IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 03

Originating Summons No 841 of 2018

In the matter of Order 100 Rules 2 and 4 of the Rules of Court
(Cap 322, R 5, 2014 Rev Ed)

And

In the matter of the development known as GOODLUCK GARDEN
(Strata Title Plan No 952) comprised in Land Lot No 4278P of Mukim 5

And

In the matter of the Stop Order dated 27 June 2018 issued by
the Strata Titles Boards pursuant to Section 84A(6A) of
the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed)

And

In the matter of an application under Section 84A(1) of
the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed)

Between

(1) Lim Hun Joo
(2) Awe Ying Fatt
(3) Chan Keng Siang Gregory

… *Plaintiffs*

And

(1) Kok Yin Chong
(2) Ng Yuen Yau Olivia
(3) Ng Khee Shen
(4) Michelle Ang Suan Choo

(5) Lim Choo Hwee
(6) Poon Meng Mee
(7) Chong Chiah Joo
(8) Tan Thiam Yee
(9) Goh Lay Hoon (Wu Lifen)
(10) Gan Seng Hong
(11) Toh Wai Ling, Kathleen (Zhuo Weiling, Kathleen)
(12) Ang Ann Kiat
(13) Wong Lai Fun

… *Defendants*

GROUNDS OF DECISION

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

TABLE OF CONTENTS

Lim Hun Joo and others
v
Kok Yin Chong and others

[2019] SGHC 03

High Court — Originating Summons No 841 of 2018
Woo Bih Li J
12–14 September; 26 November 2018

2 January 2019

Woo Bih Li J:

Introduction

1 The plaintiffs commenced Originating Summons No 841 of 2018 ("OS 841/2018") to apply for an order for the collective sale of a development known as Goodluck Garden ("the Property"), pursuant to s 84A(1) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("LTSA"). Pursuant to s 84A(2), the plaintiffs are the three persons from the collective sale committee ("the CSC") who were appointed by the Property's subsidiary proprietors, who had agreed in writing to sell the Property, to act jointly as their authorised representatives in connection with this collective sale application. The CSC was constituted pursuant to s 84A(1A) to act jointly on behalf of the subsidiary proprietors for the purposes of the collective sale.

2 The defendants are 13 subsidiary proprietors who filed objections to the collective sale to the High Court. They mainly contended that the present application was *ultra vires*, that there was a flagrant breach of certain statutory requirements, and that the transaction in respect of the collective sale to the purchaser was not in good faith. On this last point, the defendants raised many factors to argue that this court should not approve the collective sale application pursuant to s 84A(9)(*a*)(i).

3 I heard OS 841/2018 from 12 September 2018 to 14 September 2018. At the end of the hearing on 14 September 2018, I reserved judgment. I was informed that the plaintiffs had to obtain an order in respect of the collective sale by 26 November 2018, failing which the purchaser who entered into a sale and purchase agreement to buy the Property (*ie*, the sale and purchase agreement, amended as at 8 March 2018 ("the SPA")) might treat it as rescinded.[1] I delivered my oral judgment (*Lim Hun Joo and others v Kok Yin Chong and others* [2018] SGHC 256) on 26 November 2018, addressing the main issues of law and fact, and indicated that more detailed grounds of decision would follow. In short, I granted the primary orders sought by the plaintiffs with costs and disbursements to be determined at a later date.

4 These are the grounds of my decision. References to statutory provisions are to provisions of the LTSA unless otherwise stated.

Background

5 I set out the background facts as far as they were undisputed.

[1] See Kok Yin Chong's 1st affidavit filed on 20 August 2018 ("Kok's 1st affidavit") at pp 485, 494; see Notes of Arguments of 12 September 2018 ("NAs 12/09/18") at p 51 lines 5–7.

6 The Property is a freehold development comprising 210 units.[2] In or around May 2017, the management council of the Property's management corporation invited Knight Frank Pte Ltd ("Knight Frank") to share with the subsidiary proprietors an overview of the collective sale process.[3] Knight Frank will be referred to as a "marketing agent" in these grounds.[4] On 27 May 2017, Knight Frank gave a presentation to the subsidiary proprietors where it estimated the sale price for the Property to be at least $455.8m, and estimated the development charge ("DC") payable for the redevelopment of the Property to be $48.4m.[5] The DC is a tax payable by developers to the relevant authorities when planning permission is granted to carry out a development project which increases the value of the land.[6]

7 On 1 July 2017, an extraordinary general meeting ("EGM") of the management corporation was convened. At this EGM, the CSC was constituted to act jointly on behalf of the subsidiary proprietors for the purposes of a collective sale.[7] The subsidiary proprietors resolved that the CSC comprise six members, and that the three plaintiffs and three other individuals form the CSC.[8] The first plaintiff became the chairman of the CSC.[9]

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2 See Lim Hun Joo's 1st affidavit filed on 10 July 2018 ("Lim's 1st affidavit") at paras 7(1), 9; Kok's 1st affidavit at para 5.

3 See Lim's 1st affidavit at para 10.

4 See Lim's 1st affidavit at p 572.

5 See Lim's 1st affidavit at para 11; Kok's 1st affidavit at para 7.

6 Loh Kai Chieh's 1st affidavit filed on 10 July 2018 ("Loh's 1st affidavit") at para 10.

7 See Lim's 1st affidavit at p 409.

8 Lim's 1st affidavit at pp 408–409.

9 Kok's 1st affidavit at para 9.

8 The CSC thereafter contacted a few marketing agents, including Knight Frank, with the intention of appointing one of them for the proposed collective sale. Sometime in early July 2017, the CSC members unanimously agreed to appoint Knight Frank as the marketing agent.[10] The CSC members also unanimously agreed to appoint Rajah & Tann Singapore LLP ("R&T") as the legal firm for the collective sale.[11]

9 On 9 September 2017, an EGM of the management corporation was convened and was attended, in person or by proxy, by subsidiary proprietors who collectively own 135 units of the Property.[12] At the EGM, Knight Frank shared a proposed reserve price of $500m for the collective sale and an estimated DC of around $58.5m, subject to verification.[13] Knight Frank explained the apportionment method of sale proceeds.[14] R&T then went through the terms and conditions of the collective sale agreement ("the CSA").[15] The CSA stated that the reserve price was $500m, although this reserve price could be changed in accordance with the provisions in the CSA.[16] However, at the EGM, the subsidiary proprietors did not vote on or otherwise approve the apportionment of sale proceeds and the terms and conditions of the CSA.[17] Instead, after the EGM was concluded, subsidiary proprietors who collectively own 76 units signed the CSA that day.[18]

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10 See Lim's 1st affidavit at p 570; Kok's 1st affidavit at para 139.

11 See Lim's 1st affidavit at p 571.

12 See Lim's 1st affidavit at pp 575–578.

13 See Lim's 1st affidavit at pp 579, 588.

14 See Lim's 1st affidavit at p 580.

15 See Lim's 1st affidavit at p 580.

16 See Kok's 1st affidavit at p 248.

17 Defendants' Written Submissions at para 10.

10 Thereafter, the CSC circulated a situational update dated 18 October 2017, which was provided with inputs from Knight Frank, where the CSC stated that the DC was one of the factors that had been taken into consideration to establish the reserve price.[19]

11 On 22 November 2017, the CSC, in consultation with Knight Frank, resolved to increase the reserve price from $500m to $550m,[20] and did so pursuant to Schedule 3 cl 3 of the CSA.[21]

12 On the same day, Knight Frank appointed an architectural company, Ong & Ong Pte Ltd ("Ong & Ong"), to carry out for the Property, the Gross Floor Area ("GFA") verification and the Development Baseline search with the Urban Redevelopment Authority ("URA").[22] These searches would provide information to determine the actual amount of DC payable for the Property ("the DC verification").[23] Consequently, Ong & Ong spent some weeks to do the necessary preparatory work for submitting the search applications to URA.[24]

13 Thereafter, Knight Frank sent letters dated 24 November 2017 to the subsidiary proprietors to inform them that the CSC had resolved to increase the reserve price to $550m.[25]

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18 See Lim's 1st affidavit at para 25, p 581.

19 Kok's 1st affidavit at p 184.

20 Lim's 1st affidavit at p 610.

21 See Kok's 1st affidavit at p 248.

22 Loh's 1st affidavit at para 67.

23 See Lim's 1st affidavit at p 623; Loh's 1st affidavit at para 36(1)(b).

24 See Loh's 1st affidavit at para 30.

25 See Lim's 1st affidavit at p 612; Kok's 1st affidavit at p 190.

14 As at 7 December 2017, subsidiary proprietors of the lots with less than 80% of the share values and less than 80% of the total area of all the lots had signed the CSA. Knight Frank then sent a letter dated 8 December 2017 to urge the subsidiary proprietors to support the collective sale.[26] The letter stated that "[DC] rates are highly expected to increase on 1 March 2018 and it will have a direct impact on [the potential bidders'] bid price[s]". The letter added that "[i]t is ideal to lock in a buyer before further [DC] rates increment, as this directly affects the land rate – developers may factor in potential [DC] increase during tender and discount the price to owners".

15 Thereafter, by 15 January 2018, subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots had signed the CSA.[27] The subsidiary proprietors thus reached the 80% consent threshold required for making any collective sale application pursuant to s 84A(1)(*b*). (Subsidiary proprietors who signed the CSA (at this point or thereafter) will be referred to as "majority owners" or "assenting subsidiary proprietors", and subsidiary proprietors who did not sign the CSA will be referred to as "minority owners" or "dissenting subsidiary proprietors".)

16 On 18 January 2018, Ong & Ong submitted the search applications for the DC verification to URA.[28]

17 On 25 January 2018, the CSC convened what they called an "owners' meeting".[29] Knight Frank informed the subsidiary proprietors that the 80%

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26 Kok's 1st affidavit at pp 192–194.

27 See Loh's 1st affidavit at para 34; Kok's 1st affidavit at para 19.

28 See Loh's 1st affidavit at para 30.

29 See Lim's 1st affidavit at pp 614–615.

consent threshold had been reached and that the Property would be launched for sale by way of public tender on 26 January 2018. Knight Frank mentioned that the estimated DC was $63.19m, and that it had appointed an architect to carry out the DC verification.[30]

18 On 26 January 2018, the Property was launched for sale by way of public tender. The public tender was scheduled to close on 7 March 2018. When the Property was launched for sale, Knight Frank's marketing efforts included sending emails to some 652 potential bidders on its database to notify them of the launch.[31] In the emails, it was mentioned that the reserve price was $550m, that there was an additional estimated DC of approximately $63.2m, and that Knight Frank was awaiting a reply from URA on the Development Baseline which Knight Frank expected to receive within the next two weeks (this was a reference to the DC verification).[32] Knight Frank also published an article on its webpage and from 26 January 2018 to 22 February 2018, placed four advertisements in the Business Times and one advertisement in the Straits Times to market the Property.[33] In these various marketing materials, it was stated that the Master Plan 2014 (which was a reference to the URA Master Plan 2014) had zoned the site of the Property "Residential" with a Gross Plot Ratio ("GPR") of 1.4. The GPR relates to the intensity of the land use permitted on a site.[34]

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30 See Lim's 1st affidavit at p 623; Loh's 1st affidavit at para 36(1)(b).

31 See Loh's 1st affidavit at para 37.

32 See Loh's 1st affidavit at p 261.

33 See Kok's 1st affidavit at pp 196–197; Loh's 1st affidavit at pp 285–289.

34 Defendants' Written Submissions at para 14.

19 From 26 January 2018 to 25 February 2018, three potential bidders requested a site inspection of the Property.[35]

20 On 26 February 2018, there was a very important development. The CSC received a copy of URA's letter to Ong & Ong dated the same day ("URA's letter"), which set out the recomputed GFA and the development charge baseline of the Property, and the CSC forwarded it to Knight Frank.[36] According to Knight Frank, URA's letter meant that no DC would be payable for the Property.[37]

21 The following took place on 26 February 2018. Knight Frank immediately began updating potential bidders in various ways that no DC was payable. Knight Frank sent emails to some 652 potential bidders,[38] and made direct calls to potential bidders who had earlier expressed interest in the Property.[39] Knight Frank also informed Colliers International Consultancy & Valuation (Singapore) Pte Ltd ("Colliers"), which had been appointed to give an independent valuation of the Property as at 7 March 2018, of the development charge baseline.[40] There were also urgent discussions between Knight Frank and the CSC. Knight Frank advised that there was no reason to extend the closing date of the tender, *ie*, 7 March 2018. If any potential bidder requested an extension of the closing date, Knight Frank would discuss the request with the CSC. The CSC did not disagree with this approach.[41]

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35 Loh's 1st affidavit at para 41.

36 See Lim Hun Joo's 4th affidavit filed on 11 September 2018 ("Lim's 4th affidavit") at paras 5–6; Lim's 1st affidavit at pp 684–685.

37 See Lim's 4th affidavit at para 7.

38 See Loh's 1st affidavit at para 43, p 295.

39 See Loh's 1st affidavit at para 44.

40 See Lim's 1st affidavit at p 374.

22 On 1 March 2018, Knight Frank also advertised in the Business Times that no DC was payable.[42]

23 Prior to the closing date of the tender, the CSC did not update the subsidiary proprietors that no DC was payable.[43]

24 From 26 February 2018 to 7 March 2018, five potential bidders requested a site inspection of the Property. There was no request for an extension of the closing date of the tender.[44]

25 On 7 March 2018, the tender was closed as scheduled and the tender box was opened.[45] There were:

(a) one expression of interest at $480m;

(b) one bid at $580m; and

(c) a second bid at $610m.

26 Colliers' valuation report dated 7 March 2018, which had been placed in the tender box, was also opened.[46] Amongst other things, Colliers took into account URA's letter dated 26 January 2018,[47] and was of the opinion that the market value of the Property was $542m.[48]

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41 See Lim's 4th affidavit at para 10.

42 See Loh's 1st affidavit at para 45, p 329.

43 See Kok's 1st affidavit at para 24.

44 See Loh's 1st affidavit at para 46.

45 Loh's 1st affidavit at paras 47–48.

46 Lim's 1st affidavit at para 38.

47 Goh Seow Leng's affidavit filed on 4 September 2018 ("Goh's affidavit") at para 3.

48 Kok's 1st affidavit at p 578.

27 As the higher of the two bids, *ie*, at $610m, was higher than both the valuation by Colliers and the reserve price of $550m, the CSC awarded the tender on 8 March 2018 to the joint-bidders who had submitted that bid.[49] Thereafter, Knight Frank sent a letter dated 8 March 2018 to the subsidiary proprietors to inform them that a sale contract (*ie*, the SPA) had been entered into that day for the Property for the sale price of $610m.[50] Knight Frank did not mention in this letter that there was no DC payable.[51]

28 On 19 March 2018, an owners' meeting was convened to explain to the subsidiary proprietors the progress made in the collective sale process thus far, including the past marketing campaign and the terms and conditions of the SPA. It was at this meeting that the CSC informed the subsidiary proprietors for the first time that there was no DC payable.[52] Although queries were raised as to why they were not informed more promptly,[53] no assenting subsidiary proprietor sought to withdraw from the CSA. Indeed, apparently subsidiary proprietors of ten units subsequently added their signatures to the CSA.[54]

29 On 5 April 2018, the joint-bidders nominated the purchaser to purchase the Property in place of them, as allowed under the SPA.[55]

30 On 25 April 2018, the plaintiffs made an application to a Strata Titles Board for an order for the collective sale of the Property, pursuant to

49 See Loh's 1st affidavit at para 50.

50 Kok's 1st affidavit at p 204.

51 Kok's 1st affidavit at para 25.

52 See Kok's 1st affidavit at para 28; Lim's 1st affidavit at pp 372–378.

53 See Kok's 1st affidavit at p 211.

54 See Lim's 1st affidavit at pp 44–55.

55 Kok's 1st affidavit at pp 479–480.

s 84A(2A)(*a*).[56] On 10 May 2018 and 11 May 2018, various defendants filed two sets of objections to the collective sale to the Board.[57] The Board held two mediation sessions on 1 June 2018 and 19 June 2018. Thereafter, on 27 June 2018, the Board ordered a discontinuance of all proceedings before it in connection with the plaintiffs' application pursuant to s 84A(6A) (*ie*, the Board issued a "section 84A stop order").[58] The plaintiffs then commenced OS 841/2018 on or about 10 July 2018, pursuant to s 84A(2A)(*b*), to apply to the High Court for an order for the collective sale of the Property. On 20 August 2018, the defendants filed their objections to the collective sale to the High Court.

31 By way of a summary, a table for the chronology of the key events has been set out in the Annex to the grounds of my decision.

Issues

32 In submitting that this court should not approve the collective sale application, the defendants raised multiple grounds of objection. Some of these grounds of objection had not been stated in the objections the defendants filed to the Board on 10 May 2018 and 11 May 2018. There was thus a preliminary issue whether the defendants were allowed to raise grounds of objection before the High Court that had not been raised before the Board.

33 In the defendants' multiple grounds of objection to the collective sale before the High Court (including those grounds that had not been raised before the Board), they raised the following main issues.

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56 See Lim's 1st affidavit at pp 33–34.

57 See Kok's 1st affidavit at p 704.

58 See Kok's 1st affidavit at para 32, pp 704–705.

34 The first main issue was that the first plaintiff ("Lim") and the third plaintiff ("Chan") each failed to declare an actual or a potential conflict of interest before their elections into the CSC. This was because Lim has a relative and Chan has two relatives, all of whom come within the meaning of "associate", and they each own another unit in the Property. These failures to disclose were in breach of para 2(1)(*g*) of the Third Schedule. Accordingly, under para 2(2) of the Third Schedule, each of their elections into the CSC was void.

35 It followed, the defendants argued, that the present application before the court by all three plaintiffs was *ultra vires* as all three were to act jointly in bringing the application but they could not have done so because the elections of Lim and Chan as members of the CSC were void. Alternatively, the invalid elections were factors which assisted the defendants to show that the collective sale transaction was not in good faith (see [37(a)] below).

36 The second main issue was that there was a flagrant breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule because the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA were not given at a general meeting of the management corporation. Alternatively, this breach was a factor which assisted the defendants to show that the collective sale transaction was not in good faith (see [37(b)] below).

37 The third main issue was that the transaction in respect of the collective sale to the purchaser was not in good faith, and accordingly pursuant to s 84A(9)(*a*)(i), this court should not approve the collective sale application. Many factors were raised by the defendants in this regard and they were:

(a) that Lim and Chan had actual or potential conflicts of interest which were not disclosed;

(b) that the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA were not given at a general meeting of the management corporation;

(c) that the CSC members campaigned to be elected as a "6-man bloc";

(d) that the CSC appointed Knight Frank as the marketing agent in undue haste and with undue preference for Knight Frank, and also failed to re-negotiate Knight Frank's fees upon learning that no DC was payable;

(e) that the CSC failed to keep and/or display the minutes of three meetings;

(f) that the CSC failed to allow minority owners to raise valid concerns over the collective sale;

(g) that the CSC failed to inform and consult the subsidiary proprietors about a material change in the actual DC for the Property from the last estimate given by Knight Frank and failed to extend the closing date of the public tender; and

(h) that Colliers' valuation report was fundamentally flawed and the CSC could not rely on it to justify the collective sale to the purchaser.

38 I will address these issues *seriatim*.

Preliminary issue of grounds of objection not raised before the Board

39 A preliminary issue was whether the defendants were allowed to raise grounds of objection to the collective sale before the High Court which had not been stated in the objections they had filed to the Board pursuant to s 84A(4). The plaintiffs objected to such grounds being raised by the defendants before the High Court, alleging that s 84A(4A) was not complied with.

40 Sections 84A(4) and 84A(4A) state:

> (4) In the case of an application to a Board under subsection (1) for an order for the sale of all the lots and common property in a strata title plan, each of the following persons may file an objection to the sale, stating the grounds of objection, within a period of 21 days after the date of the notice served pursuant to paragraph 1(*e*) of the First Schedule or such longer period as the Board allows in exceptional circumstances, whether before or after the end of the 21 days:
>
> (*a*) a subsidiary proprietor of any lot in the strata title plan who has not agreed in writing to the sale; and
>
> (*b*) a mortgagee, chargee or other person (other than a lessee) with an estate or interest in land and whose interest is notified on the land-register for that lot.
>
> (4A) Where a section 84A stop order is issued under subsection (6A)(*b*) in respect of an application to a Board under subsection (1) for an order for the sale of all the lots and common property in a strata title plan, and an application is then made to the High Court under subsection (1) for an order for the same sale of all the lots and common property in the same strata title plan, any person referred to in subsection (4)(*a*) or (*b*) who filed an objection to the Board (**but no others**) may **re-file** his objection to the sale, **stating the same grounds of objection**, to the High Court in the manner and within the time delimited by the Rules of Court.
>
> [emphasis added in bold]

Parties' arguments

41 The defendants submitted that an objection to the collective sale filed to the High Court may include grounds of objection not initially stated in the objection filed to a Board. First, they argued that s 84A(4A) does not bar this.[59] The provision expressly restricts the persons who may file objections to the High Court, by providing that any person "who filed an objection to the Board (*but no others*) may re-file his objection to the sale … to the High Court" [emphasis added]. The defendants submitted that the provision does not

[59] See NAs 12/09/18 at p 97 lines 3–7, 13–17.

expressly restrict the grounds of objection that may be stated in the objection filed to the High Court, because the phrase "but no others" is used to qualify only the persons who may file objections to the High Court, but is not used to qualify the grounds of objection that may be raised before the High Court.

42 Second, the defendants submitted that, in any event, the High Court in *Ngui Gek Lian Philomene and others v Chan Kiat and others (HSR International Realtors Pte Ltd, intervener)* [2013] 4 SLR 694 ("*Thomson View Condominium (HC)*") held that s 84A(4A) does not prevent an objector from raising a new ground of objection before the High Court if, through no fault of his, it became known to him only after he had filed an objection to the Board (at [45]).[60]

43 Third, the defendants raised the point that the LTSA is silent as to whether an objection filed to the Board may be amended after it has been filed.[61] If the objection filed to the Board may not be amended and the objection filed to the High Court may not include additional grounds of objection which were not raised before the Board, an objector who was not legally represented when filing his objection to the Board might be disadvantaged.[62] Counsel for the defendants nevertheless agreed that this argument carried less weight in this case where only two of the 13 defendants had not been legally represented in the proceedings before the Board.[63]

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60 See Defendants' Written Submissions at paras 199–200.

61 See NAs 12/09/18 at p 69 lines 10–11.

62 See NAs 12/09/18 at p 69 lines 17–18.

63 See NAs 12/09/18 at p 71 lines 5–6, 24–25, p 72 lines 1–2.

44 Fourth, the defendants argued that the court has to ultimately look at the collective sale transaction holistically with all the facts available to it and make the determination of good faith under s 84A(9).[64] The defendants premised this argument on s 84A(10), which states:

> (10) Where no objection has been filed under subsection (4) to a Board or under subsection (4A) to the High Court, the determination under subsection (9) shall be made by the High Court or the Board on the basis of the facts available to the High Court or Board, as the case may be.

The defendants submitted that an objector who wished to state additional grounds of objection when filing his objection to the High Court could not be in a worse position than if no objection had been filed to the High Court.[65] The defendants also argued that the plaintiffs' objection to additional grounds being raised before the High Court was a technical one.[66]

45 On the other hand, the plaintiffs submitted that s 84A(4A) expressly provides that an objector is only entitled to re-file his objection to the collective sale to the High Court, "stating the same grounds of objection" as those stated in his objection filed to the Board.[67] The plaintiffs supported their submission with the decision of the High Court in *Choo Liang Haw (alias Choo Liang Hoa) and others v Chua Seet Mui and others and another matter* [2015] 2 SLR 931 ("*Gilstead Court (HC)*") on which I will say more later. It seemed that, in the alternative, counsel for the plaintiffs accepted (in chambers) the decision in *Thomson View Condominium (HC)* that an objector may raise a new ground of

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64 See NAs 12/09/18 at p 101 lines 7–11.

65 See NAs 12/09/18 at p 98 lines 11–14.

66 See NAs 12/09/18 at p 100 lines 8–9.

67 See Plaintiffs' Skeletal Submissions at paras 10–11.

objection before the High Court only if, through no fault of his, it became known to him only after he had filed an objection to the Board.

Decision

46 Section 84A(4A) states that any person who filed an objection to the Board (pursuant to s 84A(4)), "but no others", may "*re-file* his objection to the sale, stating the *same grounds of objection*, to the High Court" [emphasis added]. The plain and ordinary meaning conveyed by the text of this provision is that (i) only a person who filed an objection to the Board may file an objection to the High Court, and (ii) that person may not raise grounds of objection that were not stated in his objection filed to the Board. Contrary to the defendants' submission, s 84A(4A) does expressly restrict both the persons who may file objections to the High Court and the grounds of objection that may be raised before the High Court.

47 The decision in *Gilstead Court (HC)* would support this interpretation of the plain and ordinary meaning conveyed by the text of s 84A(4A), where the High Court remarked that "[r]aising new grounds of objections before the High Court runs contrary to the express wording of s 84A(4A)" (at [48]). Apart from this statement, there was, however, little discussion by the High Court in *Gilstead Court (HC)* on s 84A(4A). This was because the new grounds of objection raised before the High Court were either unsupported by evidence or were not legitimate grounds for objecting (see [49], [52]). The High Court then proceeded in its decision to consider the grounds of objection before it that had previously been raised before the Board. On appeal, the decision of the Court of Appeal in *Lim Li Meng Dominic and others v Ching Pui Sim Sally and*

another and another matter [2015] 5 SLR 989 ("*Gilstead Court (CA)*") did not discuss s 84A(4A).

48 On the other hand, as mentioned, the High Court in *Thomson View Condominium (HC)* held that s 84A(4A) does not prevent an objector from raising a new ground of objection before the High Court if, through no fault of his, it became known to him only after he had filed an objection to the Board (at [45]). In that case, the objectors only learnt of the facts concerning a new ground of objection to the collective sale sometime after they had already filed their objections to the Board stating other grounds of objection (see [44]). It was thus impossible for the objectors to have stated this new ground of objection in their objections filed to the Board. Andrew Ang J found that it would be "patently unfair" to deny the objectors the opportunity to raise this new ground of objection before the High Court based on a literal interpretation of s 84A(4A) (at [44]), and allowed the new ground of objection to be raised before the High Court. I add that it was in considering and analysing this new ground of objection that Ang J ultimately decided to dismiss the collective sale application before the court. There was no appeal from Ang J's decision in *Thomson View Condominium (HC)*.

49 At this point, I add for completeness that in *N K Rajarh and others v Tan Eng Chuan and others* [2014] 1 SLR 694 ("*Harbour View Gardens (CA)*"), an argument was raised before the Court of Appeal that the objectors were precluded from raising a ground of objection before the High Court since it had not been raised before the Board (see [29]). It seems, however, that such an argument was not raised before the High Court in *N K Rajarh and others v Tan Eng Chuan and others* [2013] 3 SLR 103. The Court of Appeal ultimately did not discuss this argument in its decision.

50 Having considered all the above, I found that s 84A(4A) simply means what is conveyed by its plain and ordinary meaning: only a person who filed an objection to the collective sale to the Board (pursuant to s 84A(4)) may re-file his objection to the High Court, stating the same grounds of objection. This prevents the collective sale application process from being complicated or delayed by the raising of new grounds of objection before the High Court which should have first been raised before the Board. The onus is on the objector to first raise before the Board all grounds of objection he wishes to raise. The defendants thus could not rely on s 84A(10) (as set out at [44] above) to raise new grounds of objection before the High Court and then claim that the plaintiffs' objection to new grounds being raised was a technical one.

51 In this regard, the question as to whether a ground of objection raised before the High Court is the same as that before the Board is to be considered objectively and holistically. An objection filed to the Board has to clearly present the grounds of objection, in order for the applicants making the collective sale application to know the case they have to meet. On the other hand, the court should not to be too quick to construe a ground of objection raised before the Board narrowly, such as to refuse hearing a ground of objection raised before the High Court on the ground that they are not the same.

52 However, I agreed that the High Court may consider a ground of objection which had not been raised before the Board if, through no fault of the objector, he could not have known at that time of the facts giving rise to the ground of objection. I refer to the example Ang J gave in *Thomson View Condominium (HC)* where objectors may discover a collective sale committee's fraudulent concealment of wrongdoing only after they have already filed objections to the Board (see *Thomson View Condominium (HC)* at [43]).

53 Therefore, in view of s 84A(4A), the defendants were entitled to rely only on those grounds of objections which they had stated in the objections they filed to the Board and not new ones unless they could not have known at that time of the facts giving rise to those new grounds of objection.

Issue of *ultra vires*

54 I turn to consider the first main issue as to whether the present application before the court was *ultra vires* (see [34]–[35] above). As mentioned, this issue arose from the defendants' argument that Lim and Chan each failed to declare an actual or a potential conflict of interest before their elections into the CSC, arising from each of them having an associate or associates who each owns another unit in the Property. These failures to disclose were in breach of para 2(1)(*g*) of the Third Schedule and accordingly, under para 2(2) of the Third Schedule, the elections of Lim and Chan into the CSC were void. On the other hand, the plaintiffs denied that Lim and Chan had any conflict of interest.

55 I was of the view that the mere fact that an "associate" of Lim and two "associates" of Chan each owns another unit in the Property did not mean that Lim and Chan respectively had an actual or a potential conflict of interest. Hence, there was no breach of para 2(1)(*g*) of the Third Schedule. I will elaborate on this later when I discuss the third main issue as to whether the collective sale transaction was in good faith.

56 However, in discussing this *ultra vires* issue, I will, for the sake of argument, assume for the time being that there was an actual or a potential conflict of interest and, hence, a breach by Lim and a breach by Chan thus

rendering each of their elections void, pursuant to para 2(2) of the Third Schedule.

Parties' arguments

57 The defendants argued that the present application before the court by all three plaintiffs was *ultra vires* as all three were to act jointly in bringing the application but they could not have done so because the elections of Lim and Chan as members of the CSC were void.[68] The defendants referred me to *Gilstead Court (CA)* ([47] *supra*) which considered whether the originating summons in that case was *ultra vires*.[69] The defendants acknowledged, however, that *Gilstead Court (CA)* did not address a situation where the elections of some of the authorised representatives as members of the collective sale committee were void.[70] The defendants also submitted that the CSC could have chosen other members of the CSC to be the authorised representatives instead of Lim and Chan, such that the defendants would not have been able to mount this *ultra vires* argument.[71]

58 The plaintiffs submitted that this ground of objection that the present application was *ultra vires* had not been raised before the Board.[72] The plaintiffs submitted that, in any event, even if the elections of Lim and Chan as members of the CSC were void, para 10 of the Third Schedule provides that the acts of the CSC done in good faith shall be as valid as if any defect in the appointment

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68 See Defendants' Aide Memoire for Reply Submissions at para 2.

69 See NAs 12/09/18 at p 23 lines 16–17.

70 See NAs 12/09/18 at p 25 lines 13–15.

71 See Notes of Arguments of 14 September 2018 ("NAs 14/09/18") at p 111 lines 2–4, 11–14.

72 See Notes of Arguments of 13 September 2018 ("NAs 13/09/18") at p 100 lines 6–12.

or any disqualification of a CSC member did not exist and the CSC were fully and properly constituted.[73]

59 The plaintiffs also argued that the defendants failed to dispute the jurisdiction of the High Court in these proceedings as stipulated under O 100 r 6 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).[74] The plaintiffs further contended that pursuant to O 15 r 6, no cause or matter shall be defeated by reason of the misjoinder of any party.[75]

60 In reply, the defendants submitted that O 100 r 6 was irrelevant because they were not disputing the jurisdiction of the High Court by reason of any irregularity in the originating summons or service thereof.[76]

Decision

61 I took the plaintiffs' position to be that the defendants had not raised before the Board the ground of objection that the collective sale application, whether made to the Board or to the High Court, was *ultra vires*. The defendants submitted that they could not have raised this ground of objection before the Board because the plaintiffs only answered on 7 August 2018 that Lim and Chan have associates who each owns another unit in the Property (see [125] below). This answer came after the defendants had filed their objections to the Board (and even after OS 841/2018 had commenced on or about 10 July 2018).[77]

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73 See NAs 13/09/18 at p 97 lines 4–6, p 100 lines 13–19.

74 See NAs 13/09/18 at p 101 lines 16–22.

75 See NAs 13/09/18 at p 103 lines 14–16.

76 See NAs 14/09/18 at p 72 lines 20–23.

77 See NAs 12/09/18 at p 6 lines 10–16, p 22 lines 3–8.

62 I noted that in one set of objections filed before the Board, there was no mention of conflict of interest.[78] In another set, conflict of interest was raised but in a different context, *ie*, that "the members of the CSC did not declare their ownership details to the [subsidiary proprietors]".[79] This is different from saying that certain members of the CSC failed to disclose details of ownership by their associates. However, I also noted that in this set of objections, it was parenthetically suggested, without further explanation, that paras 2(1)(*c*) and 2(1)(*g*) of the Third Schedule were breached. These paragraphs are set out at [64] below.

63 In any event, since the information about ownership of units by associates was not disclosed to the defendants before they raised objections before the Board, I was of the view that the defendants were not precluded from raising such ownership as giving rise to conflicts of interest in their objections to the High Court.

64 While the defendants were not raising before the High Court that para 2(1)(*c*) of the Third Schedule was breached but only that para 2(1)(*g*) was breached, for completeness, I will discuss them both. Paragraphs 2(1)(*c*), 2(1)(*g*) and 2(2) of the Third Schedule state:

> **Disclosure of conflict of interests**
>
> 2.—(1) If a person standing for election as a member of a collective sale committee is aware of any conflict of interest or potential conflict of interest, if any, with his duties or interests as a member of the collective sale committee (should he be elected) arising from —
>
> …

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78 See Kok's 1st affidavit at pp 636–637.

79 See Kok's 1st affidavit at p 647.

> (*c*) his possession or ownership of any lot or common property that may be the subject of the collective sale, whether alone or together with any of his associates;
>
> …
>
> (*g*) his associate's possession or ownership of any lot or common property that may be the subject of the collective sale,
>
> he shall, before his election, declare at the general meeting convened for such election, the nature and extent of all such conflicts of interest or potential conflicts of interest.
>
> (2) The election of any person who fails to comply with sub-paragraph (1) shall be void.
>
> …

65 If the defendants' ground of objection that there was a failure to comply with paras 2(1)(*c*) and 2(1)(*g*) was made out, the elections of the relevant CSC members were void pursuant to para 2(2). Such members would thus not qualify to be the authorised representatives whom the assenting subsidiary proprietors may appoint under s 84A(2) to act jointly in connection with any collective sale application, because the authorised representatives must be members of the CSC. This formed the premise of the defendants' *ultra vires* argument.

66 In my view, O 100 r 6 of the Rules of Court did not apply because the defendants were not disputing the jurisdiction of the High Court by reason of any irregularity in the originating summons or service thereof. Therefore, they were not required to file an application to court to set aside the originating summons of the plaintiffs. It was sufficient for the defendants to oppose the originating summons by affidavit.

67 However, even if the elections of Lim and Chan as members of the CSC were void, this did not mean that the application before this court was *ultra vires*.

68 The defendants' reliance on *Gilstead Court (CA)* was misplaced. The originating summons in that case was *ultra vires* because the authorised representatives, whose appointments were all valid, did not act jointly in bringing the collective sale application as they were required to do (see *Gilstead Court (CA)* at [125]). However, the application before this court would not have been a similar case of the authorised representatives failing to act jointly in bringing the collective sale application; Lim and Chan would have ceased to be authorised representatives and, hence, ceased to be plaintiffs in this application. Consequently, the second plaintiff would have become the sole authorised representative and the sole plaintiff.

69 Accordingly, I concluded that the plaintiffs' application before this court was not *ultra vires*.

70 I add that para 10 of the Third Schedule might not have assisted the plaintiffs. Paragraph 10 states:

> **Acts of collective sale committee valid notwithstanding vacancy, etc.**
>
> 10. Any act or proceeding of a collective sale committee done in good faith shall, notwithstanding that at the time when the act or proceeding was done, taken or commenced there was —
>
> (*a*) a vacancy in the office of a member of the collective sale committee; or
>
> (*b*) any defect in the appointment or any disqualification of any such member,
>
> be as valid as if the vacancy, defect or disqualification did not exist and the collective sale committee were fully and properly constituted.

71 Paragraph 10 pertains to the acts or proceedings of a collective sale committee and not those of the authorised representatives. The application

before this court for an order for the collective sale made pursuant to s 84A(1) was made by the plaintiffs as the authorised representatives of the assenting subsidiary proprietors (see s 84A(2)). It was not made by the CSC. In any event, it was not necessary for me to reach a conclusion as to whether para 10 would otherwise have validated the present proceedings.

72 It was also not necessary for me to decide whether O 15 r 6 would have assisted the plaintiffs if the elections of Lim and Chan were void.

Issue of the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA

Parties' arguments

73 As regards the second main issue, the defendants submitted that there was a flagrant breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule because the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA were not given at a general meeting of the management corporation, in this case, the EGM on 9 September 2017. The defendants argued, in the course of oral submissions, that this was such a flagrant breach that the collective sale process and the CSA were invalidated.[80]

74 The plaintiffs submitted that no objection had been raised before the Board and the High Court about the apportionment method.[81]

75 Initially, the plaintiffs also did not admit that there was a breach of the relevant provisions. The plaintiffs argued that there was overwhelming support of the apportionment of sale proceeds and of the terms and conditions of the

[80] See NAs 14/09/18 at p 124 line 18, p 125 lines 16–19.

[81] Plaintiffs' Skeletal Submissions at para 112.

CSA by the subsidiary proprietors who attended the EGM.[82] The plaintiffs submitted that it was sufficient if more than 50% of the subsidiary proprietors who attended the EGM signed the CSA that day, after the EGM was concluded.[83]

76 The plaintiffs also contended that, in any event, considering s 84A(7C), the High Court should not invalidate the application for an order for the collective sale by reason only of non-compliance with paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule if such non-compliance did not prejudice the interest of any person.[84] The plaintiffs argued that the test was ultimately whether the sale price was appropriate in the circumstances.[85]

Decision

77 The objection that non-compliance with para 7(1) of the Third Schedule had invalidated the CSA had been raised before the Board, where the defendants stated, *inter alia*:[86]

> There was no opportunity for [the subsidiary proprietors] to vote on important matters regarding the apportionment of sale proceeds and the terms and conditions of the CSA … There was therefore a breach of paragraph 7(1) of the Third Schedule to the LTSA. The CSA is thus consequently void.

78 However, it appeared that the defendants did not specifically mention this non-compliance with para 7(1) as a discrete ground to invalidate the CSA in their objections filed to the High Court by affidavit pursuant to O 100 r 5(1)

82 See Plaintiffs' Skeletal Submissions at para 113.

83 See Plaintiffs' Skeletal Submissions at para 113.

84 See NAs 13/09/18 at p 128 lines 5–10.

85 See NAs 13/09/18 at p 62 lines 20–25, p 63 line 1.

86 See Kok's 1st affidavit at pp 644–645.

of the Rules of Court.[87] The defendants instead mentioned in their objections filed to the High Court that such non-compliance was a factor which assisted them to show that the collective sale transaction was not in good faith.[88]

79 The same seemed to be the case with respect to the defendants' written submissions to the court, *ie*, the defendants did not specifically mention that non-compliance with para 7(1) invalidated the CSA but instead mentioned that such non-compliance was a factor to show that the transaction was not in good faith.[89] It was only during the hearing before the court that the defendants orally submitted that non-compliance with para 7(1) invalidated the CSA.[90]

80 The defendants should have specifically mentioned in their objections filed to the High Court, and thereafter in their written submissions, the non-compliance with para 7(1) as a discrete ground to invalidate the CSA. As they had not, then strictly speaking, they were precluded from raising it as a discrete ground. However, for completeness, I will address it as if it had been raised as a discrete ground.

81 With respect to the question whether paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule were complied with, I did not agree with the plaintiffs' submission that it was sufficient if more than 50% of the subsidiary proprietors who attended the EGM signed the CSA.

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87 See Kok's 1st affidavit at paras 131–135.

88 See also Kok's 1st affidavit at para 34(c).

89 See Defendants' Written Submissions at paras 158–164; see also Defendants' Revised Aide Memoire at p 9 paras 5–10; Defendants' Aide Memoire for Reply Submissions at pp 7–8 paras 35–39.

90 See NAs 14/09/18 at p 124 line 18, p 125 lines 16–19.

82 Paragraphs 7(1)(*b*) and 7(1)(*c*) of the Third Schedule state:

> **General meetings convened by collective sale committee**
>
> 7.—(1) The collective sale committee shall convene one or more general meetings of the management corporation in accordance with the Second Schedule for the following purposes:
>
> …
>
> (*b*) to approve the apportionment of sale proceeds; and
>
> (*c*) to approve the terms and conditions of the collective sale agreement.
>
> …

83 The terms of paras 7(1)(*b*) and 7(1)(*c*) are clear. I agreed with the defendants that the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA were to be done at the EGM. It was not disputed that the signing of the CSA was done after the EGM was concluded.

84 Indeed, para 7(2) of the Third Schedule makes this point even clearer. It states that, "The meeting for any of the purposes in sub-paragraph (1)(*a*), (*b*) and (*c*) shall be convened before any subsidiary proprietor signs the collective sale agreement."

85 It was also not disputed that there was no voting on these aspects of the CSA at the EGM. In my view, the approval must be established by some overt act like voting. It was not sufficient for the plaintiffs to say that it was clear that a majority of those attending the EGM had approved those aspects. It was not a unanimous decision. How would this clarity of approval be established if not by voting?

86 Accordingly, there was a breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule.

87 Would that breach then invalidate the plaintiffs' application?

88 Section 84A(7C) states:

> (7C) A Board shall not invalidate an application to the Board for an order under subsection (1) or section 84D(2), 84E(3) or 84FA(2) by reason only of non-compliance with any requirement in the First, Second or Third Schedule if the Board is satisfied that such non-compliance does not prejudice the interest of any person, and the Board may make such order as may be necessary to rectify the non-compliance and such order for costs.

This provision does not mention the High Court.

89 The plaintiffs relied on s 84A(7C) to submit that not every non-compliance with any requirement in the First, Second or Third Schedule is fatal to an application to a Board or to the High Court. The plaintiffs submitted that although the High Court is not mentioned in s 84A(7C), this was an inadvertent omission.[91] They argued that the High Court in *Gilstead Court (HC)* ([45] *supra*) did not say that the power to invalidate an application under s 84A(7C) belonged only to the Board.[92] Also, there seemed to be no argument by the parties in *Gilstead Court (HC)* on this point,[93] and the Court of Appeal in *Gilstead Court (CA)* ([47] *supra*) did not discuss s 84A(7C). The plaintiffs submitted that it could not be that the High Court has a lesser power than the Board.[94] This was reinforced by the fact that if there is any objection filed to the Board, it is the High Court, and not the Board, which eventually decides whether to approve the collective sale application when that subsequent application is made to the

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91 See NAs 14/09/18 at p 137 lines 2–3.

92 See NAs 14/09/18 at p 135 lines 10–12.

93 See NAs 14/09/18 at p 136 lines 1–2.

94 See NAs 14/09/18 at p 136 lines 8–10.

High Court after the Board issues a "section 84A stop order" (see s 84A(2A) set out at [91] below).

90 On the other hand, the defendants submitted that the omission to mention the High Court in s 84A(7C) was deliberate. Therefore, s 84A(7C) does not apply to an application made to the High Court.[95]

91 I set out two other provisions of the LTSA, ss 84A(2A) and 84A(3):

> (2A) An application under subsection (1) for an order for the sale of all the lots and common property in a strata title plan —
>
> (*a*) must be made to a Board in the first instance; and
>
> (*b*) may be made to the High Court thereafter if, and only if, a section 84A stop order is issued by the Board under subsection (6A)(*b*) with respect to the application to that Board in respect of the same sale.
>
> …
>
> (3) Subject to subsection (7C), no application may be made to a Board under subsection (1) by the subsidiary proprietors referred to in subsection (1) unless they have complied with the requirements specified in the First, Second and Third Schedules and have provided an undertaking to pay the costs of the Board under subsection (5).
>
> …

92 Read together with s 84A(3), s 84A(7C) seems to apply only to the stage where an application is made to the Board in the first instance (s 84A(2A)(*a*)). The purpose seems to be so that the Board need not invalidate any application before it simply because of a non-compliance with any requirement in the First, Second or Third Schedule. I also observed that s 84A(7C) uses the words "shall not *invalidate* an application", rather than the words "shall not *approve* an application" which are found in s 84A(9) [emphasis added] (see also ss 84A(6)

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95 See NAs 14/09/18 at p 78 lines 7–10.

and 84A(7)). I will discuss ss 84A(7) and 84A(9) at [95] below. It thus appears that s 84A(7C) is more concerned with a threshold issue of whether an application may even be made, rather than with the subsequent issue of whether an application which has already been made shall or shall not be approved. This also explains why s 84A(7C) mentions the Board only and not the High Court, since an application is made to the Board in the first instance. The threshold issue of whether an application may even be made should thus have been settled before the Board in the first instance. Thus, the omission to mention the High Court in s 84A(7C) appears deliberate. However, the omission means that the court still has to grapple with the question as to whether a non-compliance with any requirement in the First, Second or Third Schedule would necessarily invalidate an application to the High Court for approval.

93 While the LTSA scheme contains the "minimum standards of conduct" that form the "baseline" below which the majority owners will not be permitted to descend (*Harbour View Gardens (CA)* ([49] *supra*) at [34]; *Gilstead Court (CA)* at [40]), it seemed to me that a non-compliance will not, in and of itself, necessarily invalidate an application to the High Court even if the non-compliance is not of a merely technical provision (see *Harbour View Gardens (CA)* at [54]; *Gilstead Court (CA)* at [52]). This will accord with the framework in s 84A(7C) regarding an application to the Board. Indeed, that was what I believed the High Court in *Gilstead Court (HC)* was saying when it referred to this provision at [51]. The High Court also cited the Court of Appeal in *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 2 SLR(R) 597 at [35] for the proposition that the court should not allow a "truly technical objection" to frustrate a collective sale application.

94 Strictly speaking, s 84A(7C) does not apply to an application made to the High Court. However, the provision does suggest that the statutory framework is that non-compliance *per se* is not necessarily fatal to an application to the High Court for approval.

95 On the other hand, a non-compliance would result in the dismissal of an application to the High Court if the circumstances pertaining to the non-compliance amount to an absence of good faith under s 84A(9)(*a*)(i). This is because the provision governing whether the court shall approve an application is s 84A(7) which states:

> (7) Where one or more objections have been filed under subsection (4A) in respect of an application under subsection (1) to the High Court, the High Court **shall, subject to subsection (9)**, approve the application and order that all the lots and common property in the strata title plan be sold unless, having regard to the objections, the High Court is satisfied that —
>
> (*a*) any objector, being a subsidiary proprietor, will incur a financial loss; or
>
> (*b*) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.
>
> [emphasis in bold]

The court has to approve the application unless the circumstances set out in ss 84A(7)(*a*), 84A(7)(*b*) or 84A(9) apply (see also *Ramachandran Jayakumar and another v Woo Hon Wai and others and another matter* [2017] 2 SLR 413 ("*Shunfu Ville (CA)*") at [9]). Therefore, in the context of this case, the court would dismiss the application if the circumstances pertaining to the non-compliance amounted to an absence of good faith in the transaction under s 84A(9)(*a*)(i).

96 I therefore considered the CSC's non-compliance with paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule in the context of the absence of good faith argument.

Issue of good faith of the transaction

97 I come now to the third main issue, *ie*, whether the transaction in respect of the collective sale to the purchaser was in good faith. I first set out the general law governing collective sales in this regard.

"Good faith" in s 84A(9)(a)(i)

98 Section 84A(9)(*a*)(i) states:

> (9) The High Court or a Board shall not approve an application made under subsection (1) —
>
> (*a*) if the High Court or Board, as the case may be, is satisfied that —
>
> (i) the transaction is not in good faith after taking into account only the following factors:
>
> (A) the sale price for the lots and the common property in the strata title plan;
>
> (B) the method of distributing the proceeds of sale; and
>
> (C) the relationship of the purchaser to any of the subsidiary proprietors; …

99 The meaning of "good faith" under s 84A(9)(*a*)(i) has been considered on various occasions by the Court of Appeal, and recently in *Shunfu Ville (CA)* ([95] *supra*). In its decision in *Shunfu Ville (CA)*, the Court of Appeal generally affirmed, once again, its judgment in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Horizon Towers (CA)*"). These two cases should

be the starting point for the test of good faith and not the High Court case of *Tsai Jean v Har Mee Lee and others* [2009] 2 SLR(R) 1 ("*Cairnhill Heights (HC)*") which the plaintiffs relied on.[96]

100 In *Horizon Towers (CA)*, the Court of Appeal stated at [133]:

> In our view, the term "good faith" under s 84A(9)(*a*)(i) must be read in the light of the [collective sale committee]'s role as fiduciary agent (at general law and, now, under s 84A(1A)), and whose power of sale is analogous to that of a trustee of a power of sale. Thus, in our view, the duty of good faith under s 84A(9)(*a*)(i) requires the [collective 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. *In particular, [a collective sale committee] must act as a prudent owner to obtain the best price reasonably obtainable for the entire development*. … [emphasis in original]

101 The duties of a collective sale committee include, and are not limited to (*Horizon Towers (CA)* at [134]; *Shunfu Ville (CA)* at [58]):

(a) the duty of loyalty or fidelity;

(b) the duty of even-handedness;

(c) the duty to avoid any actual or potential conflict of interest;

(d) the duty to make full disclosure of relevant information; and

(e) the duty to act with conscientiousness.

102 In assessing whether the collective sale transaction is in good faith, the court will take into account only three circumstances: (a) the sale price

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[96] See NAs 13/09/18 at p 72 lines 1–2.

(s 84A(9)(*a*)(i)(A)); (b) the method of distributing the proceeds of sale (s 84A(9)(*a*)(i)(B)); and (c) the relationship of the purchaser to any of the subsidiary proprietors (s 84A(9)(*a*)(i)(C)).

103 In taking into account the sale price for the test of good faith, the Court of Appeal in *Horizon Towers (CA)* held that the word "transaction" in s 84A(9)(*a*)(i) (at [130]):

> … embraces the entire sale process, including the marketing, the negotiations and the finalisation of that sale price (all of which steps ought to be evaluated in the context of prevailing market conditions), culminating in the eventual sale of the property.

104 Ultimately, the test of good faith is concerned with whether the sale price was the best price reasonably obtainable in the prevailing circumstances, or as the Court of Appeal in *Shunfu Ville (CA)* framed it, whether the sale price was *appropriate* in the circumstances (*Shunfu Ville (CA)* at [59], [61(c)]). The Court of Appeal chose to frame the test as such because "determining what the best price is can entail a theoretical inquiry" (at [61(c)]).

105 In determining whether the sale price was appropriate in the circumstances, all the facts of the case must be appraised in the round. As the Court of Appeal explained in *Shunfu Ville (CA)* at [59]:

> … 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. …

106 It is also apposite to repeat the Court of Appeal's statements in *Shunfu Ville (CA)* at [61(a)]:

> … Absent any reason for thinking that members of a collective sale committee are *actuated by any improper motives or any conflict of interest*, and absent *clear evidence that the transaction is tainted by unfairness towards some subsidiary proprietors*, in particular the dissenting subsidiary proprietors, *or by some deficit in the transaction*, we think as a matter of common sense, that the transaction will less likely be refused approval. This follows because, as was noted in [*Horizon Towers (CA)*] itself at [131], 'good faith' under s 84A(9)(*a*)(i)(A) of the LTSA entails considerations of good faith as a matter of common law and equity; this usually entails a finding of *some want of probity on the part of the relevant parties*, although this can be inferred from aspects of the transaction itself. [emphasis added]

Burden of proof

107 A preliminary issue was, which party had the burden of proof in respect of good faith under s 84A(9)(*a*)(i)? As set out at [98] above, s 84A(9)(*a*)(i) states that, "The High Court … shall not approve an application made under subsection (1) if the High Court … is satisfied that the transaction is not in good faith …"

108 The plaintiffs said that based on the statutory language of s 84A(9)(*a*)(i),[97] the burden of proof was on the defendants to prove the absence of good faith. The plaintiffs relied on the decision of the High Court in *Woo Hon Wai and others v Ramachandran Jayakumar and others* [2017] 4 SLR 74 ("*Shunfu Ville (HC)*"). There, the High Court said, at [55], that he who asserts must prove and also referred to the language in s 84A(9)(*a*)(i) to conclude that the burden lay on the objectors there to establish the absence of good faith. It seems, as the defendants submitted,[98] that there was no argument by the parties in *Shunfu Ville (HC)* on the issue of burden of proof. On appeal, the Court of

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97 See NAs 13/09/18 at p 63 lines 10–19, 23–25, p 64 lines 1–3.

98 See NAs 13/09/18 at p 55 lines 1–9.

Appeal in *Shunfu Ville (CA)* did not specifically deal with the issue of burden of proof in respect of good faith.

109 The plaintiffs also submitted that the High Court in *Cairnhill Heights (HC)* ([99] *supra*) seemed to suggest that the objectors to a collective sale have the burden of proving the absence of good faith, with the words "the threshold for objectors to cross" (at [21]).[99] The High Court in *Cairnhill Heights (HC)* was otherwise silent on this issue of burden of proof. I add that *Cairnhill Heights (HC)* was decided before the decision of the Court of Appeal in *Horizon Towers (CA)*.

110 On the other hand, the defendants said that the burden of proof was on the plaintiffs to prove that the transaction was in good faith. The defendants relied on the decision of the Court of Appeal in *Horizon Towers (CA)* where the Court of Appeal was of the view at [200] that the Board had wrongly placed the burden of proof on the objectors. The Court of Appeal said that once *prima facie* evidence of bad faith is produced by the objectors, the applicants have the task of disproving such bad faith and establishing that the transaction is in good faith.

111 The Court of Appeal's statement has to be understood in its context. First, the Court of Appeal was specifically considering the issue of whether there was a potential conflict of interest that impugned the good faith of the transaction before it. Second, the Court of Appeal was considering the role of a Board in determining collective sale applications. Unlike the Board's present role in receiving collective sale applications, at the time of the decision in *Horizon Towers (CA)*, the Board determined collective sale applications by mediation-arbitration pursuant to s 89(2) of the Building Maintenance and

[99] See NAs 13/09/18 at p 74 lines 11–19.

Strata Management Act 2004 (Act 47 of 2004). The Court of Appeal also held that the Board had a "significant inquisitorial role to play" (at [173]), and also that pursuant to reg 18(1) of the Building Maintenance and Strata Management (Strata Titles Boards) Regulations 2005 (S195/2005), the Board was not bound to apply the rules of evidence applicable to civil proceedings in any court but could inform itself on any matter in such manner as it thought fit. It was in the light of this backdrop that the Court of Appeal held at [173]:

> … Ultimately, the applicants must adduce sufficient evidence to convince the [Board] that the transaction was in good faith. For example, in cases where *prima facie* evidence of a potential conflict of interest has been adduced, the applicants must in turn produce sufficient evidence to disprove that conflict of interest (assuming this can be done) or to prove that such conflict is not material, and satisfy the [Board] of the good faith of the transaction.

112 In coming to its decision that the Board had wrongly placed the burden of proof on the objectors, the Court of Appeal also cited s 113 of the Evidence Act (Cap 97, 1997 Rev Ed) but it seems that this was *obiter dicta* as it appears that neither party before the Court of Appeal had relied on that statutory provision.

113 Section 113 of the Evidence Act states:

> **Proof of good faith in transactions where one party is in relation of active confidence**
>
> **113.** Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.
>
> *Illustrations*
>
> (*a*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.

> (*b*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

114 On the one hand, it could be argued that when s 84A(9)(*a*)(i) refers to the situation where the transaction is not in good faith, "the transaction" here is not confined to the transaction as between the subsidiary proprietors and the purchaser but includes the overall process leading to the eventual transaction to sell to a purchaser. It seems that the legislative scheme where a collective sale application requires the approval of the High Court is just as concerned, if not more concerned, about the competing interests between the assenting and the dissenting subsidiary proprietors as it is about the competing interests of the subsidiary proprietors as a whole and the purchaser. One could also argue that, through the collective sale committee, the assenting subsidiary proprietors are in a position of active confidence *vis-à-vis* the dissenting subsidiary proprietors and therefore s 113 of the Evidence Act requires the plaintiffs, who represent the assenting subsidiary proprietors, to establish good faith in the transaction.

115 On the other hand, s 113 of the Evidence Act seems to contemplate "the good faith of a transaction between parties" where the parties are on the opposite ends of the transaction, as the illustrations in s 113 demonstrate this, *ie*, a sale by a client to an attorney (illustration (*a*)) and a sale by a son just come of age to a father (illustration (*b*)). In the present case, the transaction was the collective sale of the Property and that transaction was between the subsidiary proprietors and the purchaser. It was not between the assenting and the dissenting subsidiary proprietors, or between the CSC and the dissenting subsidiary proprietors. Furthermore, the plaintiffs are the authorised representatives of the assenting subsidiary proprietors and they represent those subsidiary proprietors, and not the CSC as such. It was doubtful that the assenting subsidiary proprietors are in

a position of active confidence *vis-à-vis* the defendants. In my view, this seemed to be the more persuasive argument. I add that s 113 of the Evidence Act which predates the collective sale scheme under the LTSA was not drafted with such a scheme in mind, and it may be that this scheme under the LTSA was also not drafted with s 113 of the Evidence Act in mind.

116 Thus, in my view, s 113 of the Evidence Act does not apply here in respect of the question of good faith under s 84A(9)(*a*)(i) of the LTSA. Nevertheless, I was of the view that the legal burden was on the plaintiffs to establish that the transaction was in good faith for the following reasons.

117 As the plaintiffs were seeking a court order for the collective sale under s 84A(1), then as a matter of general principle, it should be they who had the burden of persuading the court to grant the order. This was reinforced by s 84A(10) (set out at [44] above) which applies where no objection has been filed to the High Court. In that event, the determination of good faith under s 84A(9) is to be made by the court on the basis of the facts available to it. If the legal burden of proof were not on the plaintiffs, then it would follow that the court will grant the order for the collective sale whenever no objection has been filed. However, s 84A(10) suggests that that does not necessarily follow. The court may still decide not to grant the order for the collective sale on the facts available to it. This points to the legal burden being on the plaintiffs all the time.

118 From the practical point of view, it will ordinarily be the case that in contested applications, objections will be filed. The objectors adduce the evidence to support the allegations of bad faith, and if that establishes a *prima facie* case of bad faith, then the applicants have to counter such allegations with evidence and/or arguments of their own (see *Horizon Towers (CA)* at [200]).

However, the legal burden remains with the applicants to establish that the collective sale transaction is in good faith.

119 As for the statutory language of s 84A(9)(*a*)(i), that "[t]he High Court … shall not approve an application made under subsection (1) if the High Court … is satisfied that the transaction is not in good faith", I was of the view that it is equivocal on the question as to which party has the burden of proof in respect of good faith.

Sub-issues

120 I come now to the factors which the defendants raised to allege bad faith, *ie*, that the transaction in respect of the collective sale to the purchaser was not in good faith. I will refer to them as sub-issues. However, one should also bear in mind that the defendants did not allege that there was bad faith on the part of any individual person or entity specifically, whether in the CSC, Knight Frank or R&T.[100]

Conflict of interest

(1) Parties' arguments

121 The first sub-issue was the question about conflict of interest, *ie*, whether Lim and Chan had actual or potential conflicts of interest which were not disclosed. This was one of the main factors which the defendants raised to allege bad faith. As mentioned already, it was not in dispute that Lim and Chan have associates who each owns another unit in the Property. Specifically, Lim's brother and Chan's brother and mother each owns another unit,[101] and the units

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100 See *eg*, Defendants' Aide Memoire for Reply Submissions at para 34; NAs 14/09/18 at p 89 lines 7–10.

they own are of the same type as those Lim and Chan own respectively.[102] It was also not in dispute that before Lim and Chan were elected as members of the CSC, they did not declare any conflict of interest. Indeed, their position was that there was no actual or potential conflict.

122 First, it was unclear whether the defendants were suggesting that both Lim and Chan had actual or potential conflicts of interest, or only actual conflicts of interest. The objections filed to the High Court on 20 August 2018 seemed to generally allege that Lim and Chan had conflicts of interest.[103] I add that while the defendants' written submissions to the court dated 10 September 2018 appeared to suggest that both Lim and Chan had actual conflicts of interest,[104] the earlier correspondence from the defendants' lawyers to the plaintiffs' lawyers dated 14 June 2018 suggested that both Lim and Chan had actual or potential conflicts of interest.[105] Taking the defendants' case at its highest, I proceeded on the basis that they were suggesting that both Lim and Chan had actual or potential conflicts of interest.

123 The defendants contended that it was a reasonable inference that with associates who own the same type of units, Lim and Chan had extra interest and felt additional urgency to push through with the collective sale as quickly as possible even if the sale price was not necessarily the appropriate price that could be obtained.[106] The defendants also submitted that in view of the fact that

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101 Defendants' Written Submissions at para 137; Kok's 1st affidavit at para 114.

102 Defendants' Written Submissions at para 138.

103 See Kok's 1st affidavit at para 127.

104 See Defendants' Written Submissions at para 148.

105 Kok's 1st affidavit at pp 834–835.

106 See Defendants' Written Submissions at para 139.

the associates of Lim and Chan own the same type of unit as them, this resulted in what would appear to be an overrepresentation of that type of unit on the CSC.[107] The defendants argued that this point should also have been disclosed to the subsidiary proprietors before they were asked to vote Lim and Chan into the CSC.

124 Second, the defendants submitted that Lim and Chan did not declare their alleged conflicts of interest on multiple occasions, such as: (i) before Lim and Chan were elected into the CSC on 1 July 2017;[108] (ii) when Lim and Chan signed the conflict of interest declaration forms on 5 September 2017 to indicate there was no conflict;[109] and (iii) at the EGM on 9 September 2017.[110] The defendants argued that Lim and Chan were trying to hide the fact of ownership by their associates because when questions were asked about such ownership at the EGM on 9 September 2017, they declined to answer frankly.

125 Furthermore, the defendants submitted that subsequently, when their lawyers wrote to the plaintiffs' lawyers to pursue this question after objections had been filed to the Board, the plaintiffs' lawyers avoided giving an answer. The defendants' lawyers had sent the plaintiffs' lawyers a letter dated 14 June 2018, asking whether the CSC members had failed to declare their actual or potential conflicts of interest, and specifically to confirm whether Lim and Chan have associates who own or possess the units as specified in the letter.[111] The plaintiffs' lawyers did not respond to this letter. The defendants' lawyers then

107 Defendants' Written Submissions at para 138.

108 See Defendants' Written Submissions at para 136.

109 See Defendants' Written Submissions at paras 136–137; Kok's 1st affidavit at pp 827–828, 831–832.

110 See Defendants' Written Submissions at para 144(a).

111 Kok's 1st affidavit at pp 834–835.

sent the plaintiffs' lawyers a letter dated 12 July 2018 informing them that they had yet to respond to the earlier letter dated 14 June 2018, and also requesting for certain documents.[112] However, when the plaintiffs' lawyers sent the defendants' lawyers a letter dated 19 July 2018, the plaintiffs' lawyers addressed the request for documents but did not respond on the issue of conflict of interest or whether Lim and Chan have associates who own or possess the specified units.[113] The defendants submitted that it was only when their lawyers sent a more formal request by way of interrogatories to the plaintiffs on 2 August 2018 that they gave the answer on 7 August 2018 that Lim and Chan have associates who each owns another unit.[114]

126 Third, the defendants further submitted that Lim and Chan were key members of the CSC and the key movers of the collective sale, and that they had in fact pushed for a quick sale.[115] The defendants argued that Lim and Chan breached their duty of fidelity and that it was not possible to conclude that the CSC's decision to sell the Property so hastily was not infected by the conflicts of interest of Lim and Chan.

127 On the other hand, the plaintiffs submitted that the mere fact that a CSC member has an associate who owns another unit did not in and of itself give rise to any actual or potential conflict of interest.[116] The plaintiffs submitted, in their skeletal submissions, that the CSC members were only required to declare any conflict of interest that they were aware of and which arose from the relationship

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112 Kok's 1st affidavit at pp 839–840.

113 Kok's 1st affidavit at p 851.

114 See Defendants' Written Submissions at para 145; Kok's 1st affidavit at pp 864–867.

115 See Defendants' Written Submissions at paras 140–142.

116 See Plaintiffs' Skeletal Submissions at para 70.

of the CSC members and their associates with the purchaser under the proposed collective sale.[117] Since there was no such relationship with the purchaser, the plaintiffs argued that there was no actual or potential conflict of interest to be declared. At the hearing, the plaintiffs added that a CSC member also had to be "aware" of the actual or potential conflict of interest before he was required to declare it, *ie*, this was a subjective inquiry.[118]

128 The plaintiffs also submitted that the defendants' complaint regarding the composition of the CSC had not been raised before the Board.[119] The plaintiffs argued that this ground of objection was, in any event, a red herring because the LTSA does not prescribe or limit the composition of the CSC, and there was no need for the CSC members to declare their ownership details. The plaintiffs added that the defendants were not challenging the method of distributing the proceeds of sale.

129 Second, the plaintiffs submitted that the CSC members had before their elections orally declared at the EGM on 1 July 2017 that they did not have any conflict of interest.[120] (The defendants seemed to take the position that nothing was said orally to the subsidiary proprietors to deny any conflict of interest.[121]) As for the EGM on 9 September 2017, the plaintiffs submitted that the CSC had been advised by R&T and the CSC members did not declare any conflict of interest because they were of the view that they had none.[122]

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117 Plaintiffs' Skeletal Submissions at para 71.

118 See NAs 13/09/18 at p 93 lines 1–4.

119 Plaintiffs' Skeletal Submissions at para 73.

120 See Plaintiffs' Skeletal Submissions at para 72; Lim's 1st affidavit at p 409.

121 See NAs 12/09/18 at p 15 lines 9–11, p 20 lines 8–9.

122 See Lim's 1st affidavit at p 579; NAs 13/09/18 at p 117 lines 20–23.

130 The plaintiffs explained orally, at the hearing before this court, that it was the oversight of their lawyers in omitting to respond to the written requests by the defendants' lawyers for the information as to whether Lim and Chan have associates who each owns another unit.[123] The plaintiffs explained that the letter dated 14 June 2018 from the defendants' lawyers had been addressed to R&T's conveyancing lawyers and while the litigation lawyers should have responded to it, they had omitted to do so.[124] As for the letter dated 12 July 2018 from the defendants' lawyers, the plaintiffs' lawyers informed the court that they had omitted to respond on the issue of conflict of interest in their reply dated 19 July 2018, because the matter was then transitioning from R&T's conveyancing lawyers to the litigation lawyers, and the litigation team was at the material time focused on drafting OS 841/2018.[125] The plaintiffs' lawyers explained that the application to the High Court, *ie*, OS 841/2018, had to be made within 14 days after the section 84A stop order was issued on 27 June 2018 (pursuant to s 84A(2B)). The plaintiffs' lawyers stated that there was no intention not to disclose the fact of ownership by the associates of Lim and Chan.[126] When the interrogatories were served on the plaintiffs, they answered promptly without challenging the need for the interrogatories.

(2) Decision

131 The question here was whether there was an actual or a potential conflict of interest by reason only of the fact that an associate owns another unit.

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123 See NAs 13/09/18 at p 123 lines 15–18.

124 See NAs 13/09/18 at p 121 lines 20–25, p 122 line 1.

125 See NAs 13/09/18 at p 122 lines 7–22.

126 See NAs 13/09/18 at p 123 line 2.

(A) PARAGRAPH 2 OF THE THIRD SCHEDULE

132 The statutory provision concerning a collective sale committee member's duty to disclose any actual or potential conflict of interest is para 2 of the Third Schedule. The relevant provisions of para 2 state:

> **Disclosure of conflict of interests**
>
> 2.—(1) If a person standing for election as a member of a collective sale committee is aware of any conflict of interest or potential conflict of interest, if any, with his duties or interests as a member of the collective sale committee (should he be elected) arising from —
>
> …
>
> (*c*) his possession or ownership of any lot or common property that may be the subject of the collective sale, whether alone or together with any of his associates;
>
> …
>
> (*g*) his associate's possession or ownership of any lot or common property that may be the subject of the collective sale,
>
> he shall, before his election, declare at the general meeting convened for such election, the nature and extent of all such conflicts of interest or potential conflicts of interest.
>
> (2) The election of any person who fails to comply with sub-paragraph (1) shall be void.
>
> (3) If a member of a collective sale committee becomes aware of any conflict of interest or potential conflict of interest, if any, with his duties or interests as a member of the collective sale committee arising from —
>
> …
>
> (*c*) his possession or ownership of any lot or common property that may be the subject of the collective sale, whether alone or together with any of his associates;
>
> …
>
> (*g*) his associate's possession or ownership of any lot or common property that may be the subject of the collective sale,

> he must, within the relevant period, declare in writing to the chairperson of the collective sale committee, the nature and extent of all such conflicts of interest or potential conflicts of interest.
>
> …
>
> (6) For the purposes of sub-paragraphs (1) and (3), a person, *A*, is an associate of another person, *B*, if —
>
> (*a*) *A* is the spouse or a parent, remoter lineal ancestor or step-parent or a son, daughter, remoter issue, step-son or step-daughter or a brother or sister, of *B*;
>
> …

133 As can be seen, para 2(1) deals with a candidate standing for election as a member of a collective sale committee. Paragraph 2(3) deals with a person who is already elected as a member of a collective sale committee. The specified situations to disclose any actual or potential conflict of interest are the same for both. Hence, for present purposes, it is sufficient if I refer only to the requirements to disclose conflicts of interest for a candidate standing for election into a collective sale committee.

134 A collective sale committee candidate has to declare any actual or potential conflict of interest "*if any*, with his duties or interests as a member of the collective sale committee" [emphasis added] (para 2(1)). Such conflict of interest may arise from, *inter alia*, his possession or ownership of any lot in the strata development (para 2(1)(*c*)), or his associate's possession or ownership of any lot in the strata development (para 2(1)(*g*)).

135 By way of legislative history, para 2 of the Third Schedule was the result of an amendment introduced by way of the Land Titles (Strata) (Amendment) Act 2010 (Act 13 of 2010). I will call this particular amendment, "the 2010

amendment", and para 2 as it was prior to the 2010 amendment, "the previous para 2". The previous para 2 only stated as follows:

> **Disclosure of interests**
>
> 2. A person standing for election as a member of a collective sale committee who has any direct or indirect interest in any property developer, property consultant, marketing agent or legal firm, being an interest that could conflict with the proper performance of his functions as a member of a collective sale committee (should he be elected) shall, as soon as practicable after the relevant facts have come to his knowledge, disclose the nature of that interest at a general meeting.

136 The previous para 2 concerned a candidate's duty to disclose a particular type of conflict of interest before his election. Nevertheless, at the time when the previous para 2 was in operation, the duty to disclose any actual or potential conflict of interest was not confined to that stated in the previous para 2. The Court of Appeal decided *Horizon Towers (CA)* when the previous para 2 was in operation. It held that at general law, there was a duty to disclose any conflict of interest even if it was not of the kind specifically listed in the previous para 2 or if it arose after the candidate's election into the collective sale committee (see [152]).

137 The previous para 2 was amended in various significant ways by the 2010 amendment (see the explanatory statement relating to the Land Titles (Strata) (Amendment) Bill (Bill 9 of 2010) at p 32). For present purposes, I mention a few.

138 First, the previous para 2 was amended to elaborate on the kind of circumstances from which an actual or a potential conflict of interest may arise for a candidate. As mentioned at [134] above, these circumstances now include his or his associate's possession or ownership of lots in the strata development.

It is also important to bear in mind that although, for example, para 2(1)(*c*) specifically identifies the candidate's ownership of a lot, whether alone or together with any of his associates, as one such circumstance to be considered, it does not say in terms that this circumstance would necessarily give rise to an actual or a potential conflict of interest. Likewise, para 2(1)(*g*) does not say in terms that the ownership of any lot by an associate in the same strata development necessarily gives rise to an actual or a potential conflict of interest.

139 Second, the previous para 2 was amended to expressly state that the candidate's obligation to declare any actual or potential conflict of interest that he becomes aware of is a continuing one even after his election into the collective sale committee (see para 2(3)). I add here that the expression for the knowledge requirement was changed from the phrase "as soon as practicable after the relevant facts have come to his knowledge" in the previous para 2, to the phrase "aware of" in paras 2(1) and 2(3).

140 Third, the previous para 2 was amended to state that a candidate's failure to declare any actual or potential conflict of interest he was aware of before his election would void his election (see para 2(2)).

141 When explaining the 2010 amendment in relation to conflicts of interest which may arise from ownership of a lot by a candidate or his associate, Mr K Shanmugam, the Minister for Law, explained (*Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 379):

> Hereafter, it is proposed that candidates will also be required to declare the extent of ownership they have in the strata development. In addition, they will have to declare any ownership interests held by connected persons related to them. Such connected persons will include immediate family

> members as well as companies in which the candidate and/or his family collectively hold more than 5% voting power. The aim of this additional disclosure requirement is to enhance the transparency of the sales committee election process and help other owners make a more informed decision on whom they should elect to their sale committee.

142 The defendants referred to the Minister's explanation for their submission that declaration of the fact that an associate owns another unit must be made. Because the Minister did not discuss the "awareness" element (see [139] above), the defendants also contended that there was no scope for the argument that declaration is only required when a candidate believes he has any actual or potential conflict of interest.[127]

143 It seemed to me that it was arguable that the Minister's explanation went even further than the defendants' submissions if considered at face value only. The Minister's explanation suggested that a candidate was to declare the extent of his ownership in the strata development even if he owned only one unit. The first part of the Minister's explanation did not say that a candidate was to declare the extent of his ownership only if he owned more than one unit. "In addition", a candidate was to declare the extent of ownership of "connected persons" related to him, *ie*, "associates".

144 The Minister's explanation deserved further consideration. Two questions arose:

(a) Does ownership by a candidate and/or his associate of a lot in a strata development in and of itself conflict "with [a person's] duties or interests as a member of the collective sale committee"?

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127 See NAs 12/09/18 at p 39 lines 1–7.

(b) If so, what would the candidate then have to declare under his obligation to declare "the nature and extent" of such conflict of interest?

145 In this regard, I turn to the consider the decision of the Court of Appeal in *Horizon Towers (CA)* which extensively discussed the collective sale committee member's duty to disclose conflict of interest (or more specifically, his duty to avoid any actual or potential conflict of interest and his duty to make full disclosure of relevant information). This decision was rendered before the 2010 amendment.

(B) *HORIZON TOWERS (CA)*

146 As mentioned, the Court of Appeal in *Horizon Towers (CA)* held that a collective sale committee member has a duty to disclose any actual or potential conflict of interest. However, the Court of Appeal did not have to decide what exactly constitutes a potential conflict of interest. The Court of Appeal noted at [142] that the position was not yet settled in Singapore whether the test for a potential conflict of interest should be a test of "mere possibility" of conflict or the less strict test of a "real sensible possibility" (the former was favoured by the majority in the UK House of Lords case of *Boardman and another v Phipps* [1967] 2 AC 46, while the latter was crafted by Lord Upjohn in his dissenting judgment in that case). The Court of Appeal however accepted in *Horizon Towers (CA)* that it was arguable that the stricter approach is preferable for three reasons (at [142]–[145]): (i) there is the need to extinguish all possibility of temptation that a collective sale committee member may abuse his position and to deter him from so doing; (ii) there is the difficulty of inquiring into a person's state of mind or motives and ascertaining whether he has an actual conflict of interest; and (iii) there is the difficulty of detecting an actual conflict of interest given the ease with which he may conceal it.

147 As for the duty of full disclosure, the Court of Appeal explained at [147]–[148]:

> 147 The fiduciary must disclose the personal interest as soon as a possible conflict arises, or as soon after as practicable. An 'interest' may be constituted by 'the presence of some personal concern of possible significant pecuniary value in a decision taken, or transaction effected, by a fiduciary' … It may be an interest which is not yet fully realised …
>
> 148 In an adversarial trial, the burden of *proving full disclosure* lies on the fiduciary … *Mere disclosure that he has an interest or the informal making of statements that might put a principal on enquiry is not sufficient.* It is also not enough to prove that had the fiduciary asked for permission, it would have been given … In an application before [a Board], the burden should not be any less on the [collective sale committee]. It entails *full disclosure* to the objecting owners as well as the [Board].
>
> [original emphasis omitted; emphasis added in italics]

148 Because of the factual matrix before it, the Court of Appeal in *Horizon Towers (CA)* also specifically mentioned in relation to the duty to disclose conflict of interest (at [152]):

> … [a collective sale committee] member who *acquires additional units in the strata development (especially if they are financed by bank loans)* before or after he becomes a member of the [collective sale committee] *must disclose such interest* to all the subsidiary proprietors including the objecting owners. [original emphasis omitted; emphasis added in italics]

149 I will set out the facts in *Horizon Towers (CA)*. In doing so, I will draw from the decision of the Court of Appeal in *Shunfu Ville (CA)* (at [60]–[61]) which was given after the 2010 amendment. The Court of Appeal in *Shunfu Ville (CA)* generally affirmed its judgment in *Horizon Towers (CA)* (as mentioned at [99] above) and also explained how that judgment should be approached.

150 In *Horizon Towers (CA)*, the collective sale committee decided to sell the property to a developer at the reserve price despite: (i) a suggestion from a collective sale committee member to seek the consenting subsidiary proprietors' approval to do so, given that property prices had suddenly risen quite sharply; (ii) the collective sale committee's knowledge that it would not obtain such approval; and (iii) the presence of other potential offers, including a letter of offer to purchase the property for a higher price. Also, adopting the Court of Appeal's description in *Shunfu Ville (CA)* (at [60(b)]) of the facts in *Horizon Towers (CA)*:

> Two members of the sale committee in that case, one of whom was the chairman, *had purchased additional units with the assistance of substantial financing in the period leading to their appointment*, but this was not disclosed prior to the committee's decision to go ahead with the sale of the property. [emphasis added]

151 Against this background, on the failure of these two collective sale committee members to disclose their "possible if not actual conflict[s] of interest", the Court of Appeal in *Shunfu Ville (CA)* (at [61(a)]) explained that:

> … In [*Horizon Towers (CA)*], there was such a concern over *a possible conflict of interest by virtue of the fact that certain members had made additional purchases of units in the lead-up to their appointment to the sale committee and had not made any disclosure of this fact* prior to the decision to sell the property. The fact that those members elected not to testify to explain their non-disclosure suggested to the court that there was no reasonable explanation for the *hasty* decision to sell the property and that the conflict of interest had influenced their decision. … [emphasis added]

152 To summarise, the Court of Appeal in *Horizon Towers (CA)* held that the two members' potential conflicts of interest "[arose] from their purchase of additional units in the Property on bank financing" in the lead-up to their appointment to the collective sale committee (see *Horizon Towers (CA)* at

[188]). This conflicted with their duties as collective sale committee members because the reasonable inference was that such a purchase "had created an urgency on their part to sell the Property as quickly as possible".

(C) DECISION ON THE SUB-ISSUE OF CONFLICT OF INTEREST

153 In response to the question I raised at [144(a)] above, I was of the view that ownership by a candidate and/or his associate of a lot in a strata development does not in and of itself necessarily raise an actual or a potential conflict with his duties or interests as a member of the collective sale committee.

154 The terms of the relevant statutory provision, *ie*, para 2(1) of the Third Schedule, are paramount. As set out at [132] above, it states that if a candidate is "aware of any conflict of interest or potential conflict of interest, *if any*, with his duties or interests as a member of the collective sale committee" arising from the listed circumstances, he has to declare the nature and extent of all such actual or potential conflicts of interest [emphasis added].

155 The phrase "if any" is important. In my view, it means that the mere fact that a candidate owns a unit or his associate owns another unit does not necessarily mean that there is an actual or a potential conflict of interest. Otherwise that qualification "if any" is otiose.

156 Moreover, pursuant to para 1(3) of the Third Schedule, a candidate would be someone who is a subsidiary proprietor, or a nominee for election by a subsidiary proprietor which is a company, or a member of a subsidiary proprietor's immediate family who is nominated for election by that subsidiary proprietor. *If* mere ownership of a unit raised an actual or a potential conflict, every candidate would necessarily have an actual or a potential conflict of

interest before his election into the collective sale committee (see the meaning of "associate" under para 2(3)). Every candidate would then, as a matter of course, always have to declare before his election the nature and extent of his conflict of interest, *ie*, the nature and extent of his or his associate's ownership.

157 The Court of Appeal in *Shunfu Ville (CA)* did not take the approach that with para 2 (the result of the 2010 amendment), every candidate would necessarily have an actual or a potential conflict of interest and would always have to declare before his election the nature and extent of his or his associate's ownership. First, in generally affirming its judgment in *Horizon Towers (CA)* and explaining how that judgment should be approached, the Court of Appeal in *Shunfu Ville (CA)* did not suggest that the 2010 amendment affected the analysis in *Horizon Towers (CA)* on the issue of whether the collective sale committee members had any actual or potential conflicts of interest.

158 Second, the Court of Appeal in *Shunfu Ville (CA)* made an effort to explain how in *Horizon Towers (CA)* the two members' potential conflicts of interest arose from their *purchase of additional units* (i) with the assistance of *substantial bank financing* and (ii) in the *lead-up to their appointment* to the collective sale committee (see [150]–[151] above). As mentioned at [152] above, because of these two factors, the two collective sale committee members likely had an urgency to sell the strata development as quickly as possible. This thus potentially conflicted with their duty to act with conscientiousness to obtain the best sale price reasonably obtainable (see *Horizon Towers (CA)* at [188]), and thus their duties as members of a collective sale committee.

159 This reasoning shows that mere ownership does not in and of itself necessarily raise an actual or a potential conflict of interest. This should be the

case unless there is some reason to suggest otherwise, like the two factors in the case of the two collective sale committee members in *Horizon Towers (CA)*. To be clear, a candidate's mere ownership of a unit does not raise a potential conflict whether on the test of "mere possibility" of conflict or on the test of a "real sensible possibility". By extension, an associate's mere ownership of a unit also does not in and of itself necessarily raise an actual or a potential conflict with the candidate's duties or interests as a collective sale committee member.

160 Therefore, while disclosure of the nature and extent of a candidate's ownership or the existence of ownership by an associate would provide more information to subsidiary proprietors, that disclosure is not mandated by the LTSA unless there is an actual or a potential conflict of interest.

161 Accordingly, the question posed at [144(b)] above was academic in the present circumstances.

162 Was there any evidence of an actual or a potential conflict other than the fact of the ownership of a unit by an associate?

163 The defendants submitted that the associates of Lim and Chan own the same type of unit as them, resulting in what would appear to be an overrepresentation of that type of unit on the CSC. I accepted that the defendants could not have raised this ground of objection before the Board because the plaintiffs only answered on 7 August 2018 that Lim and Chan have associates who each owns another unit of the same type as them. This answer came after the defendants had filed their objections to the Board. I thus proceeded to consider this ground of objection.

164 In my view, there was no suggestion that the apportionment of sale proceeds was unfair. Just as the mere fact of an associate's ownership of another unit is insufficient to give rise to an actual or a potential conflict of interest, the mere fact that that other unit is of the same type is also insufficient. Since the LTSA does not regulate the composition of a collective sale committee, Lim and Chan also did not have to declare before their elections that their associates own the same type of unit as them.

165 I also did not find that Lim and Chan had or potentially had extra interest and urgency to push through with the collective sale as quickly as possible solely by virtue of the fact that they have associates who each owns another unit.

166 Therefore, I found that Lim and Chan had no conflict of interest to declare before their elections, and they did not have to declare that they have associates who each owns another unit. However, they should have done so to avoid unnecessary suspicion especially when questions about such ownership by associates had been raised specifically at the EGM on 9 September 2017. I will elaborate on this point later.

167 If I were wrong on the point that Lim and Chan had no conflicts of interest to disclose, their conduct should be considered further. They said they relied on legal advice that there was no actual or potential conflict of interest on their part. This was not disputed. I was of the view that they were entitled to rely on legal advice even if that advice turned out to be wrong.

168 In the circumstances, I accepted that even if Lim and Chan were obliged in law to disclose the fact of ownership by their associates, the omission to do

so was based on legal advice. That omission, as well as the omission by the plaintiffs' lawyers to answer questions raised by the defendants' lawyers concerning the question of ownership of units by associates (see [130] above), was not evidence of bad faith.

169 Further, even if Lim and Chan each had a duty to declare the ownership by their associates because such ownership would mean that Lim and Chan each had an actual or a potential conflict of interest, their non-disclosure would not necessarily have meant that the collective sale transaction was not in good faith. As the Court of Appeal stated in *Horizon Towers (CA)* at [151] (and affirmed in *Harbour View Gardens (CA)* ([49] *supra*) at [44]):

> … any non-disclosure of a conflict of interest … may affect the requirement of good faith in the transaction, especially if the [collective sale committee] member has played a decisive, influential or leading role in [a collective sale committee]'s decision to enter into the transaction. Each case of a failure to disclose a conflict of interest must be examined closely to determine the significance and consequences of the breach in relation to the transaction as a whole.

(D) ADDITIONAL REMARKS

170 That said, I agreed that the matter should have been better handled by Lim, Chan and R&T, the lawyers for the CSC who also acted for the plaintiffs.

171 I asked the plaintiffs at the hearing as to why the CSC and R&T took the risk of choosing not to disclose the ownership by the associates of Lim and Chan when specifically questioned on this matter at the EGM on 9 September 2017.[128]

172 From the minutes of that EGM,[129] it was recorded that two subsidiary proprietors had asked what "conflict of interest" meant when the Third Schedule

[128] See NAs 13/09/18 at p 116 lines 5–9.

required the CSC to declare conflicts of interest. One of them mentioned that the conflict of interest declaration should be pasted at prominent spots of the Property. A third subsidiary proprietor specifically asked whether the CSC members have associates who own other units. Of these three subsidiary proprietors, only one of them is a defendant in the present application.[130] These queries were dealt with in the following manner as recorded in the minutes:[131]

> Managing Agent mentioned the last EOGM [*ie*, the EGM on 1 July 2017] was voice-recorded with the CSC elected declaring that they do not have any conflict of interests.
>
> …
>
> CSC mentioned that the procedures will be adhered by the CSC, [Knight Frank] and R&T, to ensure a smooth exercise, and not allow the collective sale to fail due to technical issues.
>
> [R&T] advised that the member of the CSC must declare his conflict of interest as provided in Paragraph 2 of the Third Schedule of the Land Titles (Strata) Act. The declaration will be pasted on the notice board within 7 days if he is aware of the conflict of interest or potential conflict of interest as member of the CSC. This is under the Land Titles Strata Act Schedule 3 Paragraph 2(4), and paragraph 3 is a continual declaration.

173 Neither the CSC nor R&T answered the question whether the CSC members have associates who own other units. The transcript provided of the audio recording of that EGM showed that this was in spite of the abovementioned three subsidiary proprietors' persistence in asking about the disclosure of conflicts of interest, to the point that one of them requested specifically that the minutes record the discussion of this issue.[132]

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129 Lim's 1st affidavit at p 579.

130 See NAs 12/09/18 at p 56 lines 10–15.

131 Lim's 1st affidavit at p 579.

132 Kok's 1st affidavit at pp 859–860; see also Kok's 1st affidavit at para 123, pp 853–860.

174 Even though R&T had advised that there was no conflict, R&T should also have advised Lim and Chan to disclose the ownership by their associates to avoid unnecessary suspicion. Furthermore, this would have been the prudent step in case R&T's advice that there was no conflict was wrong.

175 I add also that Chan was recorded as saying:[133]

> … We are not here, as volunteers, as ah… supporting the interests of the majority hopefully, to actually mess up along the way. … Nobody is interested in making ensuring ah.., ah.., to allow ourselves to be screwed by some *technical* ah.., proceedings. [emphasis added]

176 While acknowledging that the process should not be thwarted by any technicality, Chan appeared to be oblivious to the fact that his refusal to respond openly on the issue of ownership of units by associates might provide ammunition for a technical objection to be raised. It was a simple step for Lim and Chan to have just declared the ownership by their associates in the interest of avoiding suspicion while maintaining that they had no conflict of interest.

177 Of course, this is not to say that once a person becomes a collective sale committee candidate or member, his life becomes an open book to the subsidiary proprietors. He is not obliged to answer every question of subsidiary proprietors and he should exercise good sense in choosing when and when not to answer certain questions. Every collective sale committee and its professional advisers should keep in mind that it is the interests of the collective sale committee to avoid suspicion so as to minimise objections and ill will.

178 The refusal by Lim and Chan to disclose, when initially asked, fuelled suspicion that something was amiss. Later, the omission to respond to written

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133 Kok's 1st affidavit at p 858.

requests from the defendants' lawyers added more fuel to the suspicion. By the time a positive answer was given, it appeared to come too late to assuage the suspicion raised.

179 Furthermore, the plaintiffs should not have waited until the time of the hearing to explain in the course of oral submissions why their lawyers omitted to respond to written requests for information from the defendants' lawyers (see [130] above). This explanation should have been given candidly by way of an affidavit filed before the hearing and not by oral disclosure only at the hearing itself. The matter was not well handled especially by the plaintiffs' lawyers but that too was not evidence of bad faith on the part of the plaintiffs' lawyers or the CSC.

Approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA

(1) Parties' arguments

180 I come to the second sub-issue on the omission to approve the apportionment of sale proceeds and of the terms and conditions of the CSA at a general meeting of the management corporation, in this case, the EGM on 9 September 2017. I have already touched upon this earlier.

181 To recapitulate, this omission was a breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule.

182 The defendants alleged that Lim had made it clear to the subsidiary proprietors before the EGM that there would be no voting or variations at the EGM in respect of these aspects of the CSA.[134] The defendants argued that the

[134] See Defendants' Written Submissions at paras 162, 164; Kok's 1st affidavit at p 90.

CSC also misrepresented to the subsidiary proprietors that they could not vote on these aspects of the CSA, thus severely prejudicing the rights of the minority owners to vote on them.[135] Further, the defendants submitted that the EGM was attended by subsidiary proprietors of lots with 335 share values out of the total of 783 share values (*ie*, 42.8%, a minority by share value).[136]

183 The plaintiffs submitted that on or around 18 August 2017, the CSC had circulated the CSA to the subsidiary proprietors ahead of the EGM.[137] The plaintiffs submitted that the apportionment of sale proceeds and the terms and conditions of the CSA were then explained at the EGM. As mentioned at [75] above, the plaintiffs did not initially admit that there was a breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule, and had instead stressed that it was sufficient if more than 50% of the subsidiary proprietors who attended the EGM signed the CSA that day, after the EGM was concluded. According to the plaintiffs, the EGM was attended by subsidiary proprietors of the lots with 507 share values who collectively own 135 units, and those with 296 share values (58.4%) who collectively own 76 units (56.3%) signed the CSA that day, after the EGM was concluded.[138] There seemed to be a discrepancy between the parties on the total number of share values held by the subsidiary proprietors who attended the EGM (*ie*, the defendants' figure of 335 share values (see [182] above) and the plaintiffs' figure of 507 share values), but the defendants

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135 Defendants' Written Submissions at para 163.

136 See Lim's 1st affidavit at p 578; NAs 12/09/18 at p 54 line 25, p 55 lines 1–2.

137 See Lim's 1st affidavit at para 22; NAs 13/09/18 at p 108 lines 2–6.

138 Plaintiffs' "List of owners who signed CSA on 9 September 2017 EGM" at p 5; Plaintiffs' Skeletal Submissions at para 113. In this regard, it was noted that the latter reference (citing Loh's 1st affidavit at para 25) provided that subsidiary proprietors who collectively own 76 units signed the CSA, while the former reference provided that subsidiary proprietors who collectively own 77 units signed the CSA.

appeared to have accepted that in any event, more than 50% of them, by share values or units, had signed the CSA that day, after the EGM was concluded.

184 The plaintiffs subsequently conceded orally at the hearing that "there may well not have been approval at the meeting *per se*" of the apportionment of sale proceeds and of the terms and conditions of the CSA.[139]

185 The plaintiffs orally explained that R&T had advised the CSC that no voting by the subsidiary proprietors was needed at the EGM to approve these aspects of the CSA.[140] The plaintiffs informed the court that R&T had given its advice based on the previous paras 7(1)(*b*), 7(1)(*c*) and 7(2) of the Third Schedule in operation prior to the Land Titles (Strata) (Amendment) Act 2010.[141] Under these provisions, before any subsidiary proprietor signed the collective sale agreement, the collective sale committee had to convene general meetings of the management corporation to "consider" the apportionment of sale proceeds and the terms and conditions of the collective sale agreement. These provisions did not mention the need to approve these aspects of the CSA at such meetings.

186 The plaintiffs also submitted that to date, subsidiary proprietors of lots with more than 80% of the share values and more than 80% of the total area of all the lots had signed the CSA and they continued to support the collective sale.[142]

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139 See NAs 13/09/18 at p 125 line 25, p 126 line 1.

140 See NAs 13/09/18 at p 128 lines 16–19.

141 See NAs 14/09/18 at p 66 lines 20–25, p 67 line 1.

142 See Plaintiffs' Skeletal Submissions at para 115.

(2) Decision

187 Unfortunately, the non-compliance with paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule was the result of advice from R&T. R&T had advised that it was sufficient for the assenting subsidiary proprietors to sign the CSA after the EGM. Clearly, such advice was wrong.

188 Relying on such advice, the CSC stuck to the position that there was to be no voting at the EGM even though some subsidiary proprietors had questioned whether this position was correct.[143] It was unfortunate that the CSC members appeared not to have considered the matter more carefully by themselves. It appeared that they had simply accepted their lawyers' advice without question. While, in principle, they were entitled to rely on their lawyers' advice, the CSC members should have questioned the validity of the advice in the circumstances in the light of questions being raised and of the clear terms of paras 7(1)(*b*) and 7(1)(*c*) and also para 7(2). A collective sale committee cannot simply delegate its duties to its professional advisers or simply rely on the advice given to excuse any lapses in respect of its duties (see *Horizon Towers (CA)* at [160], which discussed valuers specifically). Be that as it may, the breach of the relevant provisions was caused by R&T. It was not evidence of bad faith on the part of the CSC.

189 It is true that s 84A(9)(*a*)(i) is concerned with whether "the transaction is not in good faith", and a finding that the transaction is not in good faith does not necessarily need to be confined to the conduct of the collective sale committee alone but may take into account the conduct of its professional advisers too (see *Harbour View Gardens (CA)* ([49] *supra*) at [45], [52]). In any

143 See Kok's 1st affidavit at pp 76–92.

case, the collective sale committee's professional advisers are also its agents for the purposes of the collective sale (see *Harbour View Gardens (CA)* at [45]). However, while it was regrettable that the legal advice provided here was obviously wrong, I did not conclude that R&T acted in bad faith in giving this wrong legal advice to the CSC.

190 I added that I was not persuaded that there was prejudice to any subsidiary proprietor. Despite the unsatisfactory state of affairs where the subsidiary proprietors, especially the minority owners, were deprived of their entitlement to vote on the apportionment of sale proceeds and on the terms and conditions of the CSA at the EGM, it was not disputed that a simple majority of the subsidiary proprietors who attended the EGM signed the CSA that day, after the EGM was concluded. Furthermore, although there had been a suggestion prior to the EGM that some subsidiary proprietors might not attend the EGM if they thought that there would not be any voting on the various aspects of the CSA,[144] there was no evidence from anyone to say he did not attend the EGM on this basis. As at the date of the hearing, subsidiary proprietors of lots with not less than 80% of the share values and not less than 80% of the total area of all the lots had signed the CSA and made an application for an order for the collective sale pursuant to s 84A(1)(*b*).

Election of the CSC members

(1) Parties' arguments

191 The third sub-issue on the question of good faith pertained to how the six elected CSC members had campaigned to be elected as a "6-man bloc".[145]

144 See Kok's 1st affidavit at p 84; NAs 14/09/18 at p 120 lines 21–24.

145 See Defendants' Written Submissions at para 149; Lim Hun Joo's 3rd affidavit filed

The defendants submitted that Lim had said at the EGM on 1 July 2017 that the team of six "had to be elected in its entirety or none would accept the appointment" and that Lim had "spent a considerable time during the meeting to ask the owners to limit the number of CSC members to six".[146] The defendants submitted that as the team sought to limit the number of the CSC members to a small number of six, that ran the risk that the CSC would tend not to represent a wider cross-section of owners of various types of units in the Property.[147] The defendants also suggested that if Lim and Chan had declared their alleged conflicts of interest before their elections into the CSC (see [34] above), the seventh and last candidate who stood for election might have been elected into the CSC instead. The defendants further suggested that since the elections of Lim and Chan were void (pursuant to para 2(2) of the Third Schedule) because they did not declare their alleged conflicts of interest before their elections,[148] the elections of the other CSC members should also be void since they chose to campaign to be elected as a "6-man bloc".[149]

192 As mentioned before at [128] above, the plaintiffs submitted that the defendants' complaint regarding the composition of the CSC had not been raised before the Board.[150] The plaintiffs argued that the LTSA does not prescribe or limit the composition of the CSC and the CSC members did not have to declare their unit ownership details. The plaintiffs submitted that the subsidiary proprietors voted and determined the size of the CSC and then voted

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on 4 September 2018 ("Lim's 3rd affidavit") at para 44.

146 Defendants' Written Submissions at para 151.

147 Defendants' Written Submissions at para 152.

148 Defendants' Written Submissions at para 155.

149 Defendants' Written Submissions at para 156.

150 Plaintiffs' Skeletal Submissions at para 73.

each CSC member into the CSC individually.[151] The plaintiffs submitted that despite Lim's campaigning slogan that the team of six "had to be elected in its entirety or none would accept the appointment", if one of them had not been elected into the CSC, the remaining five members could continue to be members of the CSC and were not obliged to step down.[152] The plaintiffs added that the defendants were not challenging the method of distributing the proceeds of the collective sale.[153]

(2) Decision

193 I found that not all aspects of this ground of objection pertaining to the election of the CSC members had been raised before the Board. Before the Board, the defendants stated:[154]

> The election of the CSC members was not carried out in good faith. At the EGM on 1 July 2017, [Lim] said that 6 candidates had formed a team which had to be elected in its entirety or none would accept the appointment. There is no requirement under the LTSA that a team must be voted for in its entirety. In addition, since the number of CSC members had already been voted and fixed at 6, this precluded any minority [subsidiary proprietor] representation in the CSC committee.

194 In this regard, the defendants had not raised specifically before the Board: (i) the risk that the CSC would tend not to represent a wider cross-section of owners of various types of units; and (ii) the consequences arising from the alleged failure of Lim and Chan to declare their conflicts of interest before their elections into the CSC. With respect to (i), since this had not been raised before

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151 Plaintiffs' Skeletal Submissions at para 74.

152 See NAs 13/09/18 at p 99 lines 1–21.

153 Plaintiffs' Skeletal Submissions at para 73.

154 See Kok's 1st affidavit at p 647.

the Board when it could have been, the defendants were not allowed to raise it before the High Court, pursuant to s 84A(4A).

195 With respect to (ii), I have mentioned at [63] above that the relevant information was not disclosed to the defendants before they raised objections before the Board, and they were therefore not precluded from relying on such information to raise their objection before the High Court.

196 For completeness, I will nevertheless comment on all aspects of the defendants' ground of objection pertaining to the election of the CSC members.

197 The LTSA does not regulate the composition of a collective sale committee. Furthermore, the use of election strategies to persuade others to vote candidates into the collective sale committee as a team is not prohibited. At the EGM, the subsidiary proprietors voted and determined the size of the CSC, and the candidates were still elected individually. All the six subsidiary proprietors who stood as a team were elected into the CSC. Even if one of them was not elected, that would not necessarily mean that the rest of the team who were elected would have to decline their elections unless they specifically said that they would so decline in that event. Likewise, even if the elections of Lim and Chan were void, that would not affect the elections of other members of the CSC. In any event, I found that Lim and Chan had no conflict of interest to declare before their elections (see [166] above).

198 Also, the defendants did not challenge the method of distributing the proceeds of sale (s 84A(9)(*a*)(i)(B)). In my view, the defendants' ground of objection pertaining to the election of the CSC members did not show that the

transaction was not in good faith after taking into account only the sale price (s 84A(9)(*a*)(i)(A)).

Appointment of Knight Frank and the re-negotiation of Knight Frank's fees

(1) Parties' arguments

199 The fourth sub-issue on the question of good faith pertained to the appointment of Knight Frank and the CSC's failure to re-negotiate Knight Frank's fees subsequently. The defendants submitted that the CSC appointed Knight Frank as the marketing agent in undue haste and with undue preference for Knight Frank.[155] The defendants submitted that it was unclear if the CSC had genuinely reviewed all other candidates before Knight Frank was appointed.[156] The defendants also alleged that the CSC had failed to provide to the subsidiary proprietors information on the competing proposals from other marketing agents.[157]

200 The defendants also submitted that Knight Frank had offered the worst terms with the highest DC estimate, the lowest reserve price range and the highest abortive fee.[158] The defendants argued that Knight Frank's fees were structured based on the reserve price of $550m which had been set on the basis that there was a DC payable for the Property.[159] The defendants submitted that when the CSC subsequently learnt that no DC was payable, the CSC ought to have negotiated to adjust Knight Frank's fees accordingly so the costs of the

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155 See Defendants' Written Submissions at paras 166, 172.

156 Defendants 'Written Submissions at para 168.

157 Defendants' Written Submissions at para 168.

158 Defendants' Written Submissions at para 171.

159 Defendants' Written Submissions at para 173.

collective sale could remain competitive and not cause loss to the subsidiary proprietors.[160] The defendants argued that Knight Frank had been the one giving the wrong information about there being a DC.[161]

201 On the other hand, the plaintiffs submitted that this ground of objection concerning the CSC's dealings with Knight Frank had not been raised before the Board.[162] The plaintiffs submitted that in any event, the CSC had only appointed Knight Frank after careful consideration of the competing proposals by the other two potential marketing agents.[163] The plaintiffs argued that Knight Frank's fee rate was the lowest at the time it was appointed because the CSC had reasonably expected a collective sale at around $500m then.[164] At the sale price of $610m, Knight Frank's fees were eventually higher than the others because its fees were on a tiered basis.[165] It would receive more only because the sale price was higher than expected. The plaintiffs also argued that there was no legal basis for the CSC to have re-negotiated Knight Frank's fees as suggested by the defendants, and that such action might have been unconscionable when Knight Frank had substantially performed its contractual obligations.[166] The plaintiffs submitted that the CSC was also not prepared to distract and discourage Knight Frank from doing its job of marketing the Property in the midst of the tender period.[167]

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160 Defendants' Written Submissions at para 174.

161 See NAs 14/09/18 at p 130 lines 16–20, p 133 lines 10–12.

162 Plaintiffs' Skeletal Submissions at para 75.

163 See Plaintiffs' Skeletal Submissions at para 76.

164 See Plaintiffs' Skeletal Submissions at para 78.

165 See Lim's 1st affidavit at p 570; Kok's 1st affidavit at para 148.

166 Plaintiffs' Skeletal Submissions at para 80.

167 Plaintiffs' Skeletal Submissions at para 81.

(2) Decision

202 This ground of objection pertaining to the appointment of Knight Frank and the CSC's failure to subsequently re-negotiate Knight Frank's fees had been raised before the Board, where the defendants stated, *inter alia*:[168]

> The CSC acted with undue haste and undue preference in appointing Knight Frank as the property consultant and marketing agent[.]
>
> …
>
> As the [DC] had been revised, which in turn meant that the [reserve price] ought to have been increased above the eventual price of $550 million, the CSC ought to have carried out corresponding negotiations or adjustments of the marketing fees for Knight Frank accordingly …

203 There was some dispute as to the date of appointment of Knight Frank. The defendants submitted that Knight Frank must have been appointed on 7 July 2017, as it had stated in its presentation slides for the EGM on 9 September 2017.[169] Knight Frank would then have been appointed two days before the CSC meeting on 9 July 2017, contrary to the plaintiffs' submission that the CSC had evaluated and selected Knight Frank as the marketing agent during that CSC meeting.[170] Knight Frank would then also have been appointed the same day (*ie*, 7 July 2017) on which another marketing agent had made its presentation to the CSC.[171] To these allegations, Lim and Knight Frank's representative filed affidavits stating that Knight Frank had made a typographical error in its presentation slides as to its appointment date.[172] The defendants argued that this

168 See Kok's 1st affidavit at pp 645–646.

169 See Lim's 1st affidavit at p 595.

170 See Lim's 1st affidavit at para 19, p 570.

171 See Lim's 1st affidavit at p 554.

172 See Lim's 3rd affidavit at para 51; Loh Kai Chieh's 2nd affidavit filed on 4 September 2018 ("Loh's 2nd affidavit") at para 62.

was hardly believable and appeared to be a convenient excuse.[173] It was not in dispute that the CSC met with the other two potential marketing agents on 5 July 2017 and 7 July 2017 respectively, and that the CSC received their competing proposals.[174] I thus proceeded on the basis that Knight Frank was selected as the marketing agent after the CSC considered the respective proposals by the potential marketing agents.

204 The CSC was already authorised at the EGM on 1 July 2017 to appoint a property consultant which meant a marketing agent.[175] Accordingly, there was no need for the CSC to convene another general meeting of the management corporation to appoint Knight Frank as the marketing agent. This was consistent with para 7(1)(*a*) of the Third Schedule. Since the subsidiary proprietors would then not be appointing the marketing agent at another general meeting, there was thus no need for the CSC to provide to the subsidiary proprietors information on the competing proposals from the other marketing agents.

205 There was no suggestion by the defendants that the CSC's initial expectation of a sale price of $500m was untrue or was too low at the time it appointed Knight Frank as the marketing agent. Furthermore, Knight Frank's terms of remuneration were on a tiered basis meaning that its fees would be proportionately higher only if a sale price higher than $550m was achieved. The fees for the other two potential marketing agents were higher if the sale price did not exceed $550m.[176] In the light of this, I was of the view that Knight Frank's terms of remuneration were not excessive at the time it was appointed.

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173 See Defendants' Written Submissions at para 169.

174 See Lim's 1st affidavit at pp 501, 554, 570.

175 See Lim's 1st affidavit at pp 409, 418.

176 See Kok's 1st affidavit at para 148.

206 I also found it unrealistic for the defendants to suggest that the CSC ought to have re-negotiated Knight Frank's fees when the CSC subsequently learnt that no DC was payable. The CSC and Knight Frank only found out that there was no DC payable at a very late stage, *ie*, nine days from the close of the public tender (see [20] and [25] above). The CSC (and the subsidiary proprietors) would have very much needed Knight Frank's expertise in advising on the next course of action in the collective sale process and acting quickly, if the need arose, at that time. It would hardly be reasonable, let alone prudent, for the CSC to have attempted to re-negotiate Knight Frank's fees at such a critical time. On the contrary, if the CSC had attempted to re-negotiate Knight Frank's fees at such a time, an objection might validly be raised that the CSC had distracted itself and the marketing agent from focusing on doing what was necessary to obtain the appropriate sale price in the circumstances. The defendants' argument that the CSC ought to have re-negotiated Knight Frank's fees at that time did not reflect well on the defendants. It suggested that they were trying to find fault with the CSC.

Keeping and/or displaying the minutes of three meetings

(1) Parties' arguments

207 For the fifth sub-issue on the question of good faith, the defendants submitted, at the hearing, that the CSC failed to keep and/or display the minutes of three meetings: the EGM on 9 September 2017, the owners' meeting on 25 January 2018 and the owners' meeting on 19 March 2018.[177] The defendants argued that the CSC thus failed to comply with paras 9(1) and 9(2) of the Third Schedule and/or an extension of these requirements which was discussed by the Court of Appeal in *Harbour View Gardens (CA)* ([49] *supra*) (which I will

[177] See NAs 13/09/18 at p 8 lines 20–21, p 10 lines 7–16, p 14 lines 5–12.

discuss later).[178] The defendants submitted that the CSC's non-compliance prejudiced the rights of the subsidiary proprietors to recapitulate and understand the key points of these important meetings.[179]

208 The plaintiffs submitted that this ground of objection concerning the minutes of meetings had not been raised before the Board.[180] The plaintiffs submitted in their skeletal submissions that Lim had stated in his affidavit that "the CSC had, at the relevant time, published the 1st and 2nd EGM [held on 1 July 2017 and 9 September 2017 respectively] and all CSC meeting minutes".[181] However, at the hearing, the plaintiffs instead orally submitted that the minutes of the EGM on 9 September 2017 were not posted and did not have to be posted under para 9(2) of the Third Schedule, which required only minutes of the CSC meetings to be displayed on the notice board in the Property.[182] The plaintiffs also argued that while the CSC kept the minutes of the owners' meetings on both 25 January 2018 and 19 March 2018,[183] paras 9(1) and 9(2) did not apply to these minutes because owners' meetings were neither CSC meetings nor general meetings.[184]

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178 See Defendants' Written Submissions at paras 177–178; Kok's 1st affidavit at para 157; NAs 13/09/18 at p 8 lines 21–24.

179 See Defendants' Written Submissions at paras 183–184.

180 See Plaintiffs' Skeletal Submissions at paras 116–117.

181 See also Lim's 3rd affidavit at para 59.

182 See NAs 14/09/18 at p 63 lines 22–25, p 64 lines 1–7.

183 Lim's 1st affidavit at pp 372–378, 614–615.

184 See NAs 14/09/18 at p 63 lines 17–18.

(2) Decision

209 I found that this ground of objection as the defendants submitted at the hearing (*ie*, that the CSC failed to keep and/or display the minutes of the three abovementioned meetings) had not been raised before the Board. Before the Board, the defendants stated:[185]

> The CSC did not comply with the requirement to keep records in accordance with paragraph 9 of the Third Schedule of the LTSA. At the owners' meeting on 19 March 2018, the CSC and Knight Frank claimed that after the CSC found out from the URA on 26 February 2018 that there would be no [DC], they had engaged in extensive marketing efforts to update potential purchasers of this error in [DC]. It would therefore be reasonable to expect that *meetings would have been held to discuss these extensive marketing efforts, if there were any*. However, despite a request on 15 March 2018 by some of the [subsidiary proprietors] for a copy of *all the CSC meeting minutes to date*, there were no records kept of meetings, if any, *after the update from the URA on 26 February 2018*. [emphasis added]

210 In the defendants' ground of objection before the Board, they were referring to the minutes of all the CSC meetings that had been held during the period between 26 February 2018 to 15 March 2018 inclusive. This was not the ground of objection before the High Court as submitted at the hearing. Also, in the defendants' ground of objection before the Board, they did not mention that the CSC failed to keep and/or display the minutes of the EGM on 9 September 2017 and the owners' meetings on 25 January 2018 and 19 March 2018, although the defendants could have mentioned it. The defendants were thus not allowed to raise it before the High Court, pursuant to s 84A(4A).

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185 See Kok's 1st affidavit at p 644.

211 In any event, I found that the CSC did not breach paras 9(1) and 9(2) of the Third Schedule by not displaying the minutes of the three meetings complained of. Paragraphs 9(1) and 9(2) state:

> **Keeping of records**
>
> 9.—(1) The collective sale committee shall keep minutes of **its proceedings** and shall cause minutes of **general meetings** convened in accordance with the Second Schedule to be kept.
>
> (2) If the management corporation is required by its by-laws to maintain a notice board, the collective sale committee shall cause a copy of the minutes of **a meeting of the collective sale committee** to be displayed on the notice board within 7 days after the meeting.
>
> …
>
> [emphasis added in bold]

Paragraphs 9(1) and 9(2) do not require the CSC to display the minutes of the EGM or the owners' meetings.

212 I also did not find that the Court of Appeal in *Harbour View Gardens (CA)* extended the statutory requirements in paras 9(1) and 9(2) beyond what is stated in those paragraphs. At [36] of the decision, which the defendants referred me to, the Court of Appeal was referring to "the proceedings of both [collective sale committee] meetings and of general meetings of the subsidiary proprietors", and it cited paras 8(3) and 9(1) in this regard. The Court of Appeal also expressly stated that the requirements in para 9(2) (and para 9(4)) pertained to collective sale committee meetings.

213 That said, it seemed that Lim's affidavit was wrong when he had stated that the CSC had published the minutes of the EGM on 9 September 2017, when this had not in fact been done (see [208] above). There was no explanation as to why he made such an error.

Minority owners raising valid concerns over the collective sale

(1) Parties' arguments

214 The sixth sub-issue on the question of good faith pertained to the CSC's failure to allow minority owners to raise valid concerns over the collective sale on multiple occasions throughout the collective sale process.[186] The defendants also alleged that the CSC did not act with impartiality and good faith to safeguard the interests of minority owners whom the CSC publicly reprimanded and ridiculed.[187] The defendants further alleged that the CSC condoned the unruly behaviour of the majority owners by not asking them to calm down when they booed the minority owners and prevented them from expressing their concerns.[188] The defendants submitted that the CSC owed the duty of even-handedness to both majority owners and minority owners.[189]

215 On the other hand, the plaintiffs submitted that the CSC, with Knight Frank, had always been prepared to listen to the views of all subsidiary proprietors whether they were majority owners or minority owners.[190] The plaintiffs also submitted that the conduct of other subsidiary proprietors was not within the CSC's control and could not be imputed to the CSC.[191] The plaintiffs also contended that the conduct of other subsidiary proprietors was irrelevant to the merits of the present application before the court.

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186 Defendants' Written Submissions at para 186.

187 Defendants' Written Submissions at para 192.

188 Defendants' Written Submissions at para 188.

189 Defendants' Written Submissions at para 190.

190 Plaintiffs' Skeletal Submissions at para 119.

191 Plaintiffs' Skeletal Submissions at para 120.

(2) Decision

216 It was not disputed that this ground of objection pertaining to the CSC's failure to allow minority owners to raise valid concerns had been raised before the Board.[192]

217 I did not find that the CSC prevented minority owners from raising valid concerns over the collective sale. From the defendants' own affidavit, they stated that "[t]he 8th Defendant, together with the 3rd Defendant and the 9th Defendant, had only spent an hour or so with Knight Frank where they did discuss the [reserve price] among other things. The CSC had also joined this meeting on their own accord."[193]

218 In considering the transcript provided of the audio recording of the owners' meeting on 19 March 2018,[194] I found that the minority owner in question (who is one of the defendants) had been given the floor to raise his concerns, and in particular, over the issue concerning the nil DC.[195] I found that the CSC (and R&T) did provide responses to his questions, even if the responses provided were more argumentative than necessary and even if the minority owner might not have been satisfied with the responses.

219 The defendants' complaints must be considered in the context of the collective sale process where there were majority owners and minority owners who held opposite positions towards the collective sale. It is unfortunate that at times tensions are unnecessarily high during this process, and perhaps even

192 See Kok's 1st affidavit at p 648.

193 Kok's 1st affidavit at para 171.

194 Kok's 1st affidavit at pp 210–220.

195 Kok's 1st affidavit at pp 215–216.

higher at meetings with subsidiary proprietors when each camp may express its views in language which is unnecessarily strong.

220 It may be that the CSC members could have conducted themselves with more courtesy when communicating with the minority owners even though the minority owners might have been perceived as repeating their points or raising irrelevant questions. The CSC members having conduct of the various meetings could also have put in more effort to inform the majority owners that there was no reason to boo others. That said, it is not easy to urge restraint when emotions run high. It was difficult for me to find that the CSC breached its duty of even-handedness when conducting the various meetings or in their various modes of communication with the subsidiary proprietors. I also noted again that the defendants were not challenging the method of distributing the proceeds of sale.

DC

221 The seventh sub-issue on the question of good faith pertained to the DC, which was another main factor that the defendants raised to allege bad faith. I begin by summarising the relevant facts in this regard.

222 Knight Frank had given three estimates of the DC to the subsidiary proprietors. The amount of each estimate increased, from an initial estimate of $48.4m to the third and last estimate of $63.19m. Knight Frank had also alerted the subsidiary proprietors about the likelihood of an increase in the DC rates from 1 March 2018.

223 Knight Frank and the CSC did not wait for a formal response from URA to obtain the DC verification, before the Property was launched for sale on 26 January 2018. Knight Frank had earlier appointed Ong & Ong to make the

relevant searches to obtain the DC verification but Knight Frank and the CSC did not wait for the outcome. Instead, soon after the consent threshold of the subsidiary proprietors of lots with not less than 80% of the share values and not less than 80% of the total area of all the lots was reached, the Property was launched for sale by way of public tender on 26 January 2018, with the outcome of the DC verification pending.

224 As it turned out, URA sent a reply letter dated 26 February 2018, to Ong & Ong. A copy was sent to the CSC who sent it to Knight Frank. The letter contained information which revealed that no DC was in fact payable.

225 Knight Frank immediately began updating potential bidders in various ways. In urgent discussions between Knight Frank and the CSC, Knight Frank advised the CSC not to extend the closing date of the tender, *ie*, 7 March 2018 and the CSC did not disagree (see [21] above).

226 In the meantime, Colliers had also been appointed to give an independent valuation of the Property as at 7 March 2018.

227 On that date, the tender box was opened. There were:

(a) one expression of interest at $480m;

(b) one bid at $580m; and

(c) a second bid at $610m.

228 Colliers' report was also opened. Colliers valued the Property at $542m.

229 As the higher of the two bids was higher than both the valuation by Colliers and the reserve price of $550m, the CSC awarded the tender on 8 March

2018 to the joint-bidders who had submitted that bid. The joint-bidders subsequently nominated the purchaser to purchase the Property in place of them.

(1) Parties' arguments

230 I mention first that the defendants had originally argued in their written submissions that, since there was ultimately no DC, the requisite 80% approval obtained for the collective sale (as required under s 84A(1)(*b*)) was invalid because it had been given in reliance on a reserve price that had been calculated on the contrary basis that there was a DC payable.[196] As the defendants further explained at the hearing, the CSC and Knight Frank had allegedly misrepresented to the subsidiary proprietors that the last DC estimate was $63.19m and that the DC (rate) was increasing.[197] However, the defendants eventually accepted that the CSC and Knight Frank did not make any misrepresentation of fact to the subsidiary proprietors as initially suggested since it was clear that the $63.19m figure was an estimate subject to verification.[198] Accordingly, I proceeded on the basis that the defendants were not maintaining their original submission that the requisite 80% approval obtained for the collective sale was invalid because of a misrepresentation of fact.

(A) DEFENDANTS' ARGUMENTS

231 As a preliminary point, with regard to the arguments raised under this ground of objection, the defendants submitted that Knight Frank was the CSC's

196 See Defendants' Written Submissions at para 87.

197 See NAs 14/09/18 at p 91 lines 16–25, p 92 lines 1–4.

198 See NAs 14/09/18 at p 93 lines 12–17.

agent, and the CSC could not simply be absolved from their duties by delegating them to their professional adviser.[199]

232 The defendants' objection was that the DC verification was material. This was so especially since the subsidiary proprietors had been informed of increasing estimates of the DC before the launch of the Property for sale,[200] and about the likelihood of an increase in the DC rates from 1 March 2018.[201] The defendants submitted that as a result, the subsidiary proprietors were given the impression that the reserve price had to be kept low and that they should sign the CSA as soon as possible.[202] The defendants submitted that the DC had a bearing on the reserve price and on bids from potential bidders, and the CSC and Knight Frank had repeatedly represented to the subsidiary proprietors the same.[203] The relation was that if the DC increased, the reserve price and bid prices would have to be lowered accordingly.[204]

233 The defendants alleged that the CSC should have obtained the DC verification from URA before the launch of the Property for sale (and before fixing the reserve price).[205] Knight Frank's terms of appointment stipulated that the searches to obtain the DC verification were to be done before the Property was launched for sale.[206] The defendants submitted that the CSC should not have rushed to have the Property launched for sale without obtaining the DC

199 Defendants' Written Submissions at para 58.

200 See Defendants' Written Submissions at para 78.

201 See Kok's 1st affidavit at p 192.

202 Defendants' Written Submissions at para 80.

203 Defendants' Written Submissions at paras 71–72.

204 Defendants' Written Submissions at paras 73.

205 Defendants' Written Submissions at para 56.

206 See Defendants' Written Submissions at paras 66, 68.

verification,[207] because there was no immense time pressure to sell the Property.[208] They contended that there was no specific urgency like that in *Shunfu Ville (CA)*, where the collective sale committee there was driven to meet the statutory timelines imposed for the collective sale (at [69]).[209] In this case, the statutory deadline for making the collective sale application for the Property was in January 2019 (see paras 1–2 of the First Schedule).[210] The defendants also submitted that the property market was still vibrant in early 2018, such that the government subsequently introduced cooling measures in July 2018 to cool the collective sale fever.[211] As Knight Frank had expected to obtain the DC verification in two weeks' time from the launch of the Property for sale, the CSC could and should have waited those two weeks instead before having the Property launched for sale.[212]

234 The defendants also submitted that Knight Frank was inept in attempting to calculate the DC, when that should have been done by a "qualified person" (like an architect) as listed in the First Schedule to the Planning Act (Cap 232, 1998 Rev Ed).[213] The defendants contended that this resulted in Knight Frank requesting for and relying on incorrect information in arriving at its DC estimates.[214]

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207 See Defendants' Written Submissions at para 64.

208 See Defendants' Written Submissions at para 124.

209 NAs 12/09/18 at p 133 lines 18–25, p 134 lines 1–2.

210 Defendants' Written Submissions at para 123(e).

211 Defendants' Written Submissions at para 124.

212 See Defendants' Written Submissions at paras 64, 125; NAs 12/09/18 at p 135 lines 10–21; NAs 14/09/18 at p 96 lines 13–17.

213 See Defendants' Written Submissions at para 59; NAs 12/09/18 at p 108 lines 14–18, p 112 lines 3–7.

214 Defendants' Written Submissions at para 60.

235 Furthermore, the defendants submitted that when the DC verification was obtained on 26 February 2018 through URA's letter, the CSC should have extended the closing date of the tender to give the market time to react appropriately to the change in information pertaining to the DC.[215]

236 The defendants also submitted that the CSC should have informed and consulted the subsidiary proprietors about this material information so that they could decide whether to raise the reserve price. Alternatively, the CSC should have increased the reserve price.[216] Increasing the reserve price might in turn have yielded a higher bid from potential bidders. With the dramatic change in DC from the estimate of $63.2m to zero, the defendants contended that the CSC should have had reasonable doubts whether the original mandate to sell the Property at the reserve price of $550m still reflected the wishes of the subsidiary proprietors.[217] The CSC should thus have halted the tender process to seek a fresh mandate from the subsidiary proprietors on how to proceed.

237 The CSC did not update the subsidiary proprietors that no DC was payable at any time before the close of the tender.[218] The CSC only informed them of this information at the owners' meeting on 19 March 2018, 12 days after the tender had closed and almost a month after the CSC had been informed of it.[219] Consequently, the CSC, Knight Frank and R&T were questioned on their course of conduct with respect to the information concerning the DC, even by those in support of the collective sale.[220]

238 The defendants also argued that the publicity of the information that no DC was payable should have been via the same channels as those when the

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215 Defendants' Written Submissions at para 115.

216 Defendants' Written Submissions at para 99.

Property had been first marketed.[221] Yet, Knight Frank advertised this information for only one day on 1 March 2018 in the Business Times.[222] Potential bidders were also not informed of the maximum allowable development potential of the site of the Property.[223]

239 Further, the defendants submitted that the CSC members did not hold any CSC meeting after being informed that no DC was payable to discuss how to proceed in relation to the tender process, although all decisions of the CSC had to be made at CSC meetings pursuant to para 8 of the Third Schedule.[224] The defendants further argued that while Lim indicated that the CSC members had discussions over the phone, they did not provide any documentary evidence of the phone messages or minutes of these discussions and were thus in breach of paras 8(3) and 9(1) of the Third Schedule.[225]

240 The defendants submitted that the CSC had acted wrongly in sticking to the original deadline for the close of the tender. The defendants argued that it was unlikely that the sale price of $610m was the appropriate sale price in the circumstances.[226] The defendants also suggested that the manner in which the

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217 See Defendants' Written Submissions at paras 86–87, 94–95.

218 Defendants' Written Submissions at para 83.

219 Defendants' Written Submissions at para 86.

220 See Defendants' Written Submissions at paras 91–93; NAs 12/09/18 at p 184 lines 10–11.

221 See NAs 12/09/18 at p 166 lines 5–8.

222 See Defendants' Written Submissions at para 117.

223 See Defendants' Written Submissions at para 119.

224 See Defendants' Written Submissions at para 96.

225 See Defendants' Written Submissions at para 97; see also Lim's 4th affidavit at paras 13, 18.

226 See Defendants' Written Submissions at para 117(c).

SPA was entered into evidenced that the sale was conducted with undue haste.[227] The SPA itself was a document with tracked changes, amendments and cancellations, and was entered into within a day of the close of the tender.

241 The defendants argued that the CSC had also acted wrongly in relying on Colliers' report which was fundamentally flawed.[228] On this point, the defendants relied on a belated valuation by Asian Assets Allianz Pte Ltd ("AAA") dated 20 August 2018 which valued the Property at $637m.[229]

242 To summarise, the defendants submitted that the CSC breached three duties: (i) the duty to consult the subsidiary proprietors, (ii) the duty to make full disclosure of relevant information, and (iii) the duty to obtain the appropriate sale price in the circumstances.[230] The CSC had these duties as a fiduciary and the trustee of the power of sale for all the subsidiary proprietors, and the defendants added that they were expressly spelt out to be the duties of the CSC pursuant to the resolution by the subsidiary proprietors at the EGM on 1 July 2017.[231]

243 The defendants submitted that the above conduct of the CSC was evidence of bad faith.

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227 See NAs 12/09/18 at p 176 lines 23–25, p 177 lines 1, 5–10.

228 Defendants' Written Submissions at p 50 (heading F), para 111.

229 See Wilson Lim Yen Kia's affidavit filed on 20 August 2018 ("Dr Lim's affidavit") at p 38.

230 See NAs 12/09/18 at p 172 lines 17–22.

231 See Defendants' Written Submissions at para 90; NAs 12/09/18 at p 162 lines 20–24; Lim's 1st affidavit at pp 409, 418.

(B) PLAINTIFFS' ARGUMENTS

244 The plaintiffs disagreed.

245 The plaintiffs submitted that the CSC had relied on Knight Frank to advise them of the necessary steps in connection with the collective sale, including when to carry out the DC verification.[232] The plaintiffs and Knight Frank said that Knight Frank was to obtain the DC verification only after the 80% consent threshold had been achieved. This was done. The plaintiffs contended that this was in line with market practice for the "qualified person" (in this case, Ong & Ong) to be appointed to obtain the DC verification only after the 80% consent threshold had been achieved, because the DC verification would generally cost around $20,000.[233] The plaintiffs submitted that there was no obligation on Knight Frank to obtain the DC verification before the launch of the Property for sale.[234] Instead, they argued that it was market practice for the marketing agent to estimate the DC at the early stages of the sale process and thereafter market the Property based on the estimated DC.[235] The plaintiffs also contended that it was market practice to launch the Property for sale and seek the DC verification concurrently especially when there was an urgency for such a launch.[236] The plaintiffs submitted that there was such a real urgency in this case because there were multiple competing land sites which were up for sale in the first quarter of 2018, whether via public tender or private contract.[237]

232 See Plaintiffs' Skeletal Submissions at para 101.

233 See Plaintiffs' Skeletal Submissions at para 84(1); Loh's 1st affidavit at para 30; NAs 13/9/18 at p 138 lines 13–17.

234 Plaintiffs' Skeletal Submissions at para 101.

235 Plaintiffs' Skeletal Submissions at para 84(2).

236 Plaintiffs' Skeletal Submissions at para 102.

237 See Plaintiffs' Skeletal Submissions at para 103; Lim's 3rd affidavit at para 19; Loh's 1st affidavit at para 35.

In considering the market conditions, Knight Frank also considered whether the government would introduce any cooling measures.[238]

246 The plaintiffs also submitted that Knight Frank had taken the necessary steps to estimate the DC and each estimate it provided had been calculated with the latest information available to it at the relevant time.[239] The plaintiffs contended that Knight Frank's overall message to the subsidiary proprietors was that its DC estimates were subject to verification.[240] The plaintiffs submitted that there was no evidence of any subsidiary proprietor who had signed the CSA: (i) in reliance of the alleged representation that the DC was rising and he should thus sign the CSA as soon as possible; or (ii) seeking to withdraw from the CSA after being informed that no DC was payable at the owners' meeting on 19 March 2018.[241]

247 Further, the plaintiffs suggested that the DC was not material. They submitted that there was no direct correlation between (a) the DC and bid prices,[242] (b) the DC and the reserve price[243] and (c) the reserve price and bid prices.[244] The plaintiffs thus argued that there was no obligation under the CSA and no need for the CSC to increase the reserve price upon learning that no DC was payable since there was no guarantee that higher bid prices would have been received.[245] Instead, the plaintiffs contended that the marketing strategy of

238 Loh's 1st affidavit at para 35.

239 Plaintiffs' Skeletal Submissions at para 107.

240 Plaintiffs' Skeletal Submissions at para 110.

241 Plaintiffs' Skeletal Submissions at paras 105–106.

242 Plaintiffs' Skeletal Submissions at para 55.

243 Plaintiffs' Skeletal Submissions at para 56.

244 Plaintiffs' Skeletal Submissions at para 58.

245 Plaintiffs' Skeletal Submissions at paras 57, 61.

the CSC (and Knight Frank) was to keep the reserve price reasonable to encourage more competition between potential bidders and in turn drive up bid prices.[246]

248 The plaintiffs also submitted that the defendants had not raised before the Board the ground of objection that the CSC required or should have sought fresh instructions or guidance from the subsidiary proprietors where there was a material change in the actual DC from Knight Frank's last DC estimate.[247] The plaintiffs contended that in any event, the CSA did not require the CSC to seek any fresh instructions or guidance where there was a material change in circumstances,[248] and the subsidiary proprietors had authorised the CSC to sell the Property as long as the sale price was above the reserve price (and the independent valuation price, which in this case was Colliers' valuation).[249] The plaintiffs added that there was no utility in immediately notifying the subsidiary proprietors that no DC was payable,[250] and that all subsidiary proprietors would be deemed to have been made aware of this fact by the time Knight Frank advertised it in the Business Times on 1 March 2018.[251]

249 Furthermore, the plaintiffs said that Knight Frank had acted promptly to notify potential bidders about the fact that no DC was payable. Immediately after Knight Frank knew that no DC was payable, it undertook extensive marketing efforts to publicise this fact, including emailing some 652 potential

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246 Plaintiffs' Skeletal Submissions at para 59.

247 Plaintiffs' Skeletal Submissions at paras 9(4), 64.

248 Plaintiffs' Skeletal Submissions at para 65.

249 Plaintiffs' Skeletal Submissions at para 65; Kok's 1st affidavit at p 231, cl 4.4.

250 Plaintiffs' Skeletal Submissions at para 66.

251 Plaintiffs' Skeletal Submissions at para 67.

bidders on 26 February 2018.[252] The plaintiffs argued that potential bidders would have been able to react quickly to the news as they would have done their homework already. Given the large site of the Property, they would have conducted their feasibility studies ahead of time pending the DC verification.[253] The DC was just an acquisition cost item and it would be a question of simply computing the figures depending on whether a DC was payable.[254] This cost item would also be recouped by passing it on to future purchasers.[255] The plaintiffs further argued that by the close of the tender, all potential bidders had in fact been informed that no DC was payable, and the market, which was weak at that time, had fully reacted to this new information.[256] The plaintiffs added that five potential bidders had also requested a site inspection of the Property.[257]

250 The plaintiffs thus submitted that there was no need to extend the closing date of the tender and there was no request for such an extension.[258] On the other hand, the plaintiffs argued that a unilateral extension by the CSC of the closing date of the tender would only send the signal that the Property was undesirable and might be construed as a sign of desperation.[259] The plaintiffs also contended that the defendants' argument that the CSC should have extended the closing date of the tender needed to be particularised, *ie*, the defendants had to state specifically how long such extension should be.[260]

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252 See Plaintiffs' Skeletal Submissions at paras 41, 62(1).

253 Loh's 1st affidavit at para 40.

254 Loh's 1st affidavit at para 40; NAs 13/09/18 at p 148 line 8; NAs 14/09/18 at p 4 lines 22–23, p 10 line 1.

255 Plaintiffs' Skeletal Submissions at para 55; Loh's 2nd affidavit at para 6.

256 See Plaintiffs' Skeletal Submissions at para 63.

257 See Plaintiffs' Skeletal Submissions at para 62(2).

258 Plaintiffs' Skeletal Submissions at paras 62(3), 63.

259 Lim's 4th affidavit at para 17.

251 The plaintiffs also submitted that the CSC and Knight Frank had chosen to adopt a "wait and see approach" to the tender process, where the tender would be closed as scheduled to ascertain the market's interest in the Property with the bids submitted.[261] Until that time, the CSC would also consider any request for an extension of the closing date of the tender. Thereafter at the close of the tender, the CSC did not have to award the tender to any bidder and could decide to launch the Property for sale again by public tender, if needed.[262]

252 The plaintiffs argued that in any event, even if the CSC or Knight Frank had breached any of its duties, the defendants had not suffered any prejudice because the higher bid was more than 12.5% higher than Colliers' valuation and Colliers' valuation was valid whereas the valuation by AAA was not.[263] The plaintiffs explained that the CSC had awarded the tender to the joint-bidders the day after the tender was closed, because the joint-bidders had required the CSC to decide whether to award the tender to them by 3pm on 8 March 2018.[264]

(2) Decision

(A) PRELIMINARY POINTS

253 I make two preliminary points in relation to this ground of objection pertaining to the DC.

254 First, I found that the defendants had raised before the Board the complaint that the CSC should have sought a fresh mandate from the subsidiary

260 See NAs 13/09/18 at p 77 lines 6–11.

261 See Lim's 4th affidavit at paras 10–11, 13.

262 See Lim's 4th affidavit at paras 17–18.

263 Plaintiffs' Skeletal Submissions at para 68.

264 See Kok's 1st affidavit at p 490.

proprietors upon learning that no DC was payable. Before the Board, the defendants stated:[265]

> Further, once the CSC found out that there was no [DC], the CSC ought to have halted the tender process to seek a fresh mandate from the [subsidiary proprietors] on whether to proceed at the [reserve price] of $550 million or to hold a re-tender. With no [DC], the [subsidiary proprietors] would likely have been able to set a higher [reserve price].

255 It was not disputed that the other aspects of the ground of objection pertaining to the DC had been raised before the Board.[266]

256 Second, as mentioned at [188]–[189] above, while the CSC could rely on the advice of their professional advisers, Knight Frank and R&T, the CSC could not simply delegate their duties to the professional advisers or simply rely on the advice given to excuse every lapse on the part of the CSC in respect of their own duties. In any case, Knight Frank and R&T were also the CSC's agents for the purposes of the collective sale. A finding that the transaction was not in good faith under s 84A(9)(*a*)(i) did not necessarily need to be confined to the conduct of the CSC alone but could take into account the conduct of their professional advisers too.

(B) IMPORTANCE OF THE DC

257 I turn to consider the importance of the DC. I was of the view that the DC verification was material. It was absurd for the plaintiffs and Knight Frank to try and downplay its importance for the hearing of the plaintiffs' application to the court.

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265 Kok's 1st affidavit at p 643.

266 See Kok's 1st affidavit at pp 636–637, 641–644, 647.

258 In a situational update from the CSC dated 18 October 2017, which was provided with inputs from Knight Frank, the CSC had stated that the DC was one of the factors that had been taken into consideration to establish the reserve price.[267] It was not disputed that the reserve price was important to the subsidiary proprietors as they would not be obliged to sell if a bid was below the reserve price.

259 While it might be likely that potential bidders would not place too much weight on the reserve price when deciding how much the Property was worth, this did not mean that the DC was irrelevant to them. On the contrary, they would still take into account the DC. Indeed, Knight Frank said as much when it sent a letter dated 8 December 2017 to alert the subsidiary proprietors of the high likelihood that DC rates would rise from 1 March 2018.[268] Furthermore, the fact that Knight Frank had to act urgently to inform potential bidders that there was no DC payable proved that the DC was material information to such parties.

260 In summary:

(a) the DC was important to potential bidders; and

(b) the DC was also a factor in determining the reserve price which was more important to subsidiary proprietors than to potential bidders.

261 In this regard, the defendants submitted that with no DC, the reserve price should have been increased. On the other hand, the plaintiffs brought to my attention that after the subsidiary proprietors were informed of an increase

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267 Kok's 1st affidavit at pp 183–184.

268 Kok's 1st affidavit at pp 192–194.

in Knight Frank's estimate of the DC from an earlier estimate of around $58.5m to $63.19m, the reserve price was not reduced but remained at $550m.[269]

262 I accepted that a reduction in the DC would not necessarily mean an increase in the reserve price. Likewise, an increase in the DC would not necessarily mean a reduction in the reserve price.

263 I also accepted that, in this case, even if the subsidiary proprietors were minded to increase the reserve price as a consequence of the actual DC being materially less than Knight Frank's last estimate, the increase in the reserve price would also not necessarily be dollar for dollar. For example, they might decide to increase the reserve price by, say, only $20m even though the actual difference between the actual DC and the last estimate was $63.19m. Indeed, the subsidiary proprietors might even decide not to change the reserve price at all.

(C) KNIGHT FRANK'S DC ESTIMATES

264 I turn next to the question as to whether Knight Frank could provide estimates of the DC to the subsidiary proprietors. Section 13(1A) of the Planning Act provides that a person applying for planning permission is to appoint an architect or engineer to carry out certain duties. The Planning Act does not preclude Knight Frank from making DC estimates. However, because these were only estimates, the CSC should have proceeded with more caution.

265 In so far as the defendants relied on AAA's comments that Knight Frank had based its previous estimates of the DC on the wrong basis,[270] Knight Frank

269 See Plaintiffs' Skeletal Submissions at para 57.

270 See Defendants' Written Submissions at para 60; Dr Lim's affidavit at pp 29–32.

disputed this. It was unnecessary for me to decide how Knight Frank had arrived at the wrong figures as there was no suggestion that the CSC should have known of the wrong basis. I add that regardless of the correctness or incorrectness of Knight Frank's methodologies for estimating the DC, the fact of the matter was that Knight Frank was way off in its assessment of the actual DC. Knight Frank's third and last estimate to the subsidiary proprietors on 25 January 2018 had been $63.19m when there was in fact no DC payable. As the defendants drew to my attention, Knight Frank's over-estimation of $63.19m was much worse than the over-estimation in *Chua Choon Cheng and others v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724.[271] The Court of Appeal, in describing the facts of that case, remarked at [12] that the DC (which was factored into the sale price) had been "grossly over-estimated by some $6.6m", where the actual DC of $950,894 was "a startling 87% difference from the original estimate of $7.6m".

(D) OBTAINING THE DC VERIFICATION BEFORE THE LAUNCH OF THE PROPERTY FOR SALE

266 Should Knight Frank have obtained the DC verification before the launch of the Property for sale? Leaving aside the evidence for the time being, I would have thought that, as a matter of general principle, such important information should logically be obtained first before a sales launch so that subsidiary proprietors are making an informed decision as to what reserve price to set and also eventually what price to accept. Also, even though I accepted that the reserve price is not likely to influence the bid price from potential bidders, the DC itself does influence the bid price. Therefore, it is also preferable if the DC verification is provided to potential bidders earlier rather than later. I

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271 Defendants' Written Submissions at para 70.

come now to the terms of the scope of services which Knight Frank was to provide. The terms of the scope of services were included in the CSA (under Sched 5 to the CSA) and both sides relied on the terms.[272]

267 While it was true that the terms provided for Knight Frank to carry out the exercise to obtain the DC verification upon achieving the 80% consent threshold, this did not mean that Knight Frank was to obtain the DC verification concurrently in the period when the public tender remained open.

268 Both the CSC and Knight Frank had overlooked the following. Knight Frank had divided its scope of work into three stages: "Pre-Sale Preparation", "Marketing Stage" and "Post Marketing Stage". The provision about obtaining the DC verification was placed only under the first stage, *ie*, the Pre-Sale Preparation. The second stage, *ie*, the Marketing Stage, did not include any work pertaining to the receipt of or evaluation of the DC verification.

269 Likewise, in an "Estimated Project Timeline" provided by Knight Frank at the EGM on 9 September 2017 which showed the sequence of various events, the step to carry out the DC verification was shown as occurring before the launch of the Property for sale.[273] There was no other step shown to suggest that the receipt of and evaluation of the DC verification would be done concurrently in the period when the public tender remained open.

270 Quite clearly, Knight Frank's own terms of appointment envisaged that the DC verification was to have been carried out and concluded before the

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272 See Kok's 1st affidavit at pp 254–256.

273 Lim's 1st affidavit at p 605.

launch of the Property for sale. It was therefore not open to Knight Frank or the CSC to try and argue that it was market practice to do otherwise.

271 It was not the case of the plaintiffs that the CSC and Knight Frank knew that Knight Frank was supposed to obtain the DC verification first but, for some good reason, they both agreed not to stick to the original sequence envisaged and agreed instead to obtain the DC verification later. Instead, it was the plaintiffs' case that Knight Frank's terms of appointment did not require Knight Frank to obtain the DC verification first before the launch of the Property for sale. As I have mentioned, the plaintiffs were wrong on this point.

272 It seemed that the CSC and Knight Frank were in some haste to launch the sale because of concerns about competing land sites and the likelihood that DC rates would be raised from 1 March 2018. Even then, they should have been more careful about the possibility that the DC might be materially different from Knight Frank's latest estimate. After all, one of the marketing agents which submitted a competing proposal to the CSC had considered that the DC payable ranged from *zero* to $38.7m.[274] I found that there was some merit in the defendants' argument that the CSC could have waited two weeks to obtain the DC verification before having the Property launched for sale, since that was Knight Frank's expectation with regard to when the DC verification would be obtained (although I noted that the DC verification was eventually obtained around four weeks later).

273 The truth of the matter was that Knight Frank and the CSC, as well as R&T, were all complacent about the DC. Even though Knight Frank had made it clear that Knight Frank's estimates of the DC were subject to verification,

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274 Lim's 1st affidavit at pp 556, 560.

they had all assumed that there would be no material difference between the last estimate of the DC given by Knight Frank before the launch of the Property for sale and the actual DC as verified. This was why the CSC, Knight Frank and R&T were prepared to let the Property be launched for sale without obtaining the DC verification first. That was also why none of them had highlighted to the subsidiary proprietors that the actual DC could be very different from the last estimate provided. Apparently neither Knight Frank nor R&T advised the CSC to ask for guidance from the subsidiary proprietors as to what the CSC should do in the event of a material difference.

274 Had the CSC, Knight Frank and R&T given adequate thought to the possibility of a material difference, they ought to have realised that it would have been prudent to obtain the DC verification before the Property was launched for sale. Alternatively, they ought to have highlighted to the subsidiary proprietors that the actual DC could be very different and ought to have sought consensus as to what the CSC should do if in fact there was a material difference.

275 Indeed, it was ironic that the CSC's situational update dated 18 October 2017 to the subsidiary proprietors had stated, "The worse thing that can happen is a decision made based on wrong information."[275]

(E) EXTENDING THE CLOSING DATE OF THE PUBLIC TENDER

276 As a preliminary point, I found that in submitting that the CSC should have extended the closing date of the tender, the defendants had particularised the step that, in their view, should have been taken to obtain the appropriate sale price in the circumstances (see *Shunfu Ville (CA)* at [61(c)]). I disagreed with

[275] Kok's 1st affidavit at p 188.

the plaintiffs' argument that the defendants had to further particularise their submission to state specifically how long such extension should be (see [250] above).

277 In considering whether the CSC should have extended the closing date of the tender, I set out in brief the following chronology:

(a) 26 January 2018: the Property was launched for sale by way of public tender;

(b) 9 February 2018: the approximate time by which Knight Frank had stated in its marketing efforts that the actual DC would be determined (*ie*, within the next two weeks);

(c) 26 February 2018: Knight Frank and the CSC learnt that no DC was payable, and Knight Frank then publicised the same to potential bidders; and

(d) 7 March 2018: the tender was closed as scheduled.

278 The DC verification result was a material development. There was nil DC instead of the $63.19m given in the last estimate by Knight Frank. It was unclear when R&T knew about this development.[276]

279 In my view, as the information concerning the nil DC was received barely over a week, *ie*, nine days, before the close of the tender, the CSC should have extended the closing date of the tender by at least one week. Knight Frank had estimated in its marketing efforts that potential bidders would have known the actual DC around a month before the close of the tender, but this time

[276] See NAs 14/09/18 at p 17 lines 6–9.

estimation was off and potential bidders had around 2.5 weeks less to consider the information concerning the actual DC.

280 Extending the closing date of the tender by at least one week would have given Knight Frank more time to disseminate this material information concerning the nil DC and potential bidders would have had more time to absorb such information and respond if they so wished, although I agreed that Knight Frank did act quickly to disseminate the information. On the day it knew that no DC was payable, Knight Frank emailed some 652 potential bidders to disseminate this information, presumably the same ones to whom Knight Frank had first publicised the Property when it was launched for sale (see [18] above). Additionally, Knight Frank advertised that no DC was payable in the Business Times on 1 March 2018. In this regard, I was of the view that Knight Frank did not have to inform potential bidders of the development charge baseline as given in URA's letter, because that did not indicate the maximum allowable development potential of the site of the Property (see [308] and [314] below). The development potential was guided by the URA Master Plan 2014, and Knight Frank had already informed potential bidders in its marketing materials when the Property was launched for sale that the URA Master Plan 2014 permitted a GPR of 1.4 (see [18] above).

281 Nevertheless, the CSC and Knight Frank had not given adequate thought to the question of extending the closing date of the tender.

282 The fact that there was eventually no request from potential bidders for such an extension did not justify the CSC and Knight Frank's earlier decision not to have an extension. I also did not think that a unilateral extension of the closing date of the tender might be construed as a sign of desperation. This

might be so only if there was no good reason for an extension, but here there was a very good reason to do so.

283 Further, I did not think it was a good reason to say that the CSC did not have to award the tender to any bidder and could decide to launch the Property for sale again if needed. Instead, the idea should have been to give enough time to potential bidders to respond so as to get the appropriate sale price and to avoid, as much as possible, having to relaunch the Property for sale.

(F) INFORMING AND CONSULTING THE SUBSIDIARY PROPRIETORS

284 Furthermore, the CSC should have informed and consulted the subsidiary proprietors about this material development concerning the nil DC.

285 As the trustee of the power of collective sale, the CSC had duties to act conscientiously in exercising this power and to make full disclosure of relevant information. These were continuing duties. As the Court of Appeal stated in *Horizon Towers (CA)*, "whenever there is reasonable doubt as to the proper course to adopt, the [collective sale committee] ought to seek fresh instructions or guidance from the consenting subsidiary proprietors from whom it draws its mandate" (at [166]). This is even if the collective sale agreement did not specifically require the collective sale committee to seek any fresh instructions or guidance where there was a material change in circumstances, as in this case. I noted here that the Court of Appeal emphasised the importance of the collective sale committee consulting the subsidiary proprietors who had already signed the collective sale agreement of new material information, and not just merely updating those who had not signed the collective sale agreement. A collective sale committee must not assume that as and when new material information arises in relation to the collective sale, the majority owners would

still simply agree with all the subsequent decisions the collective sale committee makes when these decisions affect the sale of the subsidiary proprietors' individual properties.

286 It was also not sufficient for the CSC to say that they had the power to increase the reserve price under the CSA,[277] because this power was only meant to facilitate and expedite the collective sale process. Indeed, if the actual DC was materially higher than the last DC estimate, the CSC had no authority to reduce the reserve price even if it might be prudent to do so. The CSC only had authority to increase the reserve price. It was also not sufficient for the CSC to say that the subsidiary proprietors had authorised the CSC to sell the Property as long as the sale price was above the reserve price and the independent valuation price. That was also not the point.

287 While a collective sale committee does not have to consult the subsidiary proprietors every time there is new information, the question as to whether the collective sale committee ought to do so depends particularly on the materiality of the information and whether it is something which may not have been within the reasonable contemplation of the subsidiary proprietors. Furthermore, seeking such fresh instructions is more critical when there is "reasonable doubt that [the collective sale committee's] original mandate no longer reflects the consensus of the consenting subsidiary proprietors" (*Horizon Towers (CA)* at [168(i)]).

288 Whether or not the reserve price would have been raised and whether or not potential bidders would have taken into account the reserve price, the point was that the subsidiary proprietors had been given, although inadvertently, an

[277] See Kok's 1st affidavit at p 248.

inaccurate impression about the DC (*ie*, in the light of the last DC estimate of $63.19m) and this should have been corrected immediately. The new information concerning the nil DC was material to the subsidiary proprietors. They should also have been given a chance to have their say as to what the next step should be. While the CSC and Knight Frank might have been acting under pressure of time and thus failed to update the subsidiary proprietors immediately, this was pressure which was self-created and arose from their decision not to obtain the DC verification before the Property was launched for sale. In this regard, an extension of the closing date of the tender of at least one week would have given the CSC time to call for an urgent meeting of the subsidiary proprietors or, if possible, a waiver of short notice of an EGM.

289 The information concerning the nil DC was also unlikely to have been within the reasonable contemplation of the subsidiary proprietors. As it was, when the subsidiary proprietors were subsequently informed about the new information at the owners' meeting on 19 March 2018, queries were raised as to why they were not informed more promptly. No one said that he had anticipated such a material difference between Knight Frank's last DC estimate and the actual nil DC as verified. Having said that, I accepted that no assenting subsidiary proprietor sought to withdraw from the CSA and apparently some subsidiary proprietors even added their signatures to the CSA on and after 19 March 2018 (see [28] above).

290 I found that, unfortunately, Knight Frank and the CSC did not even consider whether the new information should have been disclosed to the subsidiary proprietors at the material time. This was not a case where they had raised and discussed this question. It did not cross their minds.

291 In this regard, I reproduce what Lim (the chairman of the CSC) stated in his affidavit:[278]

> Given that one of [Knight Frank]'s proposed steps was to advertise the fact that no [DC] was payable, we did not focus on updating the subsidiary proprietors immediately about the [DC] as *this news would be publicly announced* ***in any event*** *when the newspaper advertisement was published. The CSC was also planning to update the owners at the owners' meeting* ***after the close of tender*** *on all relevant matters,* ***including the fact that no [DC] was payable****.* [emphasis added in italics and bold italics]

292 This paragraph could give the impression that the CSC did consider updating the subsidiary proprietors on the nil DC but did not focus on doing so as the CSC thought that a newspaper advertisement (*ie*, that in the Business Times on 1 March 2018) would bring the news to the attention of all the subsidiary proprietors in any event. However, the truth of the matter was that the CSC did not consider updating the subsidiary proprietors at all as their attention was only on what to do *vis-à-vis* the tender process. Had the CSC really considered this point of notifying all the subsidiary proprietors, the CSC would have realised that a newspaper advertisement would not have been adequate in doing so. Furthermore, the CSC would then also have ensured that the subsidiary proprietors were informed as soon as possible either before or immediately after the close of the tender. It was telling that when Knight Frank first sent the subsidiary proprietors a letter after the close of the tender on 8 March 2018 to inform them that a sale contract had been entered into, Knight Frank did not disclose the new information on the nil DC (see [27] above). This suggested that the point of disclosure was not on Knight Frank's mind and neither had the CSC impressed the point upon Knight Frank.

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278 See Lim's 4th affidavit at para 14.

293 I noted that in answering the queries at the owners' meeting on 19 March 2018 as to why the subsidiary proprietors were not informed more promptly on the nil DC, Chan had conceded (albeit very briefly): "I would concede we could have done better".[279] But even then, Lim sought to explain away this acknowledgment by Chan. In Lim's affidavit, he sought to qualify this acknowledgment by pointing to the statement from Chan following the acknowledgment: "but bear in mind it was 3.5 working days and the developers were watching this baseline number very quickly and we had to react very fast by taking out the ads …"[280] In my view, this qualification did not assist the CSC and instead suggested that they were resiling from Chan's admission that the CSC could have done better.

294 I noted that the CSC did not convene any CSC meeting after being informed that no DC was payable to discuss how to proceed in relation to the tender process. The discussions which they had with Knight Frank or internally amongst themselves were mostly through the use of the phone. The defendants suggested that all decisions of the CSC had to be made at CSC meetings and, consequently, minutes of such meetings should have been kept.

295 Paragraph 8 of the Third Schedule does seem to suggest that decisions of a collective sale committee are to be made at physical meetings of a collective sale committee. Paragraph 8(1) refers to a quorum for such a meeting and para 8(2) refers to a decision by the majority of members of the collective sale committee present and voting at any meeting of the collective sale committee. Paragraph 8 is silent on the question whether discussions and decisions of a collective sale committee may be made other than at a physical meeting. In

279 See Kok's 1st affidavit at p 213.

280 See Lim's 3rd affidavit at para 30; Kok's 1st affidavit at p 213.

times of urgency and in view of technological advances, it seemed incongruous to insist that all important decisions must be made at a physical meeting. I doubted that that is required. However, even if a physical meeting is not always necessary, the CSC members should have kept a written record of any discussions they had had with Knight Frank or amongst themselves whether through the use of the phone or in person especially on important matters.[281] Such a record could then be made available to the subsidiary proprietors if required. This would also be in accordance with para 9(1) of the Third Schedule which states that a collective sale committee "shall keep minutes of its proceedings". While the omission to keep such records was not evidence of a lack of good faith, it was an illustration of the low standards of the CSC.

(G) CONCLUSION

296 The CSC ought to have obtained the DC verification before the Property was launched for sale, or alternatively, sought consensus from the subsidiary proprietors as to what the CSC should do if in fact there was a material difference between Knight Frank's last DC estimate and the actual DC as verified. The CSC also acted wrongly in failing to extend the closing date of the tender by at least one week. Further, the CSC should have informed and consulted the subsidiary proprietors about the nil DC before the close of tender but failed to do so. They had been too focused on the potential bidders that they lost sight of the subsidiary proprietors.

297 Still, these breaches of duty did not conclude the issue whether the transaction was in good faith after taking into account only the sale price under s 84A(9)(*a*)(i)(A) (see *Thomson View Condominium (HC)* at [33]). Fortunately

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281 Lim's 3rd affidavit at para 60; Lim's 4th affidavit at paras 13, 18.

for the CSC, Colliers' valuation was just below the reserve price and the higher bid was higher than the valuation and the reserve prices. As mentioned at [104]–[105] above, the test of good faith is concerned with whether the sale price was the appropriate price in the circumstances, and all the facts of the case must be appraised in the round.

Colliers' valuation

(1) Parties' arguments

298 The question then was whether Colliers' valuation was fundamentally flawed or was at an undervalue as alleged by the defendants.[282] This pertained to the eighth and final sub-issue about good faith. The defendants thus submitted that Colliers' report failed to be a valuation report that satisfied the requirements in para 11(2) of the Third Schedule.[283]

299 It was not disputed that this ground of objection pertaining to Colliers' valuation had not been raised before the Board specifically.[284] However, the defendants submitted that since the CSC was relying on Colliers' valuation, the defendants should be permitted to show why it was unreliable.[285] Alternatively, the defendants argued that this ground of objection pertaining to Colliers' valuation could come under the broad issue of good faith which had been raised before the Board.[286]

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282 Defendants' Written Submissions at p 50 (heading F), para 111.

283 Defendants' Written Submissions at para 114.

284 Plaintiffs' Skeletal Submissions at para 9(5); Defendants' Written Submissions at para 196.

285 Defendants' Written Submissions at para 195.

286 Defendants' Written Submissions at para 196.

300 In summary, both Colliers' valuation and AAA's valuation took into account the fact that there was no DC. However, AAA's valuation at $637m,[287] which the defendants relied on, was much higher than Colliers' valuation at $542m. This was because both valuations were based on different premises.

301 Colliers' valuation was based on a GPR of 1.4 as permitted under the URA Master Plan 2014.[288] AAA's valuation was based on a GPR of 1.655. This was because AAA did not use the GPR provided under the URA Master Plan 2014. Instead, it used the information from the development charge baseline applicable to the Property, which it claimed provided the maximum allowable development potential of the site of the Property, obtainable by applying for permission from URA.[289]

302 The plaintiffs disputed AAA's valuation and argued that it was speculative whether a GPR higher than 1.4 would have been allowed by URA.[290] They also submitted that AAA's valuation was prepared with the benefit of hindsight, and was out of sync with the assessment of independent valuers, marketing agents and developers at the material time.[291]

303 In so far as AAA also criticised certain steps or omissions of Knight Frank as to how Knight Frank arrived at its DC estimates (see [265] above), the plaintiffs alleged that AAA had not participated in any collective sale project previously and was a partisan expert.[292] I did not need to delve into this

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287 Dr Lim's affidavit at p 38.

288 See Kok's 1st affidavit at p 573.

289 See Defendants' Written Submissions at para 111.

290 See Plaintiffs' Skeletal Submissions at paras 98–99; NAs 14/09/18 at p 56 lines 22–23.

291 Plaintiffs' Skeletal Submissions at para 97.

allegation as it did not add much to the arguments already raised by the plaintiffs or the defendants.

(2) Decision

304 I considered first the question as to whether the defendants were allowed to raise this ground of objection pertaining to Colliers' valuation before the High Court.

305 It was imperative for the defendants to have raised this ground of objection before the Board since, as the defendants acknowledged at the hearing, they knew or ought to have known that the plaintiffs were relying on Collier's valuation.[293]

306 Further, the defendants could have raised this ground of objection before the Board. The GPR of 1.655, on which AAA's valuation was based, was derived by "working backwards" from the GFA of 55,384m^2 provided for the development charge baseline as given in URA's letter, by dividing that GFA by the site area of 33,457.2m^2.[294] While the defendants did not have URA's letter at the time they filed their objections to the Board in May 2018,[295] they had a copy of Colliers' report which specifically mentioned URA's reply dated 26 February 2018 (*ie*, URA's letter) and the information therein pertaining to the aforementioned GFA.[296] The defendants could also have requested a copy of URA's letter from the plaintiffs then, if the defendants thought it was necessary.

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292 See NAs 14/09/18 at p 59 lines 10–12, 17–18.

293 See NAs 12/09/18 at p 179 lines 19–24.

294 See NAs 13/09/18 at p 34 lines 2–4, 13–19; Dr Lim's affidavit at p 35.

295 See NAs 13/09/18 at p 34 lines 22–25, p 35 lines 1–7.

296 Kok's 1st affidavit at p 573; see also Goh's affidavit at para 3.

It seemed to me that they did not request a copy of URA's letter because initially they were not contesting Colliers' valuation then. The idea of contesting it was an afterthought. Consequently, I was of the view that the defendants were not allowed to raise this ground of objection pertaining to Colliers' valuation before the High Court, pursuant to s 84A(4A).

307 For completeness, I nevertheless discussed this ground of objection in my oral judgment especially since the defendants made much of it at the hearing. As mentioned, the crux of the dispute concerning Colliers' valuation was whether Colliers was right in basing its valuation on the URA Master Plan 2014 and a GPR of 1.4, or whether it should have based its valuation on the development charge baseline information and a GPR of 1.655 as AAA did instead.

308 URA's letter had stated at para 5:[297]

> Please note that the development charge baseline as conveyed is for purpose of computing [DC] and **does not indicate the allowable development potential on the site**. What can be developed on the site, i.e. the development potential, is guided by the current Master Plan [*ie*, the URA Master Plan 2014]. [emphasis in original]

309 In the course of oral arguments before me, the defendants raised an additional argument. They stressed that the SPA was in fact entered into on the basis that the allowable development potential of the site of the Property would be based on the development charge baseline information and not the development potential as guided by the URA Master Plan 2014.[298] They referred to Rider Clause 6C in the Appendix to the SPA which stated, *inter alia*, that the

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297 Loh's 1st affidavit at p 292.

298 See NAs 12/09/18 at p 178 lines 10–19.

SPA was subject to the purchaser obtaining from URA a written confirmation that the Development Baseline of the site of the Property shall be a GFA of not less than 55,384m^2.[299] They thus submitted that Colliers was not correct to have based its valuation on a GPR of 1.4, which would mean a GFA of 46,840.08m^2 only.

310 As it turned out, this submission was based on a misinterpretation of the SPA by the defendants. As the plaintiffs submitted, Rider Clause 6C was concerned with ensuring that no DC was payable.[300]

311 The question of the GPR was addressed in a different provision, *ie*, Rider Clause 6B in the Appendix to the SPA. Rider Clause 6B stated, *inter alia*, that the SPA was subject to the purchaser obtaining the written approval of URA for the outline planning permission for proposed redevelopment of the Property into a residential development with a GPR of not less than 1.4.[301] As mentioned, the GPR of 1.4 was that permitted under the URA Master Plan 2014.

312 I come now to the defendants' argument that it was the duty of the CSC to obtain the appropriate sale price in the circumstances and that the independent valuation obtained pursuant to para 11(2) of the Third Schedule should also be on that basis. Paragraph 11(2) states:

> (2) A valuation report by an independent valuer on the value of the development as at the date of the close of the public tender or public auction shall be obtained by the collective sale committee on the date of the close of the public tender or public auction.

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299 Kok's 1st affidavit at p 527.

300 See NAs 14/09/18 at p 60 lines 15–18.

301 Kok's 1st affidavit at p 526.

313 The Court of Appeal in *Horizon Towers (CA)* held that without obtaining an independent valuation prior to settling on the sale price, a collective sale committee "would have no way to gauge whether or not it is obtaining a *fair* (not to mention the best) price for the property" [emphasis added] (at [160]). In this case, the CSA also provided at cll 4.4 and 4.5.1 that the CSC may not sell the Property at a price less than the independent valuation price.[302]

314 The defendants thus argued that the independent valuation should have been based on the development charge baseline information and a GPR of 1.655, just as AAA had done in its valuation. However, it was clear that the development charge baseline information only determined whether there would be any DC. The development charge baseline information did not provide information on the permissible GPR. URA's letter stated as much (see [308] above). The defendants' argument had thus conflated the two concepts, "the development charge baseline" and "the allowable development potential". The development potential was instead guided by the URA Master Plan 2014 which permitted a GPR of 1.4.

315 Nevertheless, AAA was of the view that a valuation should take into account the possibility that URA might allow a higher GPR in view of the development charge baseline.[303] It reasoned that there was no doubt that any developer would promptly request URA to approve a development based on a GPR of 1.655.[304]

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302 Kok's 1st affidavit at p 231.

303 Defendants' Written Submissions at paras 111, 113.

304 See Dr Lim's affidavit at p 36.

316 I was of the view that AAA's reasoning was misplaced. It is one thing to assume that a successful bidder will request for a higher GPR, it is another to assume that it is prepared to commit to a price based on a possibility that it would obtain approval for a higher GPR.

317 It was different if AAA's reasoning had been that there should be a tiered pricing or tiered valuation. The first tier should be based on the current GPR of 1.4. The second is then based on the possible increase of the GPR. This would perhaps then mean that the CSC should have obtained a tiered pricing, *ie*, a committed price based on the current GPR with a premium if a higher GPR was allowed. However, AAA did not present its valuation on a tiered basis. Neither did the defendants argue that the CSC should have obtained a tiered pricing from the purchaser. Their argument was more basic, *ie*, that Colliers was wrong to use the GPR of 1.4 in its valuation.

318 In my view, Colliers' valuation was not flawed. On the contrary, AAA's valuation was flawed. A valuation should be based on existing facts. A property may be under-utilised at present and, based on existing facts, its potential is known. This is different from valuing a property based only on a possibility of achieving a higher GPR. I agreed with Colliers that such an approach would be speculative. It would be inappropriate for the purpose of a valuation intended to assist the CSC in a collective sale.

319 It was also important to note that AAA did not say that Colliers' valuation was wrong if it was correctly based on a GPR of 1.4.

320 AAA's report dated 20 August 2018 was made *ex post facto*, in valuing the Property to be $637m as at 7 March 2018. As the Court of Appeal in *Horizon*

Towers (CA) had remarked in its case, parties may have "little difficulty in locating 'independent' valuers, after the sale had taken place, to support their irreconcilable stances on the appropriateness of the sale price" (at [44]). Where the defendants had not even raised any objection pertaining to Colliers' valuation before the Board when they could have done so, I found that AAA's report was a last-minute manoeuvre by the defendants to attack the plaintiffs' reliance on Colliers' report.

Decision on the issue of good faith of the transaction

321 In the present case, the test of good faith is concerned with whether the sale price was the appropriate price in the circumstances, and all the facts of the case must be appraised in the round (see [104]–[105] above). In doing so, the entire sale process culminating in the eventual sale of the Property has to be considered (see [103] above).

322 The defendants had sought to show that many aspects of the transaction were not in good faith. There were indeed many missteps by the CSC, Knight Frank and R&T during the collective sale process, so much so that even some of the assenting subsidiary proprietors (or their representatives) expressed some dissatisfaction with them, like at the owners' meeting on 19 March 2018 after the SPA had already been entered into.

323 However, of the numerous sub-issues/factors which the defendants raised to allege bad faith, it was mainly with regard to the sub-issue pertaining to the DC that I found that the CSC breached several of its duties (see [296] above). In addition, the CSC failed to obtain the approvals of subsidiary proprietors at a general meeting of the apportionment of sale proceeds and the

terms and conditions of the CSA as the CSC relied on the wrong advice of R&T.

324 On the other hand, I found that Colliers had given a fair independent valuation.

325 Ultimately, the issue was whether the transaction was in good faith after taking into account only the sale price, pursuant to s 84A(9)(*a*)(i)(A). As the Court of Appeal explained in *Shunfu Ville (CA)*, the question is usually whether there was "some want of probity on the part of the relevant parties", like whether members of the CSC were "actuated by any improper motives or any conflict of interest" (at [61(a)]). It is less likely that the collective sale application should be dismissed "absent clear evidence that the transaction is tainted by unfairness towards some subsidiary proprietors" (at [61(a)]).

326 After considering all the facts holistically, I concluded that although the conduct of the CSC, Knight Frank and R&T was wanting in various respects, there was no bad faith after taking into account the sale price, which was $68m or 12.55% higher than Colliers' valuation.

327 As it turned out, the subsequent cooling measures introduced by the government in or about July 2018 made the sale price seem even more favourable for all subsidiary proprietors, although this had no direct bearing on the question of good faith which was to be determined at the time the sale process was undertaken.

Conclusion

328 The plaintiffs had proven that the transaction was in good faith. Accordingly, I granted an order in terms of prayers 1 to 6 and 9 of the plaintiffs' application with the qualification that the "Minority Owners", as defined in the application, need not pay the majority owners' solicitors' costs in the application and hearing fees until this question was later determined by the court after hearing arguments on it. Likewise, prayers 7 and 8 of the application regarding costs and disbursements would be heard at a later date.

329 Although the CSC and their professional advisers might view this court's decision as a victory for the majority owners, I expressed the hope that they reflect long and hard on their missteps. It was also a pity that the plaintiffs had not been more forthcoming in their conduct of the litigation. They were slow to acknowledge the possibility that there might have been missteps in the sale process.

330 The plaintiffs should also not have waited until the time of the hearing to explain in the course of oral submissions R&T's various missteps, especially with respect to R&T's advice as to whether it was necessary to obtain the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA at an EGM, and R&T's omission to respond promptly to questions from the defendants' lawyers about the ownership of units by associates of Lim and Chan. The explanation should have been stated earlier in an affidavit.

331 I mentioned that I would take the missteps and the way in which the litigation was conducted by both sides into account on the question of costs and disbursements to be decided later.

Woo Bih Li
Judge

Wong Soon Peng Adrian, Ang Leong Hao, Gan Hiang Chye and Norman Ho (Rajah & Tann Singapore LLP) for the plaintiffs;
Tan Gim Hai Adrian, Ong Pei Ching and Goh Qian'en, Benjamin (TSMP Law Corporation) for the defendants.

Annex

Chronology of Key Events

S/No	Date	Event
1	27 May 2017	Knight Frank presented to the subsidiary proprietors an estimated sale price for the Property of at least **$455.8m** and a DC estimate of **$48.4m**.
2	1 July 2017	An EGM was convened and the CSC was constituted.
3	Early July 2017	Knight Frank was appointed as the marketing agent, and R&T was appointed as the legal firm for the collective sale.
4	9 September 2017	An EGM was convened and Knight Frank shared a proposed reserve price of **$500m** and a DC estimate of around **$58.5m**. The subsidiary proprietors did not vote on or otherwise approve the apportionment of sale proceeds and the terms and conditions of the CSA. After the EGM was concluded, subsidiary proprietors began signing the CSA that day.
5	18 October 2017	The CSC circulated a situational update stating that the DC was one of the factors that had been taken into consideration to establish the reserve price.
6	22 November 2017	The CSC, in consultation with Knight Frank, resolved to increase the reserve price from $500m to **$550m**. Knight Frank appointed Ong & Ong to carry out the DC verification. Consequently, Ong & Ong spent some weeks to do the necessary preparatory work for submitting the search

S/No	Date	Event
		applications to URA.
7	24 November 2017	Knight Frank sent letters to the subsidiary proprietors to inform them that the CSC had resolved to increase the reserve price to $550m.
8	8 December 2017	Knight Frank sent a letter to urge the subsidiary proprietors to support the collective sale, stating that DC rates were highly expected to increase from 1 March 2018 and that this would have a direct impact on the potential bidders' bid prices.
9	By 15 January 2018	The subsidiary proprietors reached the 80% consent threshold required for making any collective sale application.
10	18 January 2018	Ong & Ong submitted the search applications for the DC verification to URA.
11	25 January 2018	An owners' meeting was convened and Knight Frank informed the subsidiary proprietors that the Property would be launched for sale by way of public tender on 26 January 2018, that the estimated DC was **$63.19m**, and that it had appointed an architect to carry out the DC verification.
12	26 January 2018	The Property was launched for sale by public tender. Knight Frank stated in its marketing efforts that the reserve price was $550m and the estimated DC was approximately $63.2m, and that it was awaiting a reply from URA on the Development Baseline which it expected to receive in two weeks (*ie*, the DC verification). Knight Frank also stated that the (URA) Master Plan 2014 had zoned the site of the Property "Residential" with a GPR of 1.4.

S/No	Date	Event
13	26 February 2018	The CSC received a copy of URA's letter to Ong & Ong and was informed by Knight Frank that URA's letter meant that **no DC** was payable. Knight Frank informed Colliers of the development charge baseline.
14	26 February 2018 – 7 March 2018	Knight Frank publicised that no DC was payable. There was no request for an extension of the closing date of the tender.
15	7 March 2018	The public tender was closed as scheduled. There were: (a) one expression of interest at $480m; (b) one bid at $580m; and (c) a second bid at $610m. Colliers' valuation report was also opened and Colliers was of the opinion that the market value of the Property was **$542m**.
16	8 March 2018	The CSC awarded the tender to the joint-bidders who had submitted the bid at $610m. Knight Frank sent a letter to the subsidiary proprietors to inform them that a sale contract (*ie*, the SPA) had been entered into that day for the Property for the sale price of **$610m**.
17	19 March 2018	An owners' meeting was convened to explain to the subsidiary proprietors the progress made in the collective sale process thus far and the CSC informed them for the first time that there was no DC payable.
18	5 April 2018	The joint-bidders nominated the purchaser to purchase the Property in place of them, as allowed under the SPA.