I noted above, when the CSC meetings were being held, the 1st plaintiff and Ms Sim could not possibly have known whether there would be unanimous consensus to the collective sale, such that an application to the STB would not need to be brought. In properly discharging their responsibilities to the subsidiary proprietors, the 1st plaintiff and Ms Sim had to ensure that should an application be brought to the STB, the method of apportionment adopted would be able to pass the scrutiny of the STB. Therefore, this entire line of argument by the defendant with regard to the STB only mediating disputes and not scrutinising applications missed the mark.

45 The defendant also submitted that the premium variance test was advanced by Ms Sim and the 1st plaintiff so as to reach a method of apportionment that benefited the owners of larger units at the expense of the owners of the smaller units. However, I did not think there was any credible evidence which supported the defendant's case on this. The evidence given by Ms Sim, and both parties' expert witnesses, is that the premium variance test is a methodology that can be used to determine if the method of distribution of sale proceeds from a collective sale was fair. The plaintiff's expert Mr Liaw testified that the premium variance test is a "useful tool that we do look at", even though it was not mandatory that it be used.[65]

46 The defendant's expert, Mr Chan Hiap Kong ("Mr Chan"), gave evidence as follows:[66]

> Q: Mr Chan, do you think that the premium variance test is useful?

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65 Certified Transcript (2 April 2020) at p 67 ln 25 to p 68 ln 11.
66 Certified Transcript (3 April 2020) at p 38 ln 23 to p 40 ln 7.

> A: The premium variance actually is a mathematical system that property consultants use, it's useful to a certain extent.
>
> Q: Do you agree that the premium variance test, so to speak, is useful to explain to laypersons about whether or not the proceeds that the respective units may be obtaining [*sic*] is fair or not?
>
> A: Yes, I agree.
>
> …
>
> Q: Yes, but the premium test would certainly, or should form part of the advice to fully inform the subsidiary proprietors of what they are getting from the collective sale.
>
> A: The premium test would actually make it easier for them to decide to sell or not.

47 It can be seen from the evidence referred to at [45]–[46] above that the premium variance test is recognised and adopted in the real estate industry as a useful tool to assist in determining the fairness of a proposed method of apportionment. In my view, there was nothing inherently suspect or wrong about the use of it. Indeed, its use by Jones Lang Lasalle Property Consultants Pte Ltd, who were the marketing agents in *The Albracca* ([17] *supra*), is indicative to me of its prevalent use in the industry as a yardstick by which to assess the fairness of a method of apportionment in a collective sale scenario. Its usefulness is not diminished even for a property with unique configurations or features, as was, for example, the case in *The Albracca*. There is, in my opinion, no reason why the STB, if it were to scrutinise the application under s 84A(6) LTSA, would not have regard to the premium variance test, as did the High Court in *The Albracca*, and as have I in this case.

48 As to whether the STB would not an approve an application for a collective sale if the premium variance was above 20%, there was insufficient

evidence to enable me to come to any conclusion on this point. It was in any event unnecessary for me to do so. Suffice to say, the parties' experts did not disagree that the lower (or "tighter") the premium variance was, the better were the prospects of demonstrating that the chosen method of apportionment was fair and reasonable to all the owners as the circumstances of the case would permit.

49 It is undisputed that the 1st plaintiff was one of the owners of one of the larger units in the Development, and it is undisputed that MOA2 would give owners of the larger units a more favourable distribution of the sale proceeds in comparison with MOA1. However, in and of itself, that is not evidence that there was a lack of good faith on the part of the 1st plaintiff in advocating for MOA2. The 1st plaintiff testified that the CSC members took the premium variance test as a guide to determine whether the distribution of proceeds was fair and reasonable.[67] She explained that Ms Sim, who advised the CSC on the premium variance test, was the expert who had experience with *enbloc* sales.[68] Having examined the evidence and observed the 1st plaintiff, I did not find that there was any lack of good faith on the part of the 1st plaintiff in adopting the premium variance test and supporting MOA2 on that basis.

50 The good faith in the adoption of MOA2 is also demonstrated to some extent by the justification for the 1st plaintiff's criticism of MOA1. I address this in greater detail later when considering the defendant's second objection. In summary, when the actual figures (based on the revised sale price of $148 million) were plugged into the MOA1 two-tier formula, it was clear that MOA1 was inequitable, not just to the larger retail/F&B units *but also* to the larger

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67 Certified Transcript (31 March 2020) at p 105, lns 5 to 23.

68 Certified Transcript (31 March 2020) at p 133, lns 13 to 23.

office units. Under MOA1, the smallest office units would gain significantly, and unfairly. Therefore, even if MOA2 was not the perfect apportionment method, it was *overall* more even-handed and equitable to *all* the subsidiary proprietors, and supported the plaintiffs' case that the adoption of MOA2 was not tainted by bad faith. In this regard, I bore in mind that the task of the court is, *inter alia*, to assess if the method of distribution adopted is rational and designed to be *as fair as possible* to *all the subsidiary proprietors as the circumstances of the case would permit* (*Lim Li Meng Dominic and others v Ching Pui Sim Sally and another and another matter* [2015] 5 SLR 989 at [61]).

51 In attacking the conduct of C&W, the defendant pressed the argument that Ms Sim had made a false representation to the CSC that the premium variance had to be less than 20% in order to pass scrutiny by the STB. In this regard, the defendant emphasised that Mr Liaw's evidence was contrary to Ms Sim's advice to the CSC (see [30]). Mr Liaw testified that there was no fixed premium variance standard to determine whether a method of apportionment was acceptable, and that an acceptable premium variance could be different in every case depending on what was fair and reasonable in the circumstances.[69] In his view, it would be a false proposition to state that a premium variance of not more than 20% was needed to pass the scrutiny of the STB.[70]

52 I agree that Ms Sim's advice could have been more nuanced or measured. There appears to be at least one differing expert opinion on the premium variance that would be acceptable. It is also well established that C&W, as the marketing agent of the CSC, owed duties of transparency and openness in its dealings with the CSC and the subsidiary proprietors (see *N K*

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69 Certified Transcript (2 April 2020) at p 68 ln 17 to p 69 ln 18.

70 Certified Transcript (2 April 2020) at p 69 ln 19 to p 70 ln 8.

Rajarh and others v Tan Eng Chuan and others [2014] 1 SLR 694 at [45]). Even so, I did not find that Ms Sim made any false representations. Nor did she set out to lie to the CSC or act with a view to benefiting some owners at the expense of others.

53 Based on all the available contemporaneous evidence and having observed Ms Sim on the stand, I did not find that there was anything lacking in good faith about Ms Sim's advice. Ms Sim testified that the exercise in adjusting the method of apportionment was to "make sure that the gains from the collective sale would commensurate more with valuation rather than with share values",[71] and to be "more even-handed in the distribution" across the different units.[72] She explained that she had applied the premium variance test in previous collective sales which she had advised on.[73] Ms Sim acknowledged that although she held the view that the "rule of thumb" is that the premium variance should not exceed 20%, it was not encapsulated "in writing [or] enacted in any policy".[74] The advice she gave to the CSC was based on her experience in another case which she handled, where an expert witness had to be called to explain to the STB why the premium variance could not be kept below 20%.[75] She also cited her knowledge of *The Albracca* ([17] *supra*) in support of her view that the premium variance test is a standard adopted in the industry to evaluate the fairness of a method of apportionment,[76] and that the variance should be as close as possible to 20%.

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71 Certified Transcript (1 April 2020) at p 36 lns 10 to 12.
72 Certified Transcript (1 April 2020) at p 36 ln 25.
73 Certified Transcript (1 April 2020) at p 37 lns 17 to 19.
74 Certified Transcript (1 April 2020) at p 55, lns 1 to 24.
75 Certified Transcript (1 April 2020) at p 56 lns 4 to 20.
76 Certified Transcript (1 April 2020) at p 59 ln 3.

54 In my opinion, even though Mr Liaw had his views, this could be explained as a difference in opinion between two industry professionals as to whether there was such a rule of thumb. Ms Sim may (and I would put it at no higher than that) perhaps have displayed a level of overexuberance in pitching the 20% figure as a threshold that needed to be reached or the perceived difficulty in finding a valuer to endorse an MOA with a variance of more than 20%. However, it did not, in my view, transcend to deliberate falsehoods or misstatements by Ms Sim calculated to deceive, as was argued by the defendant. Nor did it evidence any collusion between Ms Sim and the 1st plaintiff in order to influence the CSC to adopt MOA2 and abandon MOA1, as was also argued by the defendant. In this regard, I also had regard to the evidence of the defendant's expert Mr Chan. Mr Chan did not, either in his affidavit of evidence-in-chief or oral evidence, state categorically that Ms Sim was wrong in referring to a threshold or "rule of thumb" of 20% that needed to be met to satisfy the STB. In his expert report, he only went so far as to say that neither the STB, nor the guidelines issued by the Singapore Institute of Surveyors and Valuers ("SISV"), mandated the use of the premium variance test or have any hard and fast rules in adopting the test.[77] Mr Chan's oral evidence touched on the usefulness or accuracy of the premium variance test in this case (see [46] above). However, he did not proffer any evidence on the specific point about whether it was incorrect or false for Ms Sim to pitch the minimum 20% figure as a threshold or rule of thumb that needed to be achieved. I could not therefore say that the totality of the evidence showed clearly and credibly that Ms Sim falsely represented the existence of the 20% threshold/rule of thumb.

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77 Chan Hiap Kong's Affidavit (dated 14 February 2020) ("Chan Hiap Kong's Affidavit") at p 25 (para 14.2.4 of his report dated 5 February 2020).

55 The defendant further contended that Ms Sim intended to benefit the larger unit owners by making the alleged false representation. I found this contention fanciful. There was no evidence of any such intent and no motive was proffered by the defendant on why Ms Sim would harbour any such intent. For one, Ms Sim raised the issue of the 20% premium variance threshold when the CSC discussed *both* MOA1 *and* MOA2. There was also no reason for Ms Sim to side with the owners of the larger units. The defendant's assertion did not go beyond an allegation unsupported by any evidence, let alone credible evidence.

56 The defendant also argued that an irresistible inference could be drawn from the evidence to the effect that the 1st plaintiff and Ms Sim had colluded to compel the CSC members to abandon MOA1 and endorse MOA2.[78] However, I found no evidence whatsoever of collusion between the 1st plaintiff and Ms Sim. As pointed out by the plaintiffs, there was no reason for Ms Sim to collude with the owners of larger units, who were in the minority, or with a single subsidiary proprietor.[79] The minutes of the CSC meetings also show that Ms Sim had explained the rationale for her position that MOA1 was not feasible, and had gone through the figures and numbers with the CSC.[80]

57 The defendant sought to persuade me to draw an inference of collusion on the basis of a number of allegations. He stated that the 1st plaintiff was evasive and lied on the stand about not receiving an email discussing MOA1 that had been sent by the 3rd plaintiff to various owners in July 2017, including the 1st plaintiff. He also asserted that the 1st plaintiff and Ms Sim must have

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78 Defendant's Submissions at para 82(e).
79 Plaintiffs' Reply Submissions at paras 54–55.
80 Plaintiffs' Reply Submissions at para 58.

communicated with each other prior to the 2nd CSC meeting, thereby enabling the 1st plaintiff to falsely inform the CSC that the apportionment method selected must stand up to the scrutiny of the STB. The defendant claimed that MOA1 had largely already been decided upon at the commencement of the collective sale discussions. The 1st plaintiff was the only CSC member who knew that choosing the method of apportionment would be a challenge, because she already had a plan to compel the CSC to abandon MOA1. Finally, the 1st plaintiff supported Ms Sim's false representations during the CSC meetings, which is further evidence of collusion between them.[81]

58 I did not accept any of these contentions. Even if the 1st plaintiff received the July 2017 email sent by the 3rd plaintiff and was aware of discussions relating to MOA1 in 2017, it merely indicated that MOA1 was an option being considered at that point in time. I did not find that the 1st plaintiff was evasive or untruthful as a witness. As I explained above at [44], the caution given to the CSC by the 1st plaintiff and Ms Sim that the method of apportionment must stand up to the scrutiny of the STB was both accurate and properly made in the discharge of their duties to the subsidiary proprietors. I also did not accept that the CSC (or for that matter a majority of owners) had already decided on or accepted MOA1 at the commencement of the discussions regarding the collective sale, as I elaborate below at [63]–[65]. The 1st plaintiff could, as CSC chairperson, endorse the premium variance test and MOA2 on the basis that it would be the more equitable option, taking into consideration Ms Sim's *and* D&B's professional advice. That does not lead to the conclusion that she must have colluded with Ms Sim. During cross-examination, the 1st plaintiff said that prior to the 2nd CSC meeting, she had never met or spoken to Ms Sim, or had

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81 Defendant's Submissions at para 82.

any dealings with C&W.[82] I saw no reason to disbelieve this evidence. In the circumstances, not only was the inference of collusion alleged by the defendant *not* irresistible, it was in my view incredible and went against the grain of the available evidence.

59 A final word on this sub-issue. The defendant's allegations on collusion and prior communication between the 1st plaintiff and Ms Sim were at the heart of his case that the 1st plaintiff and Ms Sim did not act in good faith. Yet, somewhat troublingly, these allegations were not put to the plaintiff's witnesses during cross-examination in the course of the evidentiary hearing. Nor were they clearly flagged up in the defendant's affidavit or his Opening Statement. Raising such serious allegations for the first time in his closing submissions amounted to litigation by ambush. This was not acceptable.

(2) Effect of the representations made by the 1st plaintiff and/or Ms Sim

60 As I mentioned above at [29], the defendant's case is that the collective sale process commenced on the back of an understanding that MOA1 was supported by the majority of the subsidiary proprietors. The defendant claimed that it was "as good as resolved save for the valuation aspect",[83] before Ms Sim and the 1st plaintiff forced the CSC members to abandon MOA1 and agree to MOA2. When MOA1 was discussed in the previous attempts to achieve a collective sale for the Development, the "greater concern", according to the defendant, was the valuation of the units (*ie,* the first tier in the two-tier formula envisaged by MOA1), and that there was allegedly no issue with the division of the balance sale proceeds by share value (*ie,* the second tier in MOA1).[84] The

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82 Certified Transcript (31 March 2020) at p 36 lns 8–9.
83 Defendant's Submissions para 82(c).
84 Defendant's Submissions at para 78.

defendant contended that the CSC members had no choice but to adopt MOA2 in order for the collective sale to proceed following the false misrepresentations by the 1st plaintiff and/or Ms Sim.

61 I did not accept the defendant's contention that the majority of subsidiary proprietors, including most of the large unit owners, had already agreed to adopt or supported MOA1 before Ms Sim came into the picture. At best, the evidence suggests that in principle, they were prepared to consider it again even though it had failed to garner support during the previous attempts at a collective sale of the Development. In support of this argument, the defendant relied on an email sent by the 3rd plaintiff on 28 July 2017 (see [8]). This email, according to the defendant supported his contention that the collective sale process proceeded on the basis that there was "wide support" for MOA1.[85]

62 This email was, in my view, problematic for the defendant for a number of reasons. First, the email from the 3rd plaintiff was hearsay evidence. Second, it did not demonstrate to me the level of "agreement" that the defendant asserted it showed. There was, for example, a reference in the email to MOA1 being "agreeable *in principle … but subject to further discussion in detail*" [emphasis added].[86] The defendant himself agreed that any alleged agreement at that stage was only in principle, and that one had to look at the actual figures before coming to a decision on whether that apportionment method was fair and equitable.[87]

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85 Defendant's Submissions at para 71.
86 Tan Thiam Chye's Affidavit at p 43.
87 Certified Transcript (2 April 2020) at p 162 lns 2 to 14.

63 I also did not accept the defendant's assertion that in the previous attempts at a collective sale of the Development, valuation was the only issue and the second tier of MOA1 did not pose any difficulties. No evidence was led by the defendant on this assertion, and the available evidence points the other way. For example, the 3rd plaintiff's email of 28 July 2017 stated that the "*main obstacle* for our en-bloc proceeding [*sic*] in the past is *the sharing or apportioning method* of sales consideration from collective sales that have hinder [*sic*] the progress of en-bloc sale"[88] [emphasis added]. Further, the minutes of the 2nd CSC meeting record a comment from one of the CSC members as follows: "I'm open to discussion but ultimately the figures need to show that the premium received by each unit is fair and equitable".[89] The minutes of the 3rd CSC meeting stated that "*one major reason* why the previous [en-bloc] exercise failed was because the *initial proposed Apportionment Formula was tweaked several times* in trying to suit subsequent changes in valuation of some property units"[90] [emphasis added]. The 1st plaintiff, during cross-examination, also stated that MOA1 was discussed at two previous unsuccessful attempts to obtain a collective sale for the Development, and this time round, the very same MOA1 was being proposed again by some of the owners.[91] These different pieces of evidence indicated to me that in the previous unsuccessful attempts at a collective sale, there were major difficulties faced in reaching an agreement on MOA1 *as a whole*, including its second tier.

64 As such, on the totality of the evidence, the defendant's argument that the 1st plaintiff and the other big unit owners abruptly changed their minds only

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88 Tan Thiam Chye's Affidavit at p 43.
89 Yeo Sok Hoon's 1st Affidavit at p 261.
90 Yeo Sok Hoon's 1st Affidavit at p 265.
91 Certified Transcript (31 March 2020) at p 46 lns 8 to 17.

when Ms Sim "abandoned" MOA1 and put forward MOA2 on the back of various deliberate false representations simply could not stand. The various CSC meeting minutes did not bear this out. The 1st plaintiff and the CSC were trying their best to steer through what was clearly a prickly issue, in order to arrive at an apportionment method that was fair and equitable to all owners as far as the circumstances would permit.

65 Further, it was only possible for the CSC members to reach a considered decision on whether MOA1 should be adopted after they had sight of the actual figures in play. Coming back to the email sent by the 3rd plaintiff on 28 July 2017 (see [8]), he gave the following example of a distribution under MOA1:[92]

> Total sales consideration after deducted [sic] all incidental expenses $120M
>
> Less: Market values of all the 36 SP (Offices and shop) – assumed to be $102M
>
> Balance $18M will be distributed to each of 36 units by share value, which is $500, 000 each unit.

66 Using the above example, MOA1 *might* have appeared, on its face, reasonable to the recipients of the email. Of a total assumed net sale proceeds of $120m, $102m (or 85%) represented the hypothetical market values of the units and the remaining $18m (or 15%) would be the second tier distributed equally to all 36 units based on their equal one share value. Based on these hypothetical figures, one might even say that this iteration of MOA1 gave a lot more prominence to valuation (and inferentially, size and use of the units) and significantly less prominence to share value. However, the landscape altered dramatically once the actual numbers were applied to MOA1, based on the

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92 Tan Thiam Chye's Affidavit at p 43.

revised reserve price of $148m. Of this sum, the total valuation of the 36 units in the Development amounted to $71m (or 48% of the revised reserve price, *down* from 85% in the hypothetical example above). The balance of $77m (which had now *increased* from 15% in the hypothetical to 52%) was to be distributed by share value.[93] The actual figures, when plugged in, revealed a *significant* skew in favour of the owners of the *smallest* office units, to the detriment of not just the retail and F&B units but also of the larger office units. It is thus not altogether surprising or unreasonable that the larger retail/F&B unit owners in the CSC, *and* other office unit owners in the CSC could see that MOA1 was inequitable when confronted with the actual figures (see [50]). I come back to this at [102] below.

67 The evidence indicated that the CSC members exercised independent judgment, taking into account the representations made by Ms Sim and/or the 1st plaintiff. The method of apportionment was discussed over multiple CSC meetings, and debated by the CSC members. It can be seen from the meeting minutes that the CSC members referenced C&W's recommendations and adopted the premium variance test as a methodology to determine the fairness of a proposed apportionment method. As explained above, C&W's advice regarding using the premium variance test as a tool was unobjectionable.

68 It would be useful at this juncture to go into greater detail as to what transpired at the 4th CSC meeting, when the majority of the CSC members provisionally accepted MOA2. The meeting minutes show that Ms Sim had initially suggested a method of apportionment constituting 80% valuation and 20% share value. Mr Phee then suggested that MOA1 be adopted, and he was

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93 Exhibit "D8".

supported by the defendant and the 3rd plaintiff. Mr Daryanani and Mr Alex Seah disagreed with MOA1 as it "severely disadvantaged the retail units". Ms Sim gave her opinion that MOA1 was inequitable, due to its wide premium variance. This opinion was shared not just by the 1st plaintiff but also by another CSC member Ms Poh Khim Hong, representing the owner of several office units on the 11th floor. The minutes also record that during the meeting, other permutations of apportionment methods were tested to reduce the premium variance. The 1st plaintiff suggested that strata area be a component added into the method of apportionment, in response to the defendant's suggestion that only valuation and share value be considered in the apportionment method. The minutes record that eventually, after much deliberation and discussion, the CSC members tentatively accepted MOA2 which had a smaller premium variance compared to MOA1.[94]

69 In my view, the CSC members had a genuine choice when deciding whether or not to vote for MOA2, and the majority voted in favour of it. In doing so, I am satisfied that they exercised independent judgment as opposed to placing blind faith or trust in C&W's opinions. The defendant claimed that Ms Sim had "threatened to resign", such that the CSC had "no alternative" but to use the premium variance test and vote for MOA2.[95] The defendant also claimed that Mr Phee did not agree with the use of the premium variance test, but accepted MOA2 because he had no choice even though he was unhappy about it. The defendant relied on emails that Mr Phee sent on 16 April 2018 to the defendant and to the CSC to support his contention.[96]

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94 Yeo Sok Hoon's 1st Affidavit at pp 268–269.

95 Defendant's Reply Submissions at para 2(f).

96 Defendant's Reply Submissions at paras 2(h), 3.

70 However, the alleged unhappiness of Mr Phee in his email was, to me, neither here nor there – ultimately, Mr Phee voted *in favour of* MOA2 and further, did not raise MOA1 or any objections to MOA2 at the EGM. I note that Mr Phee stated in his email that many other unit owners would not agree to discarding MOA1 as they would be giving up too much in terms of losses.[97] In a separate email to the defendant also sent on 16 April 2018, Mr Phee mentioned that his son and daughter-in-law, who owned three other units in the Development, were dissatisfied with having to do away with MOA1 because they would be making "big sacrifices" in agreeing to MOA2 instead of MOA1.[98] Even assuming this was the case, the fact is that they too signed the CSA and did not object to the sale.[99] I pause here to mention that the defendant could have called Mr Phee or any of the other CSC members as his witnesses to buttress or corroborate his claims that the CSC was, effectively, duped or forced into agreeing to MOA2 or that there was unhappiness or turmoil within the CSC on MOA2, but he did not do so.

71 There was also no evidence to suggest that the CSC members were coerced in any way to adopt the premium variance test, or to vote for MOA2. Ms Sim testified that she informed the CSC that if a method of apportionment adopted was skewed and unfairly advantaged some owners, she would have to discharge herself. If the CSC members wished to adopt MOA1, or any other apportionment method, they were at liberty to vote accordingly and discharge Ms Sim.[100]

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97 Tan Thiam Chye's Affidavit at p 52.

98 Tan Thiam Chye's Affidavit at p 54.

99 Tan Thiam Chye's Affidavit at p 87 (Nos 8, 10 and 11).

100 Certified Transcript (1 April 2020), at pp 134, lns 2 to 8 and p 136, ln 18 to p 137, ln 2.

72 To my mind, this somewhat robust response by Ms Sim demonstrated resolve by C&W as the marketing agents to ensure that they discharged their responsibilities without fear or favour, even if it meant causing unhappiness amongst the CSC members. I digress slightly here. A lot of the difficulties in this case quite possibly stemmed, in my opinion, from a preconceived view among a number of the owners and CSC members that MOA1 was inherently fair and a good formula to work with. However, once the actual figures were available (see [66] above), the premium variance test, among others, demonstrated quite starkly that this was not the case and that MOA1 was inherently unfair. The revelation by Ms Sim to the CSC of the unfairness of MOA1 may have caught a number of CSC members by surprise. Whilst it may have been a somewhat bitter pill to swallow for some of the CSC members when told that MOA1 would not pass muster, this did not mean they were misled or coerced by Ms Sim or the 1st plaintiff into abandoning MOA1 and adopting MOA2. Indeed, the CSC was given more time to reflect on MOA2 and the figures as it was only tentatively adopted at the 4th CSC meeting. At the 5th CSC meeting and only after yet further discussions on the apportionment method, the CSC decided to move forward with MOA2.

73 The defendant also complained that MOA2 was voted on in less than two hours, which according to him, was a "record speed and achievement".[101] However, this is not entirely accurate. MOA2 was first discussed and deliberated on in detail at the 4th CSC meeting, which lasted for about 2 hours 10 minutes. At that meeting, MOA2 was tentatively agreed upon. At the 5th CSC meeting which also lasted some 2 hours 10 minutes, the discussions continued and the CSC then decided definitively to move forward with MOA2. In fairness,

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101 Defendant's Submissions at para 110.

one should consider at least the total amount of time taken at the 4th and 5th CSC meetings. Of the approximately 4 and a half hours in total, I surmise the lion's share would have been taken up by discussions and debate on the apportionment method. I thus disagreed that in the circumstances, the decision to vote on and proceed with MOA2 was one taken by the CSC "willy nilly" or with a lack of good faith.

74 In my judgment, there was no credible evidence that MOA1 was abandoned because of false representations made by Ms Sim and/or the 1st plaintiff. The minutes from the relevant CSC meetings show that involved and robust discussions had taken place on the methods of apportionment at more than one meeting. Having assessed the evidence in its entirety and holistically, it was clear to me that the decision-making process of the CSC was conducted in good faith.

(3) Alleged abrogation of duties as members/chairperson of the CSC

75 The defendant also submitted that the 1st plaintiff should have called for another professional opinion to test Ms Sim's representations, and that the other members of the CSC did not act in the interests of all the subsidiary proprietors. However, in my view, the other CSC members, like the 1st plaintiff, could legitimately refer to the premium variance test. Utilising that test as a tool, they could reasonably hold the view that MOA2 was fair and equitable. The other CSC members were also legitimately entitled to rely on the advice given to them by experienced professionals from reputable organisations, just as the 1st plaintiff was.

76 It can be seen from the discussion above that the defendant levelled all manner of criticisms against the 1st plaintiff and other CSC members. However,

it bears repeating that the defendant was himself also a member of the CSC. If the defendant had doubts about the premium variance test or was of the view that another professional opinion was necessary, he could have raised it during the CSC meetings, but did not.

77 As I have detailed above, the evidence demonstrated that the CSC members sought professional advice from a reputable property marketing agent, had the benefit of legal advice, and carefully considered the advice given to them in coming to their decision to adopt MOA2. In light of all this evidence, it could not be said that in the circumstances, the 1st plaintiff or the CSC members abrogated their duties to the subsidiary proprietors.

78 For all of the foregoing reasons, the CSC and its appointed marketing agent did, in my judgment, fulfil their duties as fiduciaries in good faith in adopting MOA2 as the method of distributing the sale proceeds from the collective sale of the Development. Their conduct did not in any way fall foul of any of the obligations spelt out in *Horizon Towers* ([38] *supra*) and as summarised in *The Albracca* ([17] *supra*) at [27]–[28].

The Second Objection: MOA2 was not fair, reasonable or equitable

Parties' cases

Defendant's case

79 The defendant's second objection was that MOA2 was not a fair, reasonable or equitable method of apportionment. He also contended that it was

not his case that MOA1 should have been adopted or that MOA1 was fairer than MOA2.[102]

80 A central plank of the defendant's criticism of MOA2 revolved around what constituted common property. The defendant claimed that common property *included all of the land* on which the Development sits. In support of this contention, the defendant relied on the Development's Certificate of Title[103] ("CT") and the Subsidiary Strata Certificate of Title ("SSCT") of one of his units in the Development.[104] The defendant argued that these documents showed that each of the subsidiary proprietor's share value represented their "1/36 share in the land" which was part of the common property.[105] The two-tier apportionment method in MOA1, so the defendant argued, distributed the premium from the sale proceeds based on the share value of each subsidiary proprietor, such that they would each receive 1/36 of the premium value. This ensured that the share value of the subsidiary proprietors would not be "diluted".[106] The defendant contended that his case was supported by s 84A of the LTSA, and that the $77 million to be distributed in the second tier of MOA1 must be the value of the common property. This, the defendant submitted, was equated to the land on which the Development sits as it is the only part of "common property" that has a real tangible value.[107] Given the defendant's definition of "common property", and his claim that the subsidiary proprietors are entitled to a 1/36th share of the common property, the two-tier apportionment method in MOA1 was fair and equitable. It gave due recognition to the

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102 Defendant's Submissions at para 100.
103 Exhibit "D6".
104 Exhibit "D7".
105 Defendant's Submissions at para 101.
106 Defendant's Submissions at para 107.
107 Defendant's Submissions at para 108.

subsidiary proprietor's inalienable right to the land as tenants-in-common in accordance with their share value. MOA2, on the other hand, sought to unfairly and wrongly dilute that right.

81 The defendant further submitted that the allotment of the share value in the Development is unique, as it did not correlate with the size of the units. As each unit had one share value, each unit's owner paid an equal amount towards the maintenance and sinking funds irrespective of size. As a result, the smaller units had been paying a disproportionate sum of maintenance over the past 49 years.[108] This disproportionate contribution should, according to the defendant, be taken into account when determining the apportionment method to be adopted.[109]

82 Lastly, by using the premium variance test, the plaintiffs were seeking to circumvent and dilute the share value allocation, thereby giving more of the sale proceeds to the larger units and denying the subsidiary proprietors of their rights to 1/36 of the common property.[110]

Plaintiff's case

83 The plaintiffs, on other hand, submitted that the land on which the Development sits is not part of common property, as seen from the definition of "common property" in the LTSA.[111] Further, under a strata scheme, a person buys a "strata lot and the accompanying undivided share in the common property", and it would be erroneous in the context of a collective sale to

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108 Defendant's Submissions at para 113.
109 Defendant's Reply Submissions at para 17.
110 Defendant's Submissions at para 113.
111 Plaintiff's Submissions at paras 76–82.

attribute ownership of a specific part of the land or the common property to a subsidiary proprietor.[112] There is also no basis to attribute the $77 million or the entire $148 million to common property.[113] The value of $148 million is the potential value of the land from the purchaser's point of view, whereas the valuation of $71 million is the existing value of the Development. The difference of $77 million is the "amount over and above what all the [subsidiary proprietors] would get if they had individually sold their units in the open market, without it being a collective sale", and should not be attributed to common property.[114]

84 The plaintiffs also argued that MOA1 was untenable and inequitable.[115] They relied on a table prepared by their expert, Mr Liaw, which showed that adopting MOA1 would be detrimental to the minority larger retail and F&B units in the Development.[116] According to the calculations made by Mr Liaw, the premium variance based on a revised reserve price of $148 million was 106% under MOA1. This large premium variance "suggests that certain units are obtaining far more premium from the sale price at the expense of other units, which may make it inequitable to the latter".[117] For example, the difference in premium between a retail unit such as #01-01, and the defendant's unit #10-02, which was one of the smallest office units, was about 107% (144% for the defendant's unit less 37% for unit #01-01). Even *amongst* the office units, comparing an office unit with the biggest strata area and the defendant's unit, the difference in premium was 28% (144% for the defendant's unit less 116%

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112 Plaintiff's Submissions at para 83.
113 Plaintiff's Submissions at para 89.
114 Plaintiff's Submissions at paras 92–93.
115 Plaintiff's Submissions at para 26.
116 Plaintiff's Submissions at para 44
117 Plaintiff's Submissions at para 45.

for the biggest office unit).[118] As such, MOA1 resulted in an uneven spread of premiums (percentage-wise) between the units of different uses, benefiting the office units by a significant margin. The plaintiffs submitted that if the CSC had adopted MOA1, it would not have been acting in good faith.[119]

85 Apart from the wide premium variance, MOA1 also reversed what was described by Mr Liaw as the unit rate per square foot ("psf"), to the detriment of the larger units. The common market understanding is that a ground floor retail/F&B unit would have a higher market value psf compared to an upper floor office unit. However, under MOA1, the psf (as a function of the sale proceeds) for the smallest office units was higher than that of the larger retail and F&B units, and also that of the larger office units. The owners of the larger units and the majority of the office units therefore would not therefore accept MOA1.[120]

86 In relation to the defendant's arguments that maintenance fees should be taken into account, the plaintiffs submitted that a collective sale exercise is not the appropriate avenue through which any recovery of such payments can be made.[121] Further, there are multiple errors in the defendant's calculations of the maintenance fees allegedly paid by him.[122] MOA2 also did have a component apportioning 20% based on share value, which recognised the maintenance fees which have been paid by all subsidiary proprietors.[123]

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118 Plaintiff's Submissions at p 16.
119 Plaintiff's Submissions at paras 45–52.
120 Plaintiff's Submissions at paras 53–57.
121 Plaintiff's Submissions at para 37.
122 Plaintiff's Submissions at paras 30–36.
123 Plaintiff's Submissions at para 40.

87 The plaintiff further submitted that in contrast, MOA2 was fair and equitable to all the subsidiary proprietors. The premium variance derived from using MOA2 was 48% (based on the revised sale price of $148 million), which was lower than the variance that resulted from using MOA1. Further, the range of premiums in psf terms was also evened out across the different uses of the units.[124] Further, MOA2 was an appropriate apportionment method to use for the Development, as it gave due consideration to the fact that the units in the Development had different attributes.[125] Finally, MOA2 was also in line with the SISV's Valuation Standards and Practice Guidelines (2015 Edition).[126]

Analysis and decision

88 With regard to the defendant's contention that it was not his case that MOA1 was fair and equitable or that it should have been adopted over MOA2, I found it difficult to accept this submission. In seeking to criticise MOA2, a substantial part of the defendant's case was that MOA1 *was* fair because it gave, according to the defendant, full legal recognition to share value. Further, the defendant maintained that MOA1 already had the support or acceptance of a majority of owners when the *enbloc* process commenced, only to be scuttled by Ms Sim and/or the 1st plaintiff at the 4th CSC meeting. The defendant's own expert, in addition to commenting on MOA2, devoted an entire section of his report seeking to demonstrate that MOA1 was fair and legally justified.[127] If indeed it was not the defendant's case that MOA1 should have been adopted or was fairer than MOA2, then that concession in fact weakened the defendant's case in challenging the good faith of the transaction.

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124 Plaintiff's Submissions at paras 95–97, p 36.
125 Plaintiff's Submissions at para 99.
126 Plaintiff's Submissions at para 111.
127 Chan Hiap Kong's Affidavit at pp 21–24.

89 I also disagreed with the defendant's premises that (i) the remaining sum of $77m (after deducting the valuation of $71m from the total revised sale price of $148m) represented the value of the common property, (ii) common property included the very land on which the Development stood, and (iii) in law, each subsidiary proprietor had an inalienable right to 1/36 of the common property which *included* the land on which the Development stood. Those premises were, in my view, erroneous and involved a misreading of the definitions of common property in, *inter alia*, the LTSA. In this regard, I found the plaintiffs' submissions more persuasive.[128]

90 Section 84A(1) of the LTSA states that an application is made for "an order for the sale of all the lots and common property in a strata title plan". It is, however, somewhat of a leap for the defendant to claim that therefore, based on s 84A(1) LTSA, the difference between the total collective sale price and the valuation of the strata lots must be the value of the common property. Section 84A of the LTSA makes no mention of such a division of the purchase price in a collective sale, and does not concern the division of sale proceeds.

91 Whilst the defendant asserted that common property included the land that the Development stood on, no authority was cited to support this assertion. Mr Tan instead referred me to s 2(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA") and s 3 of the LTSA for the definition of "common property" in those Acts. However, nothing in those definitions supported the proposition that "common property" includes the very land on which the Development stands. For reference, the definition of

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128 Plaintiff's Submissions at paras 76–93.

"common property" in s 3 LTSA relevant to these proceedings is set out as follows (the same definition is found in the BMSMA):

> "common property", subject to subsection (2), means —
>
> (a) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —
>
> (i) not comprised in any lot or proposed lot in that strata title plan; and
>
> (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots;
>
> …
> (c) in relation to any land and building mentioned in paragraph (a) or (b), any of the following whether or not comprised in a lot, proposed lot or non-strata lot:
>
> (i) the pipes, wires, cables or ducts which are used, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots (as the case may be) within that land or building, or are used or capable of being used for the servicing or enjoyment of the common property;
>
> (ii) the cubic space enclosed by a structure enclosing pipes, wires, cables or ducts mentioned in sub-paragraph (i);
>
> (iii) any structural element of the building;
>
> (iv) the waterproof membrane attached to an external wall or a roof;
>
> *Examples*
>
> (a) A foundation, load-bearing wall, column or beam, a shear core, strut, ground anchor, slab (not including any layer that is the underlayment or the flooring finishing), truss and common staircase.
>
> (b) An external wall, or a roof or façade of a building which is used or enjoyed, or capable of being used or enjoyed, by occupiers of 2 or more lots, proposed lots or non-strata lots.

> (c) A garden, sporting or recreational facility, car park or parking area for other vehicles, none of which are comprised in a lot, proposed lot or non-strata lot.
>
> (d) A central air-conditioning system and its appurtenances, and a fire sprinkler protection system and its appurtenances.
>
> (e) Any chute, pipe, wire, cable, duct or facility for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating or cooling systems, or any other similar services.

92 I agreed with the plaintiffs that based on, *inter alia*, the definitions of "land", "common property" and "strata title plan" in s 3(1) LTSA, common property is simply any land or building that is *not* already part of a strata lot *and* which may be used or enjoyed or capable of being used or enjoyed by occupiers of two or more lots.

93 On a plain reading, any "land" (which has the same meaning in the LTSA as in the Land Titles Act (Cap 157, 2004 Rev Ed), *ie* "the surface of any defined parcel of earth … [including] the subterranean space below [that surface] and … the column of airspace above [that] surface") or building which is part of a strata lot *cannot* constitute common property. This portion of the land is also not used or enjoyed or capable of being used or enjoyed by occupiers of two or more lots. It is not logical, therefore, for the *entire* land area stipulated in the CT to constitute "common property", as the defendant asserted. A perusal of the examples listed in s 3 LTSA and s 2(1) BMSMA also suggests that the intended definition of "common property" does not also encompass the entire land on which the Development stands.

94 The statement in the SSCT which the defendant sought to rely on states that the subsidiary proprietor's share "in the common property *of* the *whole land*

lot … is 1 out of 36 shares" [emphasis added], and not of the "whole land".[129] It is clear that the subsidiary proprietor's share is in 1/36 of the common property of *the land lot*, and not 1/36 of the common property comprising the *entire land* or 1/36 of *the land*. It is also clear that the definitions in the LTSA and BMSMA draw a distinction between strata lots and common property which, *together*, comprise the whole land lot in the strata title plan. It is for this reason that the SSCT, for example, refers to each subsidiary proprietor owning 1/36 *of* the common property *of* the *whole land lot*.

95 The defendant's proposition that "common property" included the entire land on which the Development sits was also untenable when viewed in the context of the LTSA and BMSMA. First, the need for the concept of "common property" is to delineate the parts of the Development for which the management corporation has a duty to repair or maintain (see Teo Keang Sood, *Strata Title and Commonhold – A Look at Selected Aspects of the Singapore and English Legislation* (2008) SJLS 420 at pp 424–425; s 29(1)(*b*)(i) BMSMA). In *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790 at [61], the Court of Appeal held that "any area or installation in respect of which the management corporation had assumed a duty to control, manage, administer or maintain would presumptively be taken to have satisfied the second limb" of s 2(1) BMSMA, *ie,* that the part of the land and building was used or capable of being used or enjoyed by occupiers of two or more lots or proposed lots, unless shown otherwise. The Court of Appeal also noted at [51] that the LTSA and BMSMA were enacted to ensure the proper upkeep of common areas (see also *Frontfield Investment Holding (Pte) Ltd v Management Corporation Strata Title Plan No 938 and others* [2001] 2 SLR(R)

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[129] Exhibit D7 at p 4; *cf* Defendant's Reply Submissions at para 26.

410 at [29] where the High Court recognised that the management corporation has a responsibility to maintain common property for the benefit of all proprietors).

96 It cannot, therefore, logically be the case that the management corporation has a responsibility to repair and/or maintain the *entire* area reflected in the CT, including the land comprised in strata lots or the entire land on which the Development sits.

97 Second, the land strata title scheme does not lend itself to the division of the land or the common property between subsidiary proprietors, and each subsidiary proprietor therefore cannot claim to own a specific portion of the land or common property. As stated by the Court of Appeal in *Abraham Aaron Isaac v Management Corporation Strata Title Plan No 664* [1999] 2 SLR(R) 287 at [22]:

> …Section 13(1) of the [LTSA] provides that: "…the common property shall be held by the subsidiary proprietors as tenants in common proportional to their respective share value and for the same term and tenure as their respective lots are held by them". As such, all the subsidiary proprietors have unity of possession, and no subsidiary proprietor can claim possession of a separate part of the property against another: *Poh Kiong Kok v MCST Plan No 581* [1990] 1 SLR(R) 617.

The plaintiffs also pointed me to the second reading of the Land Titles (Strata) (Amendment) Bill 1998 (Bill 28 of 1998) (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69) at col 632 (Assoc Prof Ho Peng Kee, Minister of State for Law)), where it was noted by the Minister that a person "buys into … a strata lot. He buys into common property. He is designated share values in common property. *He has no specific land lot*." (emphasis added). I was also referred to the third reading of the same bill (see

Singapore Parliamentary Debates, Official Report (4 May 1999) vol 70 at col 1342 (Prof S Jayakumar, Minister for Law)), where the Minister stated that:

> In strata title, there is no delineation of the subsidiary proprietor's *identifiable plot of land. There is no such thing.* You have, in common with the other subsidiary proprietors, a certain share value of the land area as well as a share value of all the common properties, and when we talk about common properties, it covers a whole range from carparks, the pool, the garden, lifts, corridors, external walls, columns, roads, drainage, sewerage and gas pipes and electric cables serving the development. So there is a distinction. When we talk about strata titles, the concept is different [from that of landed property]. You are having an identifiable airspace but with respect to land and other common properties, you have common ownership together with the rest of the subsidiary proprietors according to the share values.
>
> [emphasis added]

98 Third, the way in which certificates of title are issued was, in my view, consistent with and supported the conclusion that common property does not constitute the entire land area reflected in the certificate of title on which the strata development stands. As explained by Professor Teo Keang Sood in his article *Management Corporation: Common Property and Structural Defects* (2016) SJLS 149 at pp 153–154:

> … Under the LTSA, the common property is held by the unit owners as tenants-in-common. While a subsidiary strata certificate of title is issued for a unit, *no such certificate of title is to be issued for the common property*. The certificate of title in respect of the land on which the strata development stands is to be retained by the Registrar of Titles after the issuance of the relevant subsidiary strata certificates of title. Following from the above, it is clear that the common property is vested in the unit owners as aforesaid and not in the management corporation. *Accordingly, it is to be noted that a unit owner's subsidiary strata certificate of title issued in respect of his unit shall also certify therein his share in the common property and there is no separate certificate of title issued for the common property…*

[emphasis added]

99 Thus, the defendant was, in my view, working on a flawed starting premise to support his position that MOA2 was not fair or equitable.

100 With regard to the concern raised by the defendant that the maintenance fees had not been fairly or proportionately split between the units as a result of each unit having one share value regardless of strata area, this point was not, in my view, relevant to whether the method of apportionment chosen was fair and equitable. In any event, the defendant's argument that the smaller units had been subsidising the larger units due to the unfair split in maintenance fees did not stand up to scrutiny. The defendant alleged that the larger units would necessarily consume more of the common utilities, as they had a "bigger place to maintain",[130] but it is not clear why that would be the case. On this point, the 1st plaintiff testified that each unit paid for their own electricity.[131] Also, the ground floor retail units would have had no or little use for the lifts but would have had to pay for their maintenance when the biggest users would have been the 32 office units. Similarly, the 32 office units would collectively consume more of the central air-conditioning than the retail/F&B units. Overall, I found the contention that the smaller units had been subsidising the larger retail/F&B units over a number of decades unconvincing and somewhat one-sided.

101 Despite the defendant's contention that it was not his case that MOA1 was fairer than MOA2 (see [79] above), it was nevertheless relevant, in my view, to compare MOA1 with MOA2. This is because the comparison assisted

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130 Certified Transcript (2 April 2020) at p 127 lns 3 to 4.
131 Certified Transcript (31 March 2020) at p 115 lns 10 to 11.

in informing whether the CSC's decision to adopt MOA2 and put it to the EGM was made in good faith.

102 On this comparison, I found Mr Liaw's evidence to be logical and persuasive. Mr Liaw compared MOA1 and MOA2, and explained that under MOA2, the range of premium per unit (in psf terms) was relatively small within each group of units (*ie*, shops vs office). On the other hand, that range was much larger under MOA1.[132] Next, Mr Liaw pointed out that under MOA1, the office units obtained a premium in percentage terms substantially above the average while the retail units obtained a premium in percentage terms substantially below the average. In contrast, the range of premiums was narrowed in the case of MOA2.[133] Finally, Mr Liaw used the premium variance test as a tool to stress test both methods, and it showed that a much smaller variance was obtained under MOA2 than under MOA1. MOA2 also demonstrated one of the tightest premium variances and served to confirm Mr Liaw's opinion that MOA2 was fair and equitable. Importantly, under MOA2, the spread of premium over valuation was more evenly distributed whether by use types or size and in percentage terms, the office units still enjoyed a higher level of premium relative to their valuations.[134]

103 In my judgment, all these *indicia* pointed to the conclusion that MOA2 was fair and equitable, and was properly adopted by the CSC. They also lent credence to the plaintiffs' case that the process (or transaction) was carried out in good faith. Overall, I preferred the evidence of the plaintiffs' expert Mr Liaw

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132 Certified Transcript (2 April 2020) at p 106 ln 8 to p 107 ln 3; Liaw Sin Hai's Affidavit at p 21

133 Certified Transcript (2 April 2020), at p 107 ln 4 to p 108, ln 9; Liaw Sin Hai's Affidavit at p 21.

134 Liaw Sin Hai's Affidavit at p 21.

to the defendant's expert Mr Chan – the latter's answers were in parts not entirely logical. Mr Chan's report and conclusions on MOA1 were also based on the incorrect premise that common property included all of the land on which the Development stood.

104 I would add that MOA2 received a high percentage of support of 90.48%[135] at the EGM. There was no suggestion by the defendant of any coercion or undue influence being exercised during the voting. That level of support for MOA2 at the EGM did, in my view, go some way to indicate that the CSC members had been able to arrive, as best as they could, at an apportionment method that was a fair and equitable option to all the subsidiary proprietors.

105 A final word on MOA1. Having heard the evidence and considered the parties' arguments, I agreed that MOA1 was, objectively, unfair. It was unfair not only unfair to the retail/F&B units, but also to the largest office units such as #04-03 to #11-03, each with a strata area of 121 square metres. The disparity in the premium received by the smallest office units as compared to the largest office units (*ie,* 28%) was not marginal or insubstantial (see [84]). The defendant did not address this point in his closing or reply submissions.

106 For completeness, the defendant also suggested, in his closing submissions, that there were other possible modifications that could have been made to MOA1 had the CSC been given the opportunity to explore them. For example, the defendant suggested that the four largest retail units could be given a "top-up" to their valuations from the second tier pool of funds, and for the

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135 Yeo Sok Hoon's 1st Affidavit at p 327.

remaining proceeds to thereafter be distributed equally by share value.[136] In my view, this was a submission made on hindsight and as an afterthought. The defendant did not raise this option at any of the CSC meetings even though the CSC members were then testing out different permutations of apportionment methods. It was also not raised in his affidavit or put to any of the plaintiff's witnesses when they gave evidence. I placed no weight on this argument which was raised very late in the day and say no more about it.

107 For the foregoing reasons, I also rejected the defendant's second objection. MOA2 was in my judgment not unfair, unreasonable or inequitable. On the contrary, it was fair and equitable to all the owners of the Development, as far as the circumstances would permit. It achieved a distribution of the sale proceeds that did not significantly favour *or* disfavour any particular owner in the Development.

Conclusion

108 For the above reasons, and after having carefully considered all of the evidence holistically, I found that the transaction was made in good faith, taking into account the method of distribution of the sale proceeds. That was the only objection raised by the defendant in these proceedings. As I found against the defendant, I granted the plaintiffs' application for an order for the collective sale of the Development and quashed the stop order dated 7 November 2019 issued by the STB.

109 As costs followed the event, the plaintiffs were awarded the costs of the proceedings. The parties could not agree on the quantum of costs and

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136 Defendant's Reply Submissions at para 10.

disbursements. I thus directed that they file written submissions on costs. After considering the parties' submissions, I fixed costs at S$70,000 and disbursements at S$53,525.54 to be paid by the defendant to the plaintiffs.

S Mohan
Judicial Commissioner

Aw Jansen and Ngaim Ruo Ling (Donaldson & Burkinshaw LLP) for the plaintiffs;
Tan Denis and Thomas Ng Hoe Lun (Circular Law Chambers LLP) for the defendant.