

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2018] SGHC 171**

Originating Summons No 28 of 2018

In the matter of An Order by a Strata Titles Board in STB No. 88 of 2017 under Section 84A (6A) of the Land Titles (Strata) Act in respect of the Collective Sale of the development known as The Albracca Strata Title Plan No. 1729 comprised in Lot No. MK25-4764A

And

In the matter of An application under Section 84A of the Land Titles (Strata) Act (Cap 158) and Order 100 of the Rules of Court (Cap 322)

Between

- (1) Deorukhkar Sameer Vinay
- (2) Andrew Lee
- (3) Lee Teck Har

*... Plaintiffs*

And

Quek Chin Kheam

*... Defendant*

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**ORAL JUDGMENT**

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

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**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Deorukhkar Sameer Vinay and others**

**v**

**Quek Chin Kheam**

**[2018] SGHC 171**

High Court — Originating Summons No 28 of 2018  
Tan Siong Thye J  
28 June 2018

27 July 2018

Judgment reserved.

**Tan Siong Thye J:**

**Introduction**

1 This is an application by three authorised representatives (“the Plaintiffs”) of The Albracca’s collective sale committee (“the CSC”) for an order to allow the sale of The Albracca to SL Capital (5) Pte Ltd for \$69,119,000 under s 84A(1) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) (“the LTSA”). The Strata Titles Boards (“STB”) issued a Stop Order on the sale of The Albracca pursuant to s 84A(6A) of the LTSA on 27 December 2017 as one subsidiary proprietor (“SP”) of unit #07-02 (“the Defendant”) opposed the sale on the basis that it was not made in good faith within the meaning of s 84A(9)(a)(i) of the LTSA.

**The facts**

2 The Albracca is a 10-storey residential development with 11 units of

varying sizes and it is located at 1 Meyer Place, Singapore.<sup>1</sup> It has a total of five apartment units and six maisonette units with six typical unit types. The Albracca is directly opposite Katong Park and the proposed Katong Park MRT station is situated near to The Albracca.<sup>2</sup>

3 The strata area of each lot varies from 154 square metres (“sqm”) to 369 sqm. There are seven large units with a share value of six each while the remaining four small units have a share value of four each making a total of 58 shares.<sup>3</sup>

***The 80% consent threshold necessary for collective sale***

4 On 15 June 2016, the CSC, comprising the Plaintiffs and one Mr D M Melwani, was appointed at an extraordinary general meeting (“EGM”) of The Albracca’s SPs. All 11 SPs of The Albracca, including the Defendant, were present or represented by proxy at this EGM.<sup>4</sup> The role of the CSC was to represent and work for the best interest of all the SPs, which includes the Defendant, for the collective sale of The Albracca.

5 Subsequently, on 15 September 2016, De Souza Lim & Goh LLP was appointed the solicitor for the collective sale and on 24 September 2016, the CSC appointed Jones Lang Lasalle Property Consultants Pte Ltd (“JLL”) as the marketing agent for the collective sale.<sup>5</sup>

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<sup>1</sup> Affidavit of Deorukhkar Sameer Vinay dated 9 January 2018 (“DSV’s 1<sup>st</sup> Affidavit”) at p 23.

<sup>2</sup> Affidavit of Soo Suat Mui dated 26 March 2018 (“SSM 1<sup>st</sup> Affidavit”) at para 10.1.

<sup>3</sup> SSM 1<sup>st</sup> Affidavit at para 10.2.

<sup>4</sup> DSV’s 1<sup>st</sup> Affidavit at pp 224 to 226.

<sup>5</sup> DSV’s 1<sup>st</sup> Affidavit at para 14.

6 On 17 April 2017 at an EGM ten out of 11 SPs of The Albracca were either present or represented by proxy (the Defendant was absent). They unanimously approved the terms of the collective sale agreement (“the CSA”) and the initial reserve price of \$59.5 million for the sale of The Albracca. The method of apportionment of the sale proceeds (“MOA”), calculated at one-third share value (“SV”), one-third strata area (“SA”) and one-third current market value (“CMV”) of each unit (“ $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV”), was also unanimously approved at this EGM.<sup>6</sup>

7 As at 8 June 2017, nine out of 11 SPs which represented 83.99% of the total strata area (excluding the area of any accessory lot) and 82.76% of the total share value of The Albracca had signed the CSA on the abovementioned terms.<sup>7</sup> The Defendant and the SP of unit #09-02 did not sign the CSA.

8 However, the SP of unit #09-02 who initially opposed the collective sale subsequently changed his mind and signed the CSA on 21 October 2017. This brought the final percentage of signatories in support of the CSA to 93.1% by share value and 95% by strata area. The Defendant is the only SP who did not sign the CSA.

### ***The sale and marketing process***

9 After the 80% consent threshold was satisfied, the CSC proceeded with the launch of the public tender on 14 June 2017.<sup>8</sup> At the close of the tender on 20 June 2017, a total of 15 tender submissions were received. After evaluating the submissions, the CSC awarded the tender to the highest bidder, Sustained

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<sup>6</sup> DSV’s 1<sup>st</sup> Affidavit at para 18.

<sup>7</sup> DSV’s 1<sup>st</sup> Affidavit at para 20.

<sup>8</sup> DSV’s 1<sup>st</sup> Affidavit at para 20.

Land Pte Ltd, at the sale price of \$69,119,000.<sup>9</sup> On 1 August 2017, pursuant to the Sale and Purchase Agreement (“SPA”), the CSC received a Letter of Nomination from Sustained Land Pte Ltd nominating SL Capital (5) Pte Ltd to purchase The Albracca on its behalf.<sup>10</sup>

***The STB application***

10 On 6 October 2017, the CSC applied to the STB for an Order for Collective Sale. On 25 October 2017, the Defendant filed his objections before the STB. The STB held two mediation sessions on 21 November 2017 and 11 December 2017 to no avail. Subsequently, on 27 December 2017, the STB issued a Stop Order and on 8 January 2018, the Plaintiffs filed the present application.

**The Parties’ cases**

***The Defendant’s case***

11 Generally, the Defendant argues that the procedure of collective sale conducted by the CSC was not done fairly, honestly and in good faith. First, the Defendant argues that Lee Teck Har (“David Lee”), who is a member of the CSC, was not an independent member as there was a conflict of interest. He was in a patronage relationship with the rest of the CSC members. This allegation arose from the fact that the Management Corporation Strata Title No 1729 (“MCST”) of The Albracca had waived \$644 for late payment interest owed by David Lee to the MCST in 2015 as he had failed to pay his maintenance charges on time. The members of the MCST then were the spouses of the other members of the CSC.<sup>11</sup> Therefore, the Defendant contends that this created a patronage

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<sup>9</sup> DSV’s 1<sup>st</sup> Affidavit at para 21.

<sup>10</sup> DSV’s 1<sup>st</sup> Affidavit at para 25.

relationship and this gave rise to a conflict of interest between David Lee and the other members of the CSC as David Lee was indebted to them. Furthermore, the Defendant submits that the waiver of David Lee's late payment interest for not paying his maintenance charges on time was not raised or disclosed by David Lee at the EGM on 15 June 2016 when the members of the CSC were elected.<sup>12</sup>

12 Second, the Defendant argues that the CSC did not act in good faith when it adopted the MOA. The Defendant contends that the MOA was skewed towards allotting maximum financial gains to the large unit owners at the expense of the small unit owners.<sup>13</sup> The Defendant also alleges that the CSC had already decided on the MOA before obtaining expert advice from JLL and Savills Valuation and Professional Services (S) Pte Ltd ("Savills"). This seemed to intimate that the CSC had influenced JLL and Savills to orientate their respective advice and position to support the predetermined decision of the CSC in relation to the MOA to be adopted.<sup>14</sup>

13 Third, the Defendant argues that the CSC had acted in bad faith when it accepted the valuation report prepared by Savills. The Defendant doubts Savills was acting independently because the valuation figures in its reports were uncannily similar to the indicative valuation report ("Indicative Valuation") submitted by JLL prior to Savills' appointment as a third-party valuer.<sup>15</sup> The Defendant also argues that Savills' valuation figures were wrong and riddled

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<sup>11</sup> Defendant's Submissions at [46(a)].

<sup>12</sup> Affidavit of Quek Chin Kheam dated 9 February 2018 ("QCK's 1<sup>st</sup> Affidavit") at paras B1 to B6.

<sup>13</sup> QCK's 1<sup>st</sup> Affidavit at para C2(b).

<sup>14</sup> QCK's 1<sup>st</sup> Affidavit at para C2(h).

<sup>15</sup> QCK's 1<sup>st</sup> Affidavit at para E.



with anomalies.<sup>16</sup> The Defendant also avers that Savills refused to fully disclose its workings and analysis in coming to its findings. Savills also rejected the Defendant's request for some information. Hence the Defendant submits that Savills was not transparent about its methodology and its calculations were made using dubious and arbitrary assumptions.<sup>17</sup> Furthermore, the Defendant argues that Savills's findings in its MOA valuation report ("MOA report") were not sound.<sup>18</sup> Thus the Defendant submits that when the CSC accepted Savills' findings, it had done so in bad faith.<sup>19</sup>

14 Finally, the Defendant asserts that the Terms of Appointment of Solicitors ("TAS") and the SPA were drafted in favour of the SPs who supported the collective sale while unduly prejudicing him who is against the collective sale. In particular, the Defendant argues that the TAS was on a "no sale, no fee" basis and the SPA provided for a pool of funds which would cover any expenses incurred in defending the collective sale and against any objections raised by the SPs. However, the Defendant would have to bear all the expenses, including the litigation costs, to oppose the collective sale. This, according to the Defendant, is unfair and the CSC had breached its duty of even-handedness when it entered into the TAS and the SPA.<sup>20</sup>

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<sup>16</sup> QCK's 1<sup>st</sup> Affidavit at para F.

<sup>17</sup> QCK's 1<sup>st</sup> Affidavit at para F8. See also Affidavit of Quek Chin Kheam dated 26 April 2018 ("QCK's 2<sup>nd</sup> Affidavit") at paras 37 to 41.

<sup>18</sup> QCK's 1<sup>st</sup> Affidavit at para G.

<sup>19</sup> QCK's 1<sup>st</sup> Affidavit at para F16.

<sup>20</sup> QCK's 1<sup>st</sup> Affidavit at para H. See also QCK's 2<sup>nd</sup> Affidavit at paras 32 to 36 and Defendant's Submissions at [79].

***The Plaintiffs' case***

15 First, the Plaintiffs argue that David Lee's appointment to the CSC was proper and done in good faith. The Plaintiffs further assert that there was no patronage relationship and neither was there any conflict of interest arising from the MCST's waiver of David Lee's interest arrears for his late payment of his maintenance charges in 2015.<sup>21</sup>

16 Second, the Plaintiffs contend that the CSC was acting in good faith in arriving at and accepting the MOA of 1/3 SV – 1/3 SA – 1/3 CMV which was the fairest MOA for the large and small units of the SPs. The CSC had properly obtained and considered the various opinions from the experts and had decided that the MOA which the CSC recommended was fair and equitable to all the SPs. The CSC had also consulted, explained and updated the SPs on the various options of the MOA. Furthermore, ten out of 11 SPs had signed the CSA and had accepted the MOA.<sup>22</sup>

17 Third, the Plaintiffs aver that the valuation report and the MOA report by Savills were obtained independently and that neither JLL nor the CSC had interfered or colluded with Savills in arriving at its reports.<sup>23</sup> Therefore, the CSC was not acting in bad faith when it accepted the reports prepared by Savills.

18 Finally, the Plaintiffs contend that the TAS and the SPA were not impugned by bad faith. The relevant clauses in the TAS and the SPA are for the benefit of all the SPs because the purchaser is to set up a fund to finance the relevant application fees, filing fees and other disbursements to the STB and the

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<sup>21</sup> Plaintiffs' Skeletal Submissions at [10].

<sup>22</sup> Plaintiffs' Skeletal Submissions at [9] to [9.5].

<sup>23</sup> Plaintiffs' Skeletal Submissions at [11] to [12].

High Court for approval to sell The Albracca.<sup>24</sup> Any unused or excess sum left from that pool would be distributed to all the SPs.<sup>25</sup> Hence, the Plaintiffs contend that the CSC had not breached its duty of even-handedness when it entered into the TAS and the SPA but was in fact acting in the best interest of all the SPs.

## **My decision**

### *The issues*

19 Basically, the central and paramount concern is whether the CSC had discharged its duties in good faith. This requires me to consider the following four main issues:

- (a) Was there a conflict of interest when David Lee was appointed to the CSC?
- (b) Was the MOA arrived at in good faith?
- (c) Was the CSC acting in good faith when it accepted the valuation report prepared by Savills, a third-party valuer engaged by the CSC?
- (d) Were the TAS and the SPA fair and in line with the CSC's duty to act even-handedly?

20 The Defendant had also raised all the above issues in his objections before the STB.

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<sup>24</sup> Plaintiffs' Skeletal Submissions at [13.5].

<sup>25</sup> Plaintiffs' Skeletal Submissions at [13.6].

***The law***

21 The application for the collective sale of a private residential development is governed by s 84A of the LTSA. The Albracca was completed circa 1990s which means it is more than ten years old. Thus the relevant provision is s 84A(1)(b) of the LTSA which provides that before the SPs can apply for an order to sell the development, the SPs 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 (excluding the area of any accessory lot) must have agreed in writing to sell all the lots and common property to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the SPs.

22 An application for an order to sell a private residential development must be made to the STB in the first instance and to the High Court thereafter if, and only if, a Stop Order under s 84A(6A)(b) was issued by the STB: s 84A(2A).

23 To facilitate the collective sale of the private residential development, s 84A(1A) provides for a CSC to be constituted to act jointly on behalf of the SPs.

24 The duties of the CSC stem from s 84A(9)(a)(i) of the LTSA which provides:

(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 proprietor; ...

[Emphasis added]

25 In the Court of Appeal case of *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 Partners*”), the Court of Appeal found that the word “transaction” in s 84A(9)(a)(i) of the LTSA 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: at [130].

26 “Good faith” in the context of s 84A(9) means succinctly “honesty or absence of bad faith”: *Dynamic Investments Pte Ltd v Lee Chee Kian Silas and others* [2008] 1 SLR(R) 729 at [17] and *Horizon Partners* at [132]. Furthermore, the Court of Appeal in *Horizon Partners* also ruled that “good faith” in s 84A(9)(a)(i) of the LTSA must be read in the light of the CSC’s role as a fiduciary agent and whose power of sale is analogous to that of a trustee of a power of sale: at [133] of *Horizon Partners*.

27 Under the LTSA, therefore, the CSC’s duties to act in good faith *qua* agent, fiduciary and trustee of the power of sale include, *inter alia*: (a) the duty of loyalty or fidelity; (b) the duty of even-handedness; (c) the duty to avoid any conflict of interest; (d) the duty to make full disclosure of relevant information; and (e) the duty to act with conscientiousness: at [124] of *Horizon Partners*.

28 The aspects of these duties relevant to the present case are summarised as follows:

- (a) First, the duty of loyalty and fidelity entails that the CSC must be single-mindedly loyal to the SPs, must act in good faith and must not make a profit out of the trust endowed upon it by the SPs: at [135] of *Horizon Partners*.
- (b) Second, the duty of even-handedness requires that the CSC holds an even hand between the interests of different classes of beneficiaries (*i.e.*, the SPs of the different unit types and share values) under the trust: at [136] of *Horizon Partners*.
- (c) Third, the duty to avoid any conflict of interest entails the CSC as a whole and individually as members of the CSC not to place themselves in a position or enter into a transaction in which their personal interest may conflict with their duty to the SPs, unless the SPs consent: at [137] of *Horizon Partners*.
- (d) Fourth, the duty to make full disclosure of relevant information requires that the CSC and members of the CSC must disclose any and all personal interest as soon as a possible conflict arises, or as soon after as practicable: at [147] of *Horizon Partners*.
- (e) Finally, the duty of conscientiousness in the sale process entails the CSC to act with due diligence in appointing competent professional advisers, obtaining independent expert advice on matters relevant to the decision to sell the property, seeking fresh instructions or guidance from the consenting SPs where it entertains reasonable doubt that its original mandate no longer reflects the consensus of the consenting SPs and

disclosing any personal interests on the part of its members that might conflict with its duties and also ensuring that it has been properly informed of all potential conflicts of interests that may affect the advice it receives from any of its professional advisers: at [168] of *Horizon Partners*.

29 In that light, I shall now explain my analysis of the disputes raised by the parties before coming to my decision on whether to grant an order for the collective sale of The Albracca to proceed.

### **My Analysis**

#### ***Was there a conflict of interest when David Lee was appointed to the CSC?***

30 On the evidence, I find that there were no conflict of interests when David Lee was appointed to the CSC. According to the Defendant, David Lee was in arrears of his maintenance charges for many years until September 2015 when the interest for late payment of his maintenance charges was waived by the MCST.<sup>26</sup> The Plaintiffs submit that the waiver of David Lee's late payment interest for not paying his maintenance charges on time was in May 2015.<sup>27</sup> At the time of the waiver the CSC was not formed yet. There is also no evidence that the topic of collective sale was discussed when the waiver was granted to David Lee. The CSC was only formed at the EGM on 15 June 2016. Hence the waiver was given by the MCST nine months or 13 months, depending on the Defendant's or Plaintiffs' version respectively, before the formation of the CSC. The decision for the waiver was made by the MCST and not by the CSC. Furthermore, none of the members of the MCST was in the CSC.

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<sup>26</sup> QCK's 1<sup>st</sup> Affidavit at para B3.

<sup>27</sup> Plaintiffs' Skeletal Submissions at [10.2].

31 It is insufficient for the Defendant to merely show that David Lee had received a waiver of his late payment interest arrears of \$644 for his late payment of his maintenance charges and then conclude that David Lee was in a patronage relationship with the rest of the CSC members and thus incapable of acting independently. There is no *prima facie* evidence that David Lee had failed in any way, to act independently or in the best interest of the SPs, as a member of the CSC. I also notice that the amount of \$644 waived was only the interest on the arrears owed by David Lee for late payment of his maintenance charges. Furthermore, David Lee's second request for waiver of \$59 interest for late payment of the maintenance charges in June 2016 was not granted by the MCST albeit the sum was much smaller. Thus I agree with the Plaintiffs that the waiver of David Lee's interest arrears of \$644 in 2015 and David Lee's appointment to the CSC are two unrelated events. He, like the Defendant, owns one of the four small units. Like the other SPs of the small units he would want the best returns from the collective sale. It is unimaginable for him to compromise his own interest and that of the other SPs of small units for a paltry sum of \$644.

32 Hence, I find that there was nothing untoward in David Lee's appointment to the CSC. Neither David Lee nor the CSC was in a position of conflict of interests when David Lee was appointed to the CSC.

33 It is also noteworthy that the Defendant did not raise any objections on 15 June 2016 when David Lee expressed his interest to be voted into the CSC. In fact, the Defendant supported David Lee's appointment to the CSC, stating that David Lee would "represent the interests of smaller apartment owners" which include the Defendant himself.<sup>28</sup> For these reasons, I find that the

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<sup>28</sup> DSV's 1<sup>st</sup> Affidavit at p 225.



aspersions the Defendant throws at David Lee and the CSC are unfounded and unwarranted.

***Was the MOA arrived at in good faith?***

34 The MOA is the most important and pivotal consideration in a collective sale as it determines the share of the sale proceeds each SP will receive. Whether the collective sale is carried out fairly and equitably will probably be determined at this stage when the CSC has to recommend the most equitable MOA to all the SPs, including those who resist the collective sale. This case is no different. There are various formulations of MOA in any collective sale. In fact, in Savills' MOA report, at paragraph 5, Savills referred to the Singapore Institute of Surveyors and Valuers' ("SISV") guidelines on the distribution methods which generally include the following:<sup>29</sup>

- (a) Based on share value – this method may be used when all the units are of the same or similar strata/floor areas with the same or similar share values.
- (b) Based on strata area – this method is suitable when all the units are of the same or similar strata area or the unit value rates are similar for various sizes.
- (c) Based on valuation – this method may be used when the general attributes of the property are to be considered.
- (d) Based on a combination of share value, strata area and valuation – this method may be used when there are wide differences in the share value, strata area and valuation among the various units. An apportionment of 1/3 strata area, 1/3 share value and 1/3 valuation

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<sup>29</sup> SSM's 1<sup>st</sup> Affidavit at pp 48 to 49.

would even out, to a certain extent, the differences in strata area, share value and valuation.

35 I find that the CSC had arrived at the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV in good faith. This formulation of the MOA is also the fairest to all the SPs, *ie*, both the SPs of small and large units. It is also clear that the CSC considered the MOA after very careful deliberations of the various options of MOA as suggested by Savills and JLL before the CSC recommended its preferred MOA to the SPs.

36 I shall comment on the selected MOA and the Defendant’s preferred MOA below. In the meantime, I shall analyse and scrutinise closely the procedure leading to the final decision of the SPs, excluding the Defendant, on the selected MOA in order to ascertain whether the CSC discharged its duty honestly, fairly and in good faith.

*(i) The process of arriving at the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV*

37 At the first CSC meeting on 8 September 2016, the CSC invited JLL to give a presentation and to brief the CSC on the various concepts and terms involved in a collective sale. JLL also briefed the CSC on the concept of a Reserve Price and the MOA. JLL informed the CSC that it could only provide its full recommendation on the appropriate MOA when it had reviewed The Albracca’s building plans.<sup>30</sup>

38 On 7 October 2016, after reviewing the building plans and consulted JLL’s in-house valuation team for an assessment of an indicative CMV of the units at The Albracca, JLL informed the CSC of its findings and introduced to

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<sup>30</sup> Affidavit of Karamjit Singh Narula s/o Darshan Singh (“KSN’s 1<sup>st</sup> Affidavit”) at paras 12 to 15. See also DSV’s 1<sup>st</sup> Affidavit at pp 284 to 285.

the CSC the concept of including CMV into the formulation of an appropriate MOA for the CSC to consider. JLL also went about and obtained quotations from five independent valuation firms for the CSC to consider engaging should it choose to include CMV into the MOA.<sup>31</sup>

39 The CSC met on 24 November 2016 to discuss the MOA and the merits of including CMV into the formulation. JLL showed that a MOA comprising 50% SV and 50% SA would result in wide variations between the collective sale premium each unit type will enjoy. A collective sale premium is the difference between what a SP would receive in a collective sale and what a SP would receive when he or she sold his or her unit in the open market. According to JLL, the difference in premium between the unit with the highest premium and the lowest premium using the MOA of 50% SV and 50% SA was 23%. This was due to the unique configurations of The Albracca and the way share values were distributed across the units.<sup>32</sup>

40 However, when CMV was included in the MOA, based on the CMV of each unit in the Indicative Valuation provided by JLL's in-house valuation team, the MOA resulted in smaller variations of premium between the smallest and largest units. The difference in premium between the unit with the highest premium of 73% and the unit with the lowest premium of 58% was only 15% (based on the reserve price of \$59,500,000). As such, JLL advised the CSC that the MOA of 1/3 SV – 1/3 SA – 1/3 CMV would result in a distribution of sale proceeds that is fair and just for all the SPs of The Albracca.<sup>33</sup> This method placed equal weightage on all factors, including CMV and it also took into account the interests of all the different groups of SPs.

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<sup>31</sup> KSN's 1<sup>st</sup> Affidavit at paras 22 to 24.

<sup>32</sup> KSN's 1<sup>st</sup> Affidavit at paras 25 to 36. See also DSV's 1<sup>st</sup> Affidavit at pp 288 to 289.

<sup>33</sup> KSN's 1<sup>st</sup> Affidavit at paras 25 to 36. See also DSV's 1<sup>st</sup> Affidavit at pp 288 to 289.

41 Instead of accepting the MOA of 1/3 SV – 1/3 SA – 1/3 CMV at the 24 November 2016 meeting itself as the final MOA in the CSA, the CSC decided to adjourn its decision to consult the SPs first. This it proceeded to do at an informal owners’ meeting held on 26 November 2016. At this meeting, all the SPs, including the Defendant, were present or represented.<sup>34</sup> JLL gave a presentation to them explaining the proposed MOA of 1/3 SV – 1/3 SA – 1/3 CMV and informed the SPs that if they agree to include CMV into the formulation of the MOA, they would need to bear the costs of engaging an independent valuer to determine the CMV of each unit. JLL also explained to the SPs about the two different types of approaches that could be used to arrive at the CMV of each unit – the Individual Unit Valuation or the Typical Unit Valuation. For the Individual Unit Valuation, the valuer would have to enter each individual home unit and assess the value of the unit. For the Typical Unit Valuation, the valuer disregards unit orientation, height, views and internal renovations and assigns values to each of the unit types. The valuer would not inspect all units but only the typical units.<sup>35</sup> At this first informal owners’ meeting, all the SPs, except the Defendant, agreed to engage an independent valuer to ascertain the CMV using the Individual Unit Valuation. However, to do so, the CSC requires all the SPs to sign a letter consenting to the Individual Unit Valuation and to forward their payment for their apportioned share of the valuer’s fees to De Souza Lim & Goh LLP. The CSC then engaged Savills as its independent valuer because of Savills’ experience and favourable fee quotation.<sup>36</sup>

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<sup>34</sup> DSV’s 1<sup>st</sup> Affidavit at para 15.5.

<sup>35</sup> KSN’s 1<sup>st</sup> Affidavit at paras 36 to 45. See also Affidavit of Deorukhkar Sameer Vinay dated 26 March 2018 (“DSV’s 2<sup>nd</sup> Affidavit”) at paras 9 to 13.

<sup>36</sup> KSN’s 1<sup>st</sup> Affidavit at para 43.1. See also DSV’s 1<sup>st</sup> Affidavit at para 15.5 and 15.6.

42 Subsequently, as only ten of the 11 SPs consented to the Individual Unit Valuation (the Defendant did not give his consent), the CSC instructed Savills to use the Typical Unit Valuation method to derive the CMV of each unit in The Albracca.<sup>37</sup>

43 After inspecting the typical units of The Albracca on 17 January 2017 and 7 February 2017, Savills produced its valuation report on 16 February 2017 and this was given to JLL and the CSC.<sup>38</sup> On 17 February 2017, the CSC met and JLL gave a presentation on the various permutations of MOAs using the valuation figures provided by Savills. It was clear even then that the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV would result in a lower premium differential across the units as compared to the MOA of 50% SV and 50% SA.<sup>39</sup> According to industry practice, a MOA would be considered fair and just for all unit holders if it resulted in small premium differentials across the different units in the development.<sup>40</sup> As such, the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV was considered fair and just. After considering the various permutations of the MOA, at this stage with the benefit of the valuations of Savills, the CSC decided to adopt the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV.

44 On 1 March 2017, the CSC held another informal owners' meeting and updated the SPs on the proposed MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV and explained its justification in proposing this MOA.

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<sup>37</sup> DSV's 2<sup>nd</sup> Affidavit at para 14.

<sup>38</sup> DSV's 2<sup>nd</sup> Affidavit at para 9. See also SSM's 1<sup>st</sup> Affidavit at p 19.

<sup>39</sup> DSV's 2<sup>nd</sup> Affidavit at para 15. See also DSV's 1<sup>st</sup> Affidavit at pp 290 to 291 and KSN's 1<sup>st</sup> Affidavit at paras 50 to 54.

<sup>40</sup> KSN's 1<sup>st</sup> Affidavit at para 15.

45 On 17 April 2017, an EGM of the SPs of The Albracca was held. Ten of the 11 SPs of The Albracca were present or represented by proxy (the Defendant being absent). During this EGM, the MOA was adopted unanimously.<sup>41</sup>

46 From the above, I find that the CSC was even-handed and had acted conscientiously (see [28] above) regarding the MOA. It is clear that the CSC had obtained the expert opinions of JLL and Savills in its consideration of the MOA in order to arrive at a MOA that was fair to all the SPs, including the Defendant. Evidence shows that the CSC had discharged its duty in good faith in the determination of the method of distribution of the sale proceeds of the collective sale. The CSC was also thorough and careful as it had consulted real estate experts in its deliberation on the most equitable MOA. The CSC was also transparent and had regularly updated and consulted the SPs on the proposed MOA at the appropriate stages of the collective sale. With the SPs' consent, the CSC decided to adopt the MOA which included CMV. They had also consulted the SPs on whether to engage Savills as their independent valuer.

47 I shall now address the Defendant's concerns on the process by which the CSC arrived at the MOA of 1/3 SV – 1/3 SA – 1/3 CMV. First, the Defendant claims that the CSC decided to move away from the MOA of 50% SV and 50% SA after it was originally proposed at the first CSC meeting on 8 September 2016. He alleges that this was done suddenly and without basis.<sup>42</sup> Second, the Defendant also claims that the CSC failed to conduct due diligence as it did not pose any questions to JLL on the MOA of 1/3 SV – 1/3 SA – 1/3 CMV when JLL made a presentation on this at the CSC meeting on 24 November 2016.<sup>43</sup>

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<sup>41</sup> See DSV's 1<sup>st</sup> Affidavit at p 232.

<sup>42</sup> QCK's 1<sup>st</sup> Affidavit at para C2(d).

<sup>43</sup> QCK's 1<sup>st</sup> Affidavit at para C2(i).

48 On the evidence of the process through which the CSC came to adopt the MOA of 1/3 SV – 1/3 SA – 1/3 CMV as discussed above, I find that the Defendant's complaints are unfounded. The CSC was nothing but careful and conscientious when deciding the appropriate MOA to adopt given the unique configurations of The Albracca.

*(ii) Was the MOA of 1/3 SV – 1/3 SA – 1/3 CMV fair for all the SPs?*

49 The Defendant argues that the MOA of 1/3 SV – 1/3 SA – 1/3 CMV was unfair to the SPs, especially to the small unit owners. He criticises the valuation figures prepared by Savills was wrong. The Defendant then goes further and *uses his own valuation figures which are not supported by any real estate or valuation expert* to show that, based on his valuation figures, a MOA of 50% SV and 50% CMV would result in the fairest distribution of sale proceeds.<sup>44</sup> This is because, based on the Defendant's calculations, a MOA of 50% SV and 50% CMV would result in the tightest band of premium differential – the difference in premium between the unit with the highest premium and the unit with the lowest premium was 10.2%.<sup>45</sup> Based on this MOA, the Defendant argues that the small unit SPs like him would enjoy a higher premium of \$745,489.<sup>46</sup>

50 I shall discuss the Defendant's submissions on Savills' valuation figures and his valuation below at [57] onwards. Suffice now for me to state, at the outset, that I accept Savills' valuation figures. On the other hand, I find that the Defendant's valuations were deficient, self-serving and unsupported by any expert evidence. Thus I am unable to accept the Defendant's valuation figures (see below at [60] to [72]). Accordingly, I cannot accept the Defendant's

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<sup>44</sup> QCK's 2<sup>nd</sup> Affidavit at para 53.

<sup>45</sup> QCK's 2<sup>nd</sup> Affidavit at para 53 and Annex H at pp 19 and 20.

<sup>46</sup> QCK's 2<sup>nd</sup> Affidavit at para 54.

calculations of the distribution of sale proceeds based on the MOA of 50% SV and 50% CMV using *his* valuation figures.

51 Furthermore, using Savills' valuation data at para 9 of Savills' valuation report,<sup>47</sup> the MOA of 50% SV and 50% CMV would lead to a premium differential of 36.41%.

52 The table below will illustrate this:

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<sup>47</sup> SSM's 1<sup>st</sup> Affidavit at p 27.



**Table of MOA using 50% SV and 50% CMV**

Unit	(a)	(b)	(c)	(d)	(e)
#02-01	6	\$4,320,000	10.99%	\$7,597,131.47	75.86%
#02-02	6	\$4,320,000	10.99%	\$7,597,131.47	75.86%
#04-01	6	\$4,080,000	10.67%	\$7,373,686.42	80.73%
#04-02	6	\$4,080,000	10.67%	\$7,373,686.42	80.73%
#06-01	4	\$2,080,000	6.25%	\$4,319,937.50	107.69%
#06-02	4	\$2,080,000	6.25%	\$4,319,937.50	107.69%
#07-01	4	\$2,000,000	6.14%	\$4,245,455.82	112.27%
#07-02	4	\$2,000,000	6.14%	\$4,245,455.82	112.27%
#08-01	6	\$4,080,000	10.67%	\$7,373,686.42	80.73%
#09-01	6	\$4,040,000	10.61%	\$7,336,445.58	81.60%
#09-02	6	\$4,040,000	10.61%	\$7,336,445.58	81.60%
<b>Total</b>	<b>58</b>	<b>\$37,120,000</b>	<b>100%</b>	<b>\$69,119,000.00</b>	

Highest premium : 112.27%

Lowest premium : 75.86%

Premium difference: 36.41%

Legend:

(a) SV

(b) CMV<sup>48</sup>

(c) Percentage of sales proceeds calculated using MOA of 50% SV – 50% CMV

(d) Sales proceeds received using sale value of \$69,119,000 and percentage of sales proceeds in (c)

$$(e) \text{ Premium} = \frac{(d) - (b)}{(b)} \times 100$$

<sup>48</sup>Valuation figures in SSM's 1<sup>st</sup> Affidavit at p 68.

53 From the above table, the premium difference between the unit enjoying the highest premium and the unit with the lowest premium is 36.41%. This is higher when compared to the MOA of 50% SV and 50% SA which is 26.9% and the MOA of 1/3 SV – 1/3 SA – 1/3 CMV which is 18%.<sup>49</sup> The Defendant's preferred MOA of 50% SV and 50% CMV had deliberately excluded the strata area of the SPs. This would not be fair as the large units constitute the largest number of SPs, *ie*, seven out of 11 SPs.

54 Hence, I find that the MOA of 1/3 SV – 1/3 SA – 1/3 CMV was indeed the fairest MOA for all the SPs of The Albracca as it resulted in the smallest difference in the premium enjoyed by the different types of units taking into account their SV, SA and CMV. In fact the Defendant's unit type stood to gain the highest premium of 99.2% from the MOA of 1/3 SV – 1/3 SA – 1/3 CMV.<sup>50</sup>

55 Finally, it is pertinent to highlight that the MOA of 1/3 SV – 1/3 SA – 1/3 CMV received support from ten out of 11 SPs of The Albracca, the Defendant being the only SP who did not support it. Therefore, it could hardly then be argued that the MOA was unfair for the owners of the large and small units.

56 For these reasons, I find that the CSC had acted in good faith and had fulfilled its duties with due diligence when it adopted and later proposed the MOA of 1/3 SV – 1/3 SA – 1/3 CMV to the SPs at the EGM on 17 April 2017.

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<sup>49</sup> SSM's 1<sup>st</sup> Affidavit at p 68.

<sup>50</sup> Plaintiffs' Skeletal Submissions at [12.4] and SSM's 1<sup>st</sup> Affidavit at p 68.

***Was the CSC acting in good faith when it accepted the valuation report prepared by Savills?***

57 The Defendant's main contention on this issue is that Savills' valuation report dated 16 February 2017<sup>51</sup> was unsound and that in accepting the valuation report, the CSC had acted in bad faith. However, I find that Savills' valuation report was sound and the CSC had acted in good faith when it accepted the valuation report prepared by Savills.

58 Looking first at Savills' valuation report, there was nothing untoward which would lead me to doubt the soundness of the report. Savills had clarified that it adopted the Typical Unit Valuation approach as per CSC's instructions and derived its figures using the Direct Comparison Method. The Typical Unit Valuation and the Direct Comparison Method were also explained in Savills' report. Savills further justified the approach it took to derive the Typical Unit Valuation figures for the various unit types in The Albracca. Savills explained that it first used unit #06-02 of The Albracca as a base unit for analysis and made adjustments to derive the value of the other typical units in The Albracca. Savills used recent sales transaction data from comparable developments in the immediate vicinity of The Albracca to help form the basis of its analysis and its opinion of the valuation. In determining which developments were comparable to The Albracca in the vicinity, Savills took into consideration factors such as the date of sale (to be as close to 16 February 2017 as possible), tenure, size, age and proximity of the development to The Albracca as well as the facilities in the development. Savills then made the appropriate upward or downward adjustments of the market value of the units of the comparable developments to derive the valuation of the base unit. Again, the upward or downward adjustments took into consideration the same factors used in determining which

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<sup>51</sup> Exhibit SSM-2 of SSM's 1<sup>st</sup> Affidavit at p 17.

developments are comparable to The Albracca. Finally, Savills then made the necessary adjustments from the base unit's valuation to derive the valuation of the other unit types in The Albracca. Savills also highlighted that its approach was in line with the SISV's guidelines which is the industry practice.<sup>52</sup>

59 In the light of the foregoing, I find that Savills had provided a cogent and coherent explanation of how it arrived at its findings in its valuation report. Therefore, there was nothing unsound about Savills' valuation report.

60 Turning now to the Defendant's arguments. The Defendant has raised a number of rather technical objections to the valuation report prepared by Savills. In particular, the Defendant relies on the sales transactions of units at The Albracca over the past 25 years. The Defendant also refers to the sales transactions of developments in faraway districts such as The Interlace in District 4 and Pandan Valley in District 21 to estimate the per square foot ("psf") price of units in The Albracca which is in District 15.<sup>53</sup> The Defendant used these data as a basis to show that on average, the psf price of the large units in The Albracca was 33% lower than that of the small units.<sup>54</sup>

61 Furthermore, the Defendant contends that the large units in The Albracca have disproportionate large balcony area as compared to the small units. Therefore, the balcony areas of the large units should be priced at one-third the psf price of built-in areas. Thus the psf price of the large units in The Albracca had to be 33% lower than the psf price of the small units. The Defendant argues that Savills did not take into account this premium for the small units in its valuation report.<sup>55</sup>

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<sup>52</sup> SSM's 1<sup>st</sup> Affidavit at paras 11 to 24.

<sup>53</sup> SSM's 1<sup>st</sup> Affidavit at paras 28, 29 and 31.

<sup>54</sup> QCK's 1<sup>st</sup> Affidavit at paras D8 and F.

62 The Defendant asserts that his criticism against the soundness of Savills' valuation report should be accepted by the Court because he and his business partner, one Mr Han Teng Kwang ("Mr Han"), whom he had worked with to evaluate Savills' valuation figures, has had substantial experience valuing companies across industries and overseeing teams of sector specialists including the property sector in their line of work. The Defendant claims that his experience as the Head of Investments at Great Eastern Life Assurance Co Ltd and Mr Han's experience as Head of Resource and Development Team at DBS Bank, amongst others, meant that they were suitably qualified to provide expert comments on real estate and property valuations.<sup>56</sup>

63 The Defendant did not engage any expert from the real estate industry to discredit the Plaintiffs' experts. With the greatest respect, the Defendant and Mr Han may be qualified in fields such as finance and securities, but the Defendant cannot claim that he and Mr Han are experts in the valuation of real estate properties which is not their forte. Furthermore, neither he nor Mr Han has any training or qualifications in valuing private residential properties for collective sales. Therefore, I find that the Defendant's analysis of and challenges against Savills' valuation report which were solely based on his own understanding of the report and how he believed the valuation should have been done bear very little or no weight. On top of all these, the Defendant has a strong self-interest in his own calculations and thus there was a severe deficiency of objectivity. Furthermore, there is no affidavit from Mr Han. Thus the Defendant's references to Mr Han cannot be admitted in evidence in these proceedings.

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<sup>55</sup> QCK's 1<sup>st</sup> Affidavit at paras D1 and E2.

<sup>56</sup> QCK's 2<sup>nd</sup> Affidavit at paras 25 to 31.

64 Be that as it may, I should highlight that Savills had also addressed the Defendant’s technical objections and I accept Savills’ logical and coherent analysis of the Defendant’s objections. Thus I am unable to agree with the Defendant’s contentions against Savills’ valuation report.

65 First, Savills explained that the Defendant had made a mistake by relying on the sales transactions data of The Albracca over the past 25 years because these past transactions were outdated and no longer reflective of current market value and sentiment.<sup>57</sup>

66 Second, Savills pointed out that the Defendant’s reliance on the Urban Redevelopment Authority Price Index to show an average of 33% psf price differential between large and small units was erroneous because the Urban Redevelopment Authority Price Index is merely a general guide on the movement of general market sentiment and not truly reflective of the market trends of the subject locality.<sup>58</sup>

67 Furthermore, in addressing the Defendant’s assertion that balcony space is generally priced at one-third the psf price of in-built space, Savills explained that there “is no straight forward answer on whether a premium, discount or equal value should be applied for balcony, as it depends on the usefulness and orientation of the balcony”.<sup>59</sup>

68 However, Savills did make a downward adjustment of 8% from the base unit’s value to derive the market value for the large units.<sup>60</sup> This was based on

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<sup>57</sup> SSM’s 1<sup>st</sup> Affidavit at para 29.

<sup>58</sup> SSM’s 1<sup>st</sup> Affidavit at para 30.

<sup>59</sup> SSM’s 1<sup>st</sup> Affidavit at para 22.2.

<sup>60</sup> SSM’s 1<sup>st</sup> Affidavit at paras 22.1 and 23.

Savills’ analysis of other residential developments in the vicinity as well as its observation of market trends, especially in the Meyer Road area.<sup>61</sup> Savills had analysed the sales transactions of other residential developments in the vicinity and carried out “pairing analysis” of sales transactions of large and small units in each of the comparable developments and the large and small units in The Albracca. The “pairing analysis” included identifying suitable pairs of comparable developments in the vicinity of The Albracca by looking at the size, date of transaction and whether the large and small units in these comparable developments were located in the same building. Savills then made adjustments to determine the effective floor area to account for uncovered strata area such as roof terraces and private enclosed spaces and strata void areas wherever appropriate. Further adjustments were made to the large units in these comparable developments to equalise the differences within each pair of comparables in terms of floor level, orientation, view, type, condition and date of sale.<sup>62</sup> Based on these findings, Savills accorded the small units a premium of 8% for psf price over the large units. This was within the acceptable market range.<sup>63</sup>

69 Savills had explained in its affidavit that “[w]hile [Savills] do not have the specific breakdown of the built-in and balcony areas, for the purpose of the valuation, [Savills] have relied on the strata and floor layout plans to discern the differences” and it nonetheless applied a downward adjustment of 8% psf price from the psf price of the base unit to derive the market value of the large units. Hence Savills acknowledged that the balcony areas of large units were valued at a lower psf price than built-in areas.<sup>64</sup>

<sup>61</sup> SSM’s 1<sup>st</sup> Affidavit at para 22.1.

<sup>62</sup> Affidavit of Soo Suat Mui dated 1 June 2018 (“SSM’s 2<sup>nd</sup> Affidavit”) at para 10.

<sup>63</sup> SSM’s 1<sup>st</sup> Affidavit at para 23.

<sup>64</sup> SSM’s 1<sup>st</sup> Affidavit at para 22. See also SSM’s 2<sup>nd</sup> Affidavit at para 12.

70 Third, Savills explained that the Defendant's reliance on sales transactions data from The Interlace and Pandan Valley were unsuitable because these developments were located in different districts from The Albracca and they were not in the vicinity of The Albracca. As such, they were unsuitable comparables to be used.<sup>65</sup>

71 Finally, Savills had also extracted the sales transactions data of the Albracca over the past 25 years and the data showed that there had not been a consistent pattern showing that the small units in The Albracca had always commanded a psf price premium over the large units. This is evidenced in the transactions within The Albracca from 1990 to 1993.<sup>66</sup>

72 Thus, I cannot agree with the Defendant's objections, which were not supported by expert evidence, against Savills' valuation report. I must also add that I accept Savills' findings that an 8% psf price differential between large and small units (in favour of the small units) is the appropriate adjustment to make in evaluating the units in The Albracca. Finally, as discussed above, Savills' valuations took into account prevailing market conditions which is required in assessing whether the valuation is sound: *Horizon Partners* at [130]. The same cannot be said of the Defendant's calculations. Thus, I reject the Defendant's technical objections to Savills' valuation report and the Defendant's assertion that there must be a 33% psf price differential in favour of the small units when evaluating the valuation of the units in The Albracca.

73 Another of the Defendant's objection against Savills' valuation report is that Savills refused to disclose to him the workings, analysis and the

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<sup>65</sup> SSM's 1<sup>st</sup> Affidavit at para 31.

<sup>66</sup> SSM's 1<sup>st</sup> Affidavit at para 33.



information it used in arriving at its valuation figures. This indicated that Savills was not acting in good faith when preparing its valuation report.<sup>67</sup>

74 Based on the evidence, I am unable to agree with the Defendant's opinion. There was ample information provided in Savills' valuation report to explain how it derived its valuation figures. From this information, the Defendant could have tested the soundness of Savills' report by forwarding it to an independent expert valuer.

75 In fact, some of the requests for information that the Defendant claims that Savills had refused to release to him was denied by Savills as the latter did not have that information. For example, the Defendant requested information relating to the breakdown of built-in areas and balconies of all units.<sup>68</sup> However, Savills had mentioned that it did not have such information and it did not rely on the exact measurements of the built-in and balcony spaces of the units in The Albracca in evaluating the CMV of each unit using the Typical Unit Valuation method.<sup>69</sup> In my view the Defendant's minutiae attack on Savills' calculations was unwarranted.

76 The Defendant also argues that Savills was not independent when it prepared its report. The Defendant seems to intimate that Savills was in cahoots with JLL and the CSC in coming to its valuation findings. To support this, the Defendant alleges that Savills' valuation figures were very close to the figures in the Indicative Valuation provided by JLL. Thus the Defendant submits that the CSC was acting in bad faith when it chose to accept Savills' valuation figures in coming to a decision on the MOA to adopt.<sup>70</sup>

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<sup>67</sup> QCK's 1<sup>st</sup> Affidavit at para F.

<sup>68</sup> QCK's 1<sup>st</sup> Affidavit at Appendix Fd.

<sup>69</sup> SSM's 1<sup>st</sup> Affidavit at para 22.2. See also SSM's 2<sup>nd</sup> Affidavit at para 12.

77 On this point, I find that there was nothing in Savills' valuation report to indicate that it did not conduct independent research in coming to its findings. Apart from the similar findings between Savills' valuation report and JLL's Indicative Valuation, the Defendant did not adduce any evidence to show that there was collusion between Savills and JLL in the preparation of Savills' valuation report. Given that both JLL and Savills are experts and professionals in property valuation, it is probable that the similar conclusions in their findings can be attributed to them using the proper industry method to derive the valuation of the units in The Albracca. The Defendant's suspicion of collusion between Savills and JLL because their findings were similar was not supported by any evidence.

78 Finally, the Defendant argues that Savills gave full valuation to the built-in and balcony areas of the large units. This is a misconception of the Defendant. Savills had explained in its affidavit that it applied a downward adjustment of 8% psf price from the psf price of the small units to derive the market value of the large units (see above at [68] and [69]). This meant that Savills had taken into account the fact that the large units have larger built-in and balcony areas as compared to the small units. Hence the small unit had a premium over the large unit.

79 For the above reasons, I find that Savills' valuation report was sound and there was nothing on the face of the valuation report and on the evidence which casted any doubt on Savills' independence when they prepared the valuation report. Thus the CSC had not acted in bad faith when it accepted the valuation report prepared by Savills. In fact, I must add that I find that the CSC had acted conscientiously by engaging an independent third-party valuer, with

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<sup>70</sup> QCK's 1<sup>st</sup> Affidavit at para E.

the consent of the SPs, to conduct an independent valuation of all the units of The Albracca before it made the decision to adopt the MOA of 1/3 SV – 1/3 SA – 1/3 CMV as the preferred MOA for the collective sale of The Albracca.

***Were the TAS and the SPA fair and in line with the CSC's duty to act even-handedly?***

80 The relevant clause which the Defendant took issue with is cl 59 of the SPA:<sup>71</sup>

59. Where Schedule 2 of this Agreement shows that not all the Owners in the Development have signed the CSA, **the Purchaser shall**, for the purposes of the collective sale and/or to assist the Vendors in their application for the Approval (if necessary), upon receiving the written notice under Clause 3 hereof and within the period specified under Clause 4 hereof, **pay to the Solicitors the non-refundable sum of Singapore Dollars Fifty Thousand (S\$50,000.00) which sum shall be utilised by the Vendors for the purposes of the collective sale as they may deem fit.**

[Emphasis added]

81 The Plaintiffs submit that cl 59 of the SPA should be read together with cll 34 and 35.3 of the CSA which are reproduced as follows:<sup>72</sup>

34. The Sale Committee may establish an Application Fund, which shall be administered by the Solicitor to pay (or to provide for the payment of) Disbursements incurred or to be incurred in the Collective Sale. ...
- 35.3. The sum of Dollars Three Thousand Four Hundred (\$3,400.00) in favour of De Souza Lim & Goh LLP to be collected after a Sale Contract has been signed as Each Vendor's contribution to the Application Fund under Clause 34 **unless the Purchaser agrees to pay the same.** ...

[Emphasis added]

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<sup>71</sup> See DSV's 1<sup>st</sup> Affidavit at p 141.

<sup>72</sup> See DSV's 1<sup>st</sup> Affidavit at pp 74 to 75.

82 On a plain reading of the above clauses, I find that the \$50,000 paid by the purchaser of The Albracca pursuant to cl 59 is separate from the purchase price of \$69,119,000. I find that cl 59 shifted the financial burden of funding the costs of obtaining the approval necessary for the collective sale onto the purchaser without affecting the purchase price and the amount each SP will receive based on the MOA of 1/3 SV – 1/3 SA – 1/3 CMV.

83 Therefore the Defendant’s contention that this fund unduly prejudiced the interest of the SPs who objected to the collective sale on the basis that the \$50,000 formed part of the purchase price is entirely misconstrued.<sup>73</sup>

84 Further, the Defendant also argues that the \$50,000 fund contributed by the purchaser is unfair because it meant that the SPs who supported the collective sale need not pay for any costs that may be incurred defending the collective sale against objections while the SPs who objected to the collective sale would have to bear the costs incurred for doing so on their own. Coupled with the fact that the TAS is on a “no sale, no fee” basis, the Defendant submits that the entire arrangement of the collective sale places a heavy burden on the SPs who objected to the sale.

85 I wish to reiterate that the SPA is a voluntary commercial agreement entered freely between the purchaser and the CSC on behalf of the consenting SPs. The purchaser chose to bear the burden of funding the costs of facilitating and defending the collective sale. Thus, I find that there is nothing unfair or unusual in such an arrangement. It would be against the grains of logic to expect the purchaser or the MCST to financially support the objectors, such as the Defendant, in their actions against the collective sale.

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<sup>73</sup> QCK’s 1<sup>st</sup> Affidavit at para H5.

86 Similarly, the TAS is a voluntary commercial agreement entered freely between the CSC and De Souza Lim & Goh LLP. Under the TAS, De Souza Lim & Goh LLP would not charge any fee “if collective sale is abortive and there are no monies forfeited from the purchaser”.<sup>74</sup> This, I find, is a commercial risk De Souza Lim & Goh LLP took and this is in fact to the benefit of the SPs of The Albracca in the event the collective sale did not pull through. Thus, I find that there is nothing unfair or unusual in such an arrangement.

87 Therefore, the CSC was not acting in bad faith when it drafted the TAS and the SPA in the aforementioned way. It is a commercial decision the CSC took which was in favour of the SPs. Furthermore, the Plaintiffs had sworn on affidavit that any unused funds would be distributed to all the SPs, including the Defendant, in accordance with the MOA.<sup>75</sup>

### ***Summary of findings***

88 In summary, at the commencement of the collective sale process there were two SPs who were not in favour of selling their properties. The Defendant was one of them. Later, one of the objectors, the SP of unit #09-02, eventually agreed to the collective sale, leaving the Defendant as the only SP against the collective sale. This brought the percentage of the SPs who were in favour of the collective sale in terms of share value and strata title to over 90%. These facts are undisputed hitherto.

89 The Defendant then proceeded to oppose the collective sale by attacking the CSC on the grounds that it failed to discharge its duty fairly, honestly and in good faith. Under the LTSA it does not matter whether there is only one or

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<sup>74</sup> DSV’s 1<sup>st</sup> Affidavit at p 102.

<sup>75</sup> DSV’s 2<sup>nd</sup> Affidavit at para 36.

more who oppose the collective sale, the interest of all the SPs must be well looked after in good faith and the proceeds of sale must be fairly and equitably apportioned: see s 84A(9)(a) of the LTSA.

90 I find that the CSC had acted in good faith. First, there was no evidence to show that there was some dishonesty or bad faith in the appointment of David Lee to the CSC. There was also no evidence that David Lee had not acted independently or had acted dishonestly or in bad faith. It is in David Lee's own interest to seek the best deal for himself and the other owners of the three small units which included the Defendant.

91 Second, I find that the CSC had acted in good faith when it adopted the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV and proposed it to the SPs. The CSC had been even-handed and conscientious in its conduct. It took the time to obtain the expert opinions of JLL and Savills on the appropriate MOA to adopt. It also took the time and effort to consult the SPs on the course of action to take. Savills, an independent third-party valuer, was engaged to carry out a Typical Unit Valuation to derive the CMV for each unit in The Albracca. Eventually, the CSC was convinced that the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV was indeed the fairest for all units in The Albracca.

92 Third, based on Savills' valuation figures and the sale price of \$69,119,000, I find that the MOA of  $\frac{1}{3}$  SV –  $\frac{1}{3}$  SA –  $\frac{1}{3}$  CMV was indeed the fairest MOA. It resulted in the narrowest band of premium differential. It also evened out the differences between share value, strata area and current market value such that none of the owners was significantly favoured or disadvantaged.

93 Fourth, I do not agree with the Defendant's objections to Savills' valuation figures. On this, I find that Savills had provided a cogent and coherent explanation of how it arrived at its findings in its valuation report. The Defendant is not an expert at property valuation and he did not adduce or rely on any expert evidence to buttress his case. Thus I am unable to agree with the Defendant's technical objections and criticism of Savills' valuation report.

94 Finally, I find that there is nothing unfair about the TAS and the SPA. They are commercial agreements entered into by the purchaser and the CSC on behalf of the SPs who consented to the collective sale of The Albracca whereby the purchaser voluntarily agreed to bear the financial costs of facilitating and defending the collective sale. In coming to this arrangement, I find that the CSC had not acted uneven-handedly and neither had it acted dishonestly nor in bad faith towards any SP.

### **Conclusion**

95 In conclusion, I find that the Defendant's objections against the collective sale are unmeritorious. The CSC had acted in good faith in carrying out the collective sale. Accordingly, I quash the Stop Order imposed by STB and allow the collective sale to proceed. Furthermore, I grant to the Plaintiffs order in terms of the prayers in OS 28/2018.

96 I shall now hear parties' submissions on the costs of these proceedings.

Tan Siong Thye  
Judge

Jason Lim Chen Thor, Kevin De Souza and Geena Liaw Jin Yi (De  
Souza Lim & Goh LLP) for the first, second and third plaintiffs;  
The defendant in person.

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