IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 256

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*

ORAL JUDGMENT

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

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Lim Hun Joo and others
v
Kok Yin Chong and others

[2018] SGHC 256

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

26 November 2018 Judgment reserved.

Woo Bih Li J:

1 The plaintiffs commenced Originating Summons No 841 of 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 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.

3 The court was informed that the plaintiffs have to obtain an order in respect of the collective sale by 26 November 2018, failing which the purchaser who has entered into a sale and purchase agreement to buy the Property may treat it as rescinded. This oral judgment is rendered first. A more elaborate and detailed grounds of decision will follow.

4 Therefore, although many issues of law and fact were raised, this oral judgment will address the main ones only and will summarise the arguments and the court's reasons. References to statutory provisions are to provisions of the LTSA unless otherwise stated.

Issues

5 In summary, the defendants raised the following main issues.

6 First, 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", who each owns another unit in the Property, and this failure to disclose was in breach of para 2(1)(*g*) of the Third Schedule. Accordingly, under para 2(2) of the Third Schedule, each of their appointments as members of the CSC is void.

7 The defendants argued that the present application before the court by all three plaintiffs is *ultra vires* as all three were to act jointly in bringing the application but they could not have done so because the appointments of Lim and Chan as members of the CSC are void. Alternatively, the invalid appointments are factors which assist the defendants to show that the collective sale transaction is not in good faith.

8 Second, 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 collective sale agreement ("CSA") were not given at a general meeting of the management corporation.

9 Third, that the transaction in respect of the collective sale to the purchaser is not in good faith. Many factors were raised by the defendants in this regard but the main ones 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 failed to inform and consult the subsidiary proprietors about a material change in the actual development charge ("DC") for the Property from the last estimate given by Knight Frank Pte Ltd ("Knight Frank") and failed to extend the closing date of the public tender; and

(d) that a valuation report by Colliers International Consultancy & Valuation (Singapore) Pte Ltd ("Colliers") dated 7 March 2018 was fundamentally flawed and the CSC could not rely on it to justify the collective sale to the purchaser.

Issue of *ultra vires*

10 As regards the first main issue, I am of the view that the mere fact that an "associate" of Lim and two "associates" of Chan each owns another unit in

the Property does 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.

11 Even if, for the sake of argument, there was a breach by Lim and a breach by Chan thus rendering each of their appointments void, this does not mean that the application before this court is *ultra vires*.

12 The defendants' reliance on the Court of Appeal case involving the collective sale of Gilstead Court, *ie*, *Lim Li Meng Dominic and others v Ching Pui Sim Sally and another and another matter* [2015] 5 SLR 989 is 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. 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 plaintiffs in this application and the second plaintiff would become the sole authorised representative.

13 Accordingly, I conclude that the plaintiffs' application before this court is not *ultra vires*.

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

14 As regards the second main issue, the plaintiffs submitted that it was sufficient if more than 50% of the subsidiary proprietors who attended the relevant general meeting signed the CSA.

15 I do not agree with the plaintiffs on this submission. The terms of the relevant provisions are clear. I agree with the defendants that the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA are to be done at the general meeting. It was not disputed that the signing of the CSA was done after the general meeting was concluded.

16 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."

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

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

19 Would that breach then invalidate the plaintiffs' application?

20 Section 84A(7C) states that a Strata Titles Board shall not invalidate an application to the Board for an order for a collective sale 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.

21 This provision does not mention the High Court. Read together with s 84A(3), s 84A(7C) seems to apply only to the stage where an application is made to the Board. The purpose seems to be so that the Board need not invalidate any application before it simply because of a non-compliance. The omission to mention the High Court appears deliberate but the omission still means that the court has to grapple with the question as to whether a non-compliance would necessarily invalidate an application to the High Court for approval.

22 It seems to me that a non-compliance will not, in and of itself, invalidate an application to the High Court even if the non-compliance is not of a merely technical provision. This will accord with the framework in s 84A(7C) regarding an application to the Board.

23 However, a non-compliance would result in the dismissal of an application to the High Court if the circumstances pertaining to the non-compliance amounts to an absence of good faith under s 84A(9)(*a*)(i).

24 I will therefore consider 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

25 I come now to the third main issue, *ie*, the question of good faith.

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

26 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 *Ramachandran*

Jayakumar and another v Woo Hon Wai and others and another matter [2017] 2 SLR 413 ("*Shunfu Ville (CA)*"). 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 involving the collective sale of Cairnhill Heights which the plaintiffs relied on.

27 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.

28 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)]).

29 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

30 A preliminary issue is, which party has the burden of proof?

31 The plaintiffs said the burden of proof is 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 involving the collective sale of Shunfu Ville. 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.

32 On the other hand, the defendants relied on the decision of the Court of Appeal in *Horizon Towers (CA)* where the court was of the view at [200] that the Board had wrongly placed the burden of proof on the objectors. The court 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. The court 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 there had relied on that statutory provision.

33 Section 113 of the Evidence Act states:

> 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.

34 In my view, s 113 does not apply here because the transaction is the collective sale of the Property and that transaction is between the subsidiary proprietors and the purchaser. It is not between the assenting and the dissenting subsidiary proprietors, or between the CSC and the dissenting subsidiary proprietors.

35 Nevertheless, I am of the view that the legal burden is on the plaintiffs to establish that the transaction is in good faith for the following reasons.

36 As the plaintiffs are seeking a court order for the collective sale, then as a matter of general principle, it should be they who have the burden of persuading the court to grant the order.

37 This is reinforced by s 84A(10) 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.

38 However, from the practical point of view, it is 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. However, the legal burden remains with the applicants to establish that the collective sale transaction is in good faith.

Sub-issues

39 I come now to the main factors which the defendants raised to allege bad faith. I will refer to them as sub-issues. I add that in view of s 84A(4A), the defendants are 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 (see the decision of 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 involving the collective sale of Thomson View Condominium). In this oral judgment, however, I will not discuss whether the following sub-issues were raised before the Board, but will deal with them as if they had been raised before the Board. I will discuss whether they were raised before the Board subsequently in the grounds of decision.

Conflict of interest

40 The first sub-issue is the question about conflict of interest. As mentioned already, it was not in dispute that Lim and Chan have associates who each owns another unit in the Property. 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.

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

42 The defendants referred to a speech made by Mr K Shanmugam, the Minister for Law, in Parliament which suggested that disclosure of the fact that an associate owns another unit must be made. However, the terms of the relevant statutory provision are paramount.

43 The relevant provision is para 2(1)(*g*) of the Third Schedule which states:

> 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 —
>
> …
>
> (*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.
>
> [emphasis added in bold]

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

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

46 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. However, 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.

47 If I were wrong on this point, the conduct of Lim and Chan 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 am of the view that they were entitled to rely on legal advice even if that advice turned out to be wrong.

48 However, 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, they declined to answer frankly. Furthermore, when the defendants' 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 until the defendants' lawyers sent a more formal request by way of interrogatories. It was only then that the plaintiffs gave the answer.

49 The plaintiffs' lawyers explained orally that it was their oversight in omitting to respond to the written requests for the information. When the interrogatories were served, the plaintiffs answered promptly without challenging the need for the interrogatories.

50 In the circumstances, I accept 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, was not evidence of bad faith.

51 That said, I agree that the matter should have been better handled by Lim and Chan and the plaintiffs' lawyers. Even though the lawyers had advised that there was no conflict, the lawyers should also have advised them to disclose the ownership by their associates to avoid unnecessary suspicion. Furthermore, this would have been the prudent step in case their lawyers' advice that there was no actual or potential conflict was wrong. The refusal by Lim and Chan to disclose, when initially asked, fuelled suspicion that something was amiss. Later, the omission to respond to written 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. The matter was not well handled especially by the plaintiffs' lawyers but that too was not evidence of bad faith on the part of plaintiffs' lawyers or the CSC.

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

52 I come to the second main 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. I have already touched upon this earlier.

53 To recapitulate, this omission was a breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule. Unfortunately, this omission was the result of advice from the lawyers for the CSC who also act for the plaintiffs. They had advised that it was sufficient for the assenting subsidiary proprietors to sign the CSA after the meeting. Clearly, such advice was wrong.

54 Relying on such advice, the CSC stuck to the position that there was to be no voting at the general meeting even though some subsidiary proprietors had questioned whether this position was correct. It was unfortunate that the

CSC members appeared not to have considered the matter more carefully by themselves. It appears that they simply accepted their lawyers' advice without question. While they were entitled to rely on lawyers' advice, the CSC members should have questioned the validity of the advice 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). Be that as it may, the breach of the relevant provisions was caused by the lawyers for the CSC. It was not evidence of bad faith on the part of the CSC. I add that I am not persuaded that there was prejudice to any subsidiary proprietor.

DC

55 The third main sub-issue on the question of good faith pertains to the DC.

56 Knight Frank, who was the marketing agent for the collective sale, 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.

57 Knight Frank and the CSC did not wait for a formal response from the Urban Redevelopment Authority ("URA"), which would provide information to determine the actual amount of DC ("the DC verification"), before the Property was launched for sale on 26 January 2018. Knight Frank had earlier appointed an architectural company 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 the 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.

58 As it turned out, URA sent a reply dated 26 February 2018 to the architectural company with information which revealed that no DC was in fact payable.

59 Knight Frank immediately began updating potential bidders in various ways. After urgent discussions between Knight Frank and the CSC, it was then decided that the closing date of the tender, *ie*, 7 March 2018, was not to be extended.

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

61 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.

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

63 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

64 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. The DC had a bearing on the reserve price and on bids from potential bidders.

65 The defendants alleged that the CSC should have obtained the DC verification from URA before the launch of the Property for sale. 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. The CSC should not have rushed to have the Property launched for sale without obtaining the DC verification.

66 Furthermore, when the DC verification was obtained, the CSC should have extended the closing date of the tender, and informed and consulted the subsidiary proprietors about this material information so that they could decide whether to raise the reserve price. That might in turn have yielded a higher bid from potential bidders. The CSC had acted wrongly in sticking to the original deadline for the close of the tender.

67 The CSC had also acted wrongly in relying on Colliers' report which was fundamentally flawed. 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.

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

69 The plaintiffs disagreed. They 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. There was no obligation on Knight Frank to obtain the DC verification before the launch of the Property for sale. It was market practice to launch the Property for sale and seek the DC verification concurrently.

70 The plaintiffs also suggested that the DC was not material. They submitted that there was no direct correlation between (a) the DC and bid prices, (b) the DC and the reserve price and (c) the reserve price and bid prices.

71 The plaintiffs said that Knight Frank had acted promptly to notify potential bidders about the fact that no DC was payable. Potential bidders would have been able to react quickly to the news as they would have done their homework (like their feasibility studies) already. There was no need to extend the closing date of the tender and no one had requested for such an extension. In any event, the higher bid was higher than Colliers' valuation and Colliers' valuation was valid whereas the valuation by AAA was not.

(2) Decision

72 I am 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.

73 In a situational update from the CSC dated 18 October 2017, which was provided with inputs from Knight Frank, the CSC stated that the DC was one of the factors that had been taken into consideration to establish the reserve price. 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.

74 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. Furthermore, the fact that Knight Frank had to act urgently to inform potential bidders that there was no DC payable proves that the DC was material information to such parties.

75 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.

76 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 accept 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 such information is provided to potential bidders earlier rather than later. I 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 and both sides relied on the terms.

77 While it is 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.

78 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.

79 Likewise, in an "Estimated Project Timeline" provided by Knight Frank at the extraordinary general meeting 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. 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.

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

81 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.

82 It seems 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.

83 The truth of the matter is that Knight Frank and the CSC, as well as the lawyers for the CSC, 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, 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 the lawyers for the CSC 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 the lawyers 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.

84 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 is unclear when the CSC's lawyers knew about this development.

85 In my view, as the information concerning the nil DC was received barely over a week before the close of the tender, the CSC should have extended the closing date of the tender by at least one week.

86 This would have given Knight Frank more time to disseminate this material information and potential bidders would have had more time to absorb such information and respond if they so wished, although I agree that Knight Frank did act quickly to disseminate the information.

87 Furthermore, the CSC should have informed and consulted the subsidiary proprietors about this material development. 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 is that the subsidiary proprietors had been given, although inadvertently, an inaccurate impression about the DC and this should have been corrected immediately. They should also have been given a chance to have their say as to what the next step should be. An extension 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 extraordinary general meeting.

88 As it was, when the subsidiary proprietors were subsequently informed about the new information at a meeting on 19 March 2018, queries were raised as to why they were not informed more promptly. Having said that, I accept that no assenting subsidiary proprietor sought to withdraw from the CSA and apparently some subsidiary proprietors added their signatures to the CSA.

89 I find 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.

90 I find that when the CSC failed to consider whether to inform and consult the subsidiary proprietors or not, the CSC acted wrongly. They had been too focused on the potential bidders that they lost sight of the subsidiary proprietors.

91 Fortunately for the CSC, Colliers' valuation was just below the reserve price and the higher bid was higher than the valuation and the reserve prices.

Colliers' valuation

92 The question then is whether Colliers' valuation was fundamentally flawed as alleged by the defendants. This pertained to the fourth sub-issue about good faith.

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

94 Colliers' valuation was based on a gross plot ratio ("GPR") of 1.4 as permitted under the URA Master Plan 2014. 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.

95 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. The URA letter dated 26 February 2018 stated as much.

96 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. 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.

97 I am 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.

98 It is different if AAA's reasoning was 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. From the CSC's point of view, 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.

99 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 agree 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.

100 It is 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.

Conclusion

101 After considering all the facts holistically, including those not specifically mentioned in this oral judgment, I conclude that although the conduct of the CSC, Knight Frank and the lawyers for the CSC 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.

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

103 The plaintiffs have proven that the transaction is in good faith. Accordingly, I grant 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 is later determined by the court after hearing arguments on it. Likewise, prayers 7 and 8 of the application regarding costs and disbursements will be heard at a later date.

104 Although the CSC and their professional advisors may view this court's decision as a victory for the majority owners, I hope that they reflect long and

hard on their missteps. It is also a pity that the plaintiffs were not 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. I will 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.