

Choo Liang Haw @ Choo Liang Hoa and others v Chua Seet Mui and others and another
matter
[2015] SGHC 47

Case Number : Originating Summons Nos 941 and 982 of 2013
Decision Date : 13 February 2015
Tribunal/Court : High Court
Coram : Quentin Loh J
Counsel Name(s) : Lim Seng Siew and Naidu Devadas (instructed) (Metropolitan Law Corporation) for the plaintiffs in OS 941 and the 10th-13th defendants in OS 982; Adrian Tan and Roy Mukkam (Stamford Law Corporation) for the defendants in OS 941 and the 3rd-8th defendants in OS 982; Michael Khoo SC, Andy Chiok, Josephine Low, Ong Lee Woei and Joel Yeow (Michael Khoo & Partners) for the plaintiffs in OS 982; Davinder Singh SC, Jaikanth Shankar and Jarod Kok (Drew & Napier LLC) for the 9th defendant in OS 982; Winnifred Gomez and Rakesh s/o Pokkan Vasu (Gomez & Vasu LLC) for the 14th defendant in OS 982.
Parties : Choo Liang Haw @ Choo Liang Hoa — Loke Wan Tche — Charles Ng Pooh Cheok — Lok Kok Poh — Chua Seet Mui — Lim Sui May Petrina — Lim Li Meng Dominic — Loke Ah Meng — Soh Lay Bee — Koh Nai Hock @ Koh Chou Toh — Pan Xingzheng Edric — Quek Chia-Min Valerie — Sally Ching Pui Sum — Warren Khoo — Pan Xingzheng Edric — Quek Chia-Min Valeria — Chua Seet Mui — Loke Ah Meng — Soh Lay Bee — Lim Li Meng Dominic — Lim Sui May Petrina — Koh Nai Hock — Dillenia Land Pte Ltd — Loke Wan Tche — Lok Kok Poh — Charles Ng Pooh Cheok — Choo Liang Haw — Gary Michael Darwin

Land – Strata titles – Collective sales

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 52 of 2015 and Summons No 266 of 2015 was allowed by the Court of Appeal on 7 July 2015. See [\[2015\] SGCA 54.](#)]

13 February 2015

Judgment reserved.

Quentin Loh J:

1 This case involves the collective sale of the condominium development known as “Gilstead Court” (Strata Title Plan No 464) comprised in Land Lot No TS28-578K (“the Development”). Unlike most collective sale disputes (at least until the hearing before me), there were no parties directly opposing this sale. Rather, the objectors in this case were unhappy about certain “penalty clauses” in the Collective Sale Agreement (“CSA”) which were expressed to be applicable to them. The matter eventually culminated in two Originating Summonses before this court—Originating Summons No 941 of 2013 (“OS 941”) and Originating Summons No 982 of 2013 (“OS 982”).

2 OS 941 was commenced on 7 October 2013 by four plaintiffs (Choo Liang Haw @ Choo Liang Hoa (“Choo Liang Haw”), Loke Wan Tche, Charles Ng Pooh Cheok and Lok Kok Poh, all of whom are members of the 7-person Collective Sales Committee (“CSC”)), against six defendants (Chua Seet Mui (owner of Unit 50P), Lim Sui May Petrina and Lim Li Meng Dominic (owners of Unit 52C), Loke Ah Meng and Soh Lay Bee (owners of Unit 52A) and Koh Nai Hock @ Koh Chou Toh (“Koh Nai Hock”) (owner of Unit 54K)), the subsidiary proprietors (“SPs”) who had chosen not to sign the CSA. The prayers sought were:

- (a) a declaration that the "penalty clauses" of the CSA do not apply to the six defendants if they sign the CSA;
- (b) a declaration that any offer by Dillenia Land Pte Ltd ("DLPL"), the intending purchaser of the Development, to contribute to the six defendants' liability under the CSA is permissible and does not offend the CSA;
- (c) a declaration that upon the six defendants signing the CSA, the collective sale of the Development shall proceed on the basis that there is unanimous consent under the Sale and Purchase Agreement signed between the majority of subsidiary proprietors and DLPL;
- (d) such further orders as the court may consider just and equitable; and
- (e) that the costs of the application be provided for.

3 OS 982 was commenced slightly over a week later on 16 October 2013, originally by three plaintiffs, Sally Ching Pui Sim ("Sally Ching"), chairperson of the CSC, Warren Khoo, secretary of the CSC, and Choo Liang Haw, treasurer of the CSC. These three formed the Executive Committee of the CSC ("the Exco"). Subsequently, some four months later, on 14 February 2014, under circumstances that I shall come to, Choo Liang Haw was removed as a plaintiff and added in as the 13th defendant and Gary Michael Darwin ("Gary Darwin") was added as the 14th defendant. There were originally 12 defendants in the following order: Pan Xingzheng Edric ("Edric Pan") and Quek Chia-Min Valeria (Unit 50A), Chua Seet Mui (Unit 50P), Loke Ah Meng and Soh Lay Bee (Unit 52A), Lim Sui May Petrina and Lim Li Meng Dominic (Unit 52C), Koh Nai Hock (Unit 54K), (the owners of the five units who did not sign the CSA ("the non-signatory SPs")), DLPL, and three members of the CSC, Loke Wan Tche, Lok Kok Poh and Charles Ng Pooh Geok. This OS was amended on 17 February 2014 and the amended prayers sought were as follows:

- (a) An order that all the lots and common property in the Development be sold collectively to DLPL according to the terms and conditions of the conditional contract of sale concluded by the acceptance of DLPL's tender on 17 June 2013 in accordance with, and subject to, the Final Terms and Conditions of Tender dated 29 May 2013 and subject to any orders that may be made in these proceedings.
- (b) An order that the non-signatory SPs be bound by all the terms of the CSA as if they were parties thereto.
- (c) A declaration that Cl 7.5 (Default Contribution) and 11 (Abuse of Process) of the CSA are valid and that, in the events that have happened, Cl 7.5 and 11 are applicable, enforceable, and in full force and effect against each of the non-signatory SPs.
- (d) An order that the non-signatory SPs jointly and/or severally (as may be applicable):
 - (i) pay in respect of their five units to the plaintiffs the sum of \$2,000 each per unit under cl 7.5 (Default Contribution) of the CSA; and
 - (ii) bear or contribute to the Strata Titles Board ("STB") proceedings under cl 11 of the CSA in such sum or sums as the Court may think just and appropriate (the original prayer was for the non-signatory SPs to each bear \$27,000 for the \$135,000 incurred in costs).

The payments to be made within seven days from the date of the court order by cashier's orders

drawn in favour of "MCST 464 – Collective Sale Common Fund", with the proceeds to be used in the manner provided for in the relevant provisions of the CSA.

(e) An order that the first and second plaintiffs, being the chairperson and secretary respectively of the CSC and members of the Exco, be authorised to take any action, make any decision and do anything else required or allowed to be taken made or done under the CSA or the conditional contract of sale or in relation to the Collective Sale generally, and that any action, decision and thing taken, made or done in good faith by the first and second plaintiffs shall be deemed to be as effectively taken, made or done as if such action, decision and thing were done by the Exco as a whole or the CSC as a whole, including but not limited to:

(i) signing with DLPL and on behalf of all the SPs the Sale and Purchase Agreement in terms of the draft annexed to the Final Terms and Conditions of Tender;

(ii) receiving deposits and payments towards the purchase price and giving a valid receipt and discharge therefor;

(iii) signing any documents (other than for the operation of bank accounts as provided below) required or allowed to be signed; and

(iv) appointing solicitors and counsel and giving instructions to them for any proceedings for enforcement of the conditional contract of sale or the CSA, and defending or taking action in or in relation to any proceedings brought against them in connection with or arising from the Collective Sale.

(f) An Order that notwithstanding anything to the contrary in the mandate to DBS Bank (the bank with which the management corporation held accounts), the first and second plaintiffs, being the chairperson and secretary respectively of the CSC and members of the Exco, be authorised and empowered to operate the two bank accounts (*ie*, "MCST 464 – Collective Sale Common Fund" and "MCST 464 – Collective Sale Proceeds") maintained by the CSC for the purposes of the Collective Sale of the Development and for that purpose to comply with all the terms and conditions required by DBS Bank Ltd to the intent that the first and second plaintiffs shall be the only two authorised signatories to the two bank accounts from the date of the court order.

(g) A declaration that any action, decision or thing taken made or done by the first and second plaintiffs in good faith performance of their duty under the CSA without the participation of the 13th defendant since 1 October 2014 is deemed to be as effectively taken, made or done as if with the participation of the 13th defendant.

(h) A declaration that DLPL has committed a breach of cl 37 (Illicit Payments) of the Final Terms and Conditions of Tender by making, albeit indirectly, an offer of extraneous consideration in the sum of \$135,000 ("the Extraneous Offer") to relieve the non-signatory SPs of their liability under Cl 7.5 (Default Contribution) and 11 (Abuse of Process) of the CSA as an inducement for the non-signatory SPs to withdraw their objections in the sale approval proceedings before the STB or the High Court.

(i) An order, consequential on the declaration under the preceding paragraph (h), that DLPL pay to the plaintiffs to the use of such signatory SPs as the Court may adjudge appropriate liquidated damages in the sum of \$15,016,800 as provided in cl 37 (Illicit Payments) of the Final Terms and Conditions of Tender.

- (j) A declaration that the 10th to 13th defendants have committed a breach of their duty as CSC members to act faithfully as agents of the signatory SPs, including to observe and uphold all the provisions of the CSA and the Final Terms and Conditions of Tender, especially Cl 7.5 (Default Contribution), 11 (Abuse of Process) and 12 (Anti-Corruption) of the CSA and cl 37 of the Final Terms and Conditions, and not to subvert or attempt to subvert them.
- (k) A declaration that the 10th to 13th defendants as signatory SPs have committed a breach of their obligations to other signatory SPs to observe and uphold all the provisions of the CSA and the Final Terms and Conditions of Tender, especially Cl 7.5 (Default Contribution), 11 (Abuse of Process) and 12 (Anti-Corruption) of the CSA and cl 37 of the Final Terms and Conditions, and not to subvert or attempt to subvert them.
- (l) An injunction restraining the 10th to 13th defendants from engaging in any activity incompatible with their position as CSC members and signatories to the CSA, including but not limited to applications to court, calling meetings of owners or otherwise to alter the provisions of the CSA or the Final Terms and Conditions of Tender.
- (m) A declaration that the 14th defendant as a signatory SP has committed a breach of his obligations to other signatory SPs to observe and uphold all the provisions of the CSA and the Final Terms and Conditions of Tender, especially Cl 7.5 (Default Contribution), 11 (Abuse of Process) and 12 (Anti-Corruption) of the CSA and cl 37 of the Final Terms and Conditions, and not to subvert or attempt to subvert them.
- (n) An injunction restraining the 14th defendant from engaging in any activity incompatible with his position as signatory to the CSA, including but not limited to calling meetings of owners or otherwise to alter the provisions of the CSA or the Final Terms and Conditions of Tender.
- (o) A declaration that the purported requisition by the 10th to 14th defendants together with others for an Extraordinary General Meeting ("EOGM") of the SPs submitted on 22 November 2013 is invalid for lack of proper legal authority, and that any resolutions purporting to be passed at the EOGM and any purported action taken in pursuance of such resolutions, including any purported action taken by the CSC in pursuance of such resolutions, are invalid and null and void.
- (p) An order for costs of and in connection with these proceedings against all the defendants to be borne by the defendants in such proportion as the court may think just and appropriate.
- (q) An order that the costs and disbursements incurred by the first and second plaintiffs in and in connection with this application, including the solicitor-client costs for this application, be paid out of the collective sale proceeds as provided by the CSA.
- (r) Such further declarations and orders as the court may think just and appropriate.
- (s) Liberty to apply for such further orders or directions as may be necessary.

Background

4 The Development comprises 48 units of residential properties of varying sizes. In 2008, a few SPs were interested in coming together to collectively sell the Development by means of a collective sale. It bears mentioning that there was an earlier attempt at a collective sale [\[note: 1\]](#) between 2005 and 2007, however, for one reason or another, that collective sale was eventually aborted. [\[note: 2\]](#)

5 On 12 April 2008, at the first general meeting, the CSC was appointed. [\[note: 3\]](#) It comprised:

- (a) Sally Ching;
- (b) Warren Khoo;
- (c) Choo Liang Haw;
- (d) Chan Ju-Lian;
- (e) Loke Wan Tche;
- (f) Lok Kok Poh; and
- (g) Charles Ng Pooh Cheok.

Chan Ju-Lian was not involved in these proceedings. It has been pointed out that Chan Ju-Lian has been sitting on the CSC on behalf of his mother, Mdm Chong Kwee Leng, who is the surviving SP of unit 50Q. Chan Ju-Lian is not a registered SP of any unit. [\[note: 4\]](#) I note, however, that a member of the immediate family of an SP is eligible, upon nomination by the SP, for election as a member of the CSC (see the Third Schedule to the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("the Act") at para 1(3)(c)). As nothing materially turned on the precise status of Chan Ju-Lian, or whether a legitimate nomination was made, I will take it that he was, and is, a member of the CSC.

6 On 5 September 2009, at the first meeting of the CSC, as noted above, Sally Ching was appointed as the chairperson, Warren Khoo as the secretary and Choo Liang Haw as the treasurer. [\[note: 5\]](#) These three persons formed the Exco of the CSC.

7 The second general meeting was held on 10 April 2010. At this meeting, the CSC was given the power to appoint architects to facilitate the sale. [\[note: 6\]](#) Ong & Ong was eventually appointed as the architects.

8 In May 2011, a preliminary draft of the CSA was circulated to the SPs for their comments. [\[note: 7\]](#) The CSA was primarily drafted by Warren Khoo without the assistance of retained solicitors. [\[note: 8\]](#) On 2 July 2011, a revised draft was presented at the third meeting with the SPs, for their approval. [\[note: 9\]](#) On 9 July 2011, the final version of the CSA was released to the SPs, and the procurement of signatures commenced. The controversial clauses of the CSA ("the Objectionable Clauses") which effectively led to these proceedings, provide as follows: [\[note: 10\]](#)

7. OWNERS' CONTRIBUTIONS

7.1 Contribution Amount

As authorised by the EOGM of 2 July 2011, and as the Sellers in any event agree, each Owner shall pay an initial contribution in the sum of [\$2,000] per Unit (each, a "**Contribution**") towards the cost and expenses of the Collective Sale, provided that:

- (a) Any Owner who does not sign this Agreement may also pay the Contribution at any time before the Closing Date (or the Extended Closing Date, if any); and

(b) Any Owner may pay any amount above the Contribution whenever he so chooses (which total amount shall constitute his Contribution amount).

...

7.3 Refund on Completion of Collective Sale

In the event that the Collective Sale is successfully completed, and in recognition of the Owners who pay the Contribution (each, a "**Contributing Owner**") who by so doing add value to and assume the risks inherent in the Collective Sale, each Contributing Owner shall be refunded the full amount of his Contribution from the Sale Proceeds, with simple interest at the rate of Twelve percent per annum (12% p.a.) on the amount of the Contribution...

7.4 Refund on Non-Completion of Collective Sale

In the event that the Collective Sale fails to be completed, the Contributions, or the remainder of the Contributions, if any, after paying off the costs and expenses incurred for the purpose of the Collective Sale, shall be refunded to the Contributing Owners in proportion to the amounts they have respectively contributed.

7.5 Defaulting Owners

Any Owner who does not pay the Contribution on or before the Closing Date, of [sic] the Extended Closing Date (if any) shall have an amount equal to two times the initial Contribution amount of \$2,000 (in this case, a "**Default Contribution**") withheld from his share of the Net Sale Proceeds and paid over to the Common Fund to be shared equally by all the Contributing Owners, without prejudice to any other liability that such Owner may incur under any other provisions of this Agreement including Clause 11 (Abuse of Process) or Clause 12 (Sanctions Against Corrupt Behaviour) below.

...

11. ABUSE OF PROCESS

11.1 Application

The provisions of this Clause apply only if the Collective Sale is approved by the STB or the High Court and to an Owner who does not sign this Agreement before the Closing date or the Extended Closing Date (if any) and who:

- (a) Does not seek the assistance of the Sale Facilitation Committee or does not accept any monetary award made by the Sale Facilitation Committee;
- (b) Does not file any objection to the application for approval of the Collective Sale before the STB or before the High Court;
- (c) Withdraws or abandons his objection;
- (d) Does not have his objection recognized expressly or impliedly by the STB or the High Court; or

- (e) Obtains a monetary award from the High Court of an amount which is less than any monetary award the Sale Facilitation Committee has made which he has not accepted,

11.2 Liability for Costs of Proceedings and Set-off

The entirety or an appropriate part of the costs and expenses of and in connection with the approval proceedings before the STB and/or the High Court shall be chargeable to any such Owner to whom the preceding Clause 11.1 applies, and the same shall be withheld from his share of the Net Sale Proceeds and paid over to the Common Fund to account of [*sic*] the cost and expenses of the Collective Sale.

...

12. SANCTIONS AGAINST CORRUPT BEHAVIOUR

12.1 Liability for Receiving Extraneous Consideration

Any Owner who gives to, receives or solicits from any person (including and not limited to the Purchaser) any consideration in money or in kind which is, or would be, extraneous to any rightful share in the Sale Proceeds as provided in this Agreement, or extraneous to what an Owner would otherwise properly be entitled to receive under this Agreement, as an inducement to do or abstain from doing or as reward for doing or abstain from doing any of the following things:

- (a) signing this Agreement or abstaining from signing this Agreement;
- (b) doing anything which he ought not to do under this Agreement or abstaining from doing anything which he ought to do under this Agreement;
- (c) filing or not filing an objection in the approval proceedings before the STB or the High Court;
- (d) withdrawing or not withdrawing any objection which he has filed in the approval proceedings before the STB or the High Court; or
- (e) doing anything or refraining from doing anything in relation to any aspect of the Collective Sale process,

shall be liable to the sanctions provided in the following Clause 12.2.

12.2 Sanctions against Offending Owner

In addition to initiating investigations by the appropriate public authorities, a sum equivalent to twice the amount of consideration shall be deducted from the share of the Net Sale Proceeds of any offending Owner. The offending Owner shall disclose the amount of such consideration given, received or solicited, failing which the Collective Sale Committee will estimate it and fix the estimated amount as the amount to be deducted from the offending Owner's share of the Net Sale Proceeds. The amount thus deducted shall be paid into the Sale Proceeds Amount.

Also, cl 13 of the CSA empowered the Exco to institute proceedings on behalf of the signatory SPs

without joining them, and to seek approval before the STB or the High Court where required. [\[note: 11\]](#)

9 By 8 September 2011, after three signing sessions, SPs of 27 units had signed the CSA. These SPs had paid their respective contributions pursuant to cl 7.1 (at least \$2,000 per unit). On 5 April 2012, a marketing agent, Urban Front Real Estate Pte Ltd, was appointed [\[note: 12\]](#) with a view to encourage the remaining SPs to sign the CSA. [\[note: 13\]](#) The appointment of the marketing agent was announced at the fourth meeting with the SPs, held on 7 April 2012. [\[note: 14\]](#) The measures taken to increase the number of signatures were:

- (a) reducing the contribution to \$1,000, and allowing a refund of \$1,000 to those SPs who had already contributed \$2,000; and
- (b) extending the closing date for signing the CSA to 8 July 2012.

10 By 8 July 2012, SPs of 43 units signed the CSA. [\[note: 15\]](#) The requisite majority of 80% under s 84A(1)(b) of the Act had been comfortably attained as this represented 89.58% of the total share value and 89.42% of the total area of the Development. As noted above (at [3]), the non-signatory SPs are:

- (a) Edric Pan and Quek Chia-Min Valeria—Unit 50A;
- (b) Chua Seet Mui—Unit 50P;
- (c) Loke Ah Meng and Soh Lay Bee—Unit 52A;
- (d) Lim Li Meng Dominic and Lim Sui May Petrina—Unit 52C; and
- (e) Koh Nai Hock—Unit 54K.

They were named as the first eight defendants in OS 982.

11 In mid-February 2013, after disagreements with the marketing agents, the Exco decided to take control of the marketing activity for the sale. [\[note: 16\]](#) The CSC then prepared for a launch of the tender in May. The tender was launched on 1 May 2013 and closed on 3 June 2013. There was only one compliant bid. This came from DLPL, which was named as the 9th defendant in OS 982. It was for the sum of \$150,168,000, which was slightly over the reserve price of \$150,000,000. The other bid was for \$105,000,000, from UED Capital Venture Pte Ltd. [\[note: 17\]](#)

12 The bid from DLPL was accepted on 17 June 2013. [\[note: 18\]](#) It should be noted that cl 37 of the Final Terms and Conditions of Tender ("the S&P Agreement") dealt with "Sanctions for illicit payments" as follows: [\[note: 19\]](#)

Sanctions for illicit payments

37. In recognition of the unquantifiable damage such conduct may do to the Owners, the Tenderer is liable to pay to the Sale Committee for the benefit of the Owners not so involved, by way of liquidated damages, a sum equivalent to ten percent (10%) of the Tenderer's Bid Price, if the Tenderer should give to any Owner any consideration in money or in kind which is, or would be, extraneous to what the Owner would properly be entitled to receive under the CSA, (1) as an

inducement to do or abstain from doing or (2) as reward for doing or abstaining from doing, any of the following things:

- a. signing or not signing the CSA; or
- b. filing or not filing objections in the approval proceedings before the STB or the High Court; or
- c. withdrawing or not withdrawing any objection which the Owner has filed in the approval proceedings before the STB or the High Court; or
- d. doing anything which the Owner ought not to do, or refraining from doing anything which he ought to do, under the CSA or otherwise in relation to the collective sale.

This no doubt formed the basis of DLPL being brought in as a defendant in OS 982 and the prayers that were sought against it.

13 On 4 July 2013, an application to the STB was submitted pursuant to s 84A(2A) of the Act. The application was made in the name of the three members of the Exco, pursuant to s 84A(2) of the Act and cl 13 of the CSA. In addition to an order for sale, the application included a claim against the non-signatory SPs for: [\[note: 20\]](#)

- (a) The sum of \$2,000 per unit, which represented twice the reduced amount of contribution of \$1,000, allegedly pursuant to cl 7.5 of the CSA.
- (b) The sum of \$27,000 per unit, which amounted to \$135,000 in total, allegedly pursuant to cl 11 of the CSA. This sum represented the disbursements incurred for the STB proceedings, as calculated by Warren Khoo. The breakdown was as follows: [\[note: 21\]](#)

(i)	Legal consultant's fee:	\$120,000.
(ii)	Advertisements:	\$5,278.75.
(iii)	Valuation report:	\$6,000.
(iv)	STB filing fee:	\$5,000.

The total sum of \$136,278.75 was rounded down to \$135,000. Others disputed this sum. For instance, Edric Pan, relying on calculations by Choo Liang Haw, claimed that only \$12,077.39 had been incurred as at 10 January 2014, and that the legal consultant's fee of \$120,000 had never been incurred. [\[note: 22\]](#) Warren Khoo, however, clarified that the legal consultant's fee had already been incurred (as at 19 May 2013) but remained to be paid. As proof of this, he attached a printout of an email he received from Mr David Mitchell, a solicitor from Hin Tat Augustine & Partners, in which Mr David Mitchell stated that \$120,000 in legal fees had been incurred. [\[note: 23\]](#)

14 Between 12 and 17 July 2013, the non-signatory SPs filed objections with the STB. [\[note: 24\]](#) The objections did not pertain to the collective sale *per se*. This is exemplified in the preface of two of the objections, which read: [\[note: 25\]](#)

1. I am not objecting to the spirit of the collective sale however I am objecting to certain clauses as stated in the [CSA]...

Rather, the objections were directed at the operation of the Objectionable Clauses in the CSA, as well as the alleged lack of transparency in the tender process.

15 At the first meeting of the STB on 21 August 2014, [\[note: 26\]](#) the Exco and the non-signatory SPs were in attendance. Both sides were told to negotiate to try to come to a settlement and report back to the STB on 19 September 2013. Heeding the advice of the STB, Choo Liang Haw and Warren Khoo met the non-signatory SPs on 7 September 2013 to discuss the nature of the clauses of the CSA and the concerns of the non-signatory SPs. [\[note: 27\]](#) They proposed to meet again on 14 September 2013.

16 Shortly before the second meeting with the non-signatory SPs, on 12 September 2013, Mr Lee Liat Yeang ("Mr Lee"), DLPL's solicitor, wrote to Warren Khoo communicating DLPL's offer to contribute a sum of \$50,000 "towards the legal and necessary costs of the application to STB" on certain conditions. [\[note: 28\]](#) Warren Khoo did not respond to this offer. [\[note: 29\]](#)

17 On 14 September 2014, all the non-signatory SPs except Lim Li Meng Dominic attended the meeting with Warren Khoo. They discussed the issue relating to the contribution payments. Edric Pan was prepared to pay "a few thousand dollars more" than \$2,000. The rest of the non-signatory SPs stated they were prepared to pay no more than \$2,000 per unit. [\[note: 30\]](#)

18 On 18 September 2013, Mr Lee wrote to Warren Khoo, informing him that he was instructed to attend the STB session that was going to take place the following day. [\[note: 31\]](#) On the same day, Mr Lee also wrote to the registrar of the STB stating that he was "instructed to attend the scheduled mediation session (on 19 September 2013)", and that he trusted that the STB had no objections to his attendance. [\[note: 32\]](#) This trust, as it turns out, was misplaced, as Mr Lee was informed on 19 September 2013 by the STB that his request to attend the session was not granted. [\[note: 33\]](#)

19 On 19 September 2013, at the second session before the STB, both Warren Khoo and the non-signatory SPs were in attendance. Warren Khoo sought more time to negotiate with the non-signatory SPs. The non-signatory SPs, however, stated they were not willing to negotiate any further. After the close of the session, Mr Lee, who was waiting outside the venue, addressed the group. Warren Khoo told Mr Lee that the matter was between the Exco and the non-signatory SPs, and that he should not interfere. [\[note: 34\]](#) Warren Khoo and Sally Ching left. [\[note: 35\]](#) Mr Lee suggested to those who remained that they should try to settle the dispute amicably, and informed them of DLPL's offer of \$50,000 which he had conveyed in his email to Warren Khoo on 12 September 2013. He also stated that he could take instructions from DLPL on whether the quantum of the offer could be increased. [\[note: 36\]](#)

20 On 25 September 2013, DLPL, through Mr Lee, made a second offer on similar terms to the first, except the amount was doubled to \$100,000. [\[note: 37\]](#) This time, the offer was conveyed through an email addressed not just to Warren Khoo but to all seven members of the CSC. [\[note: 38\]](#) On 26 September 2013, DLPL made a third offer, increasing the amount to \$135,000. [\[note: 39\]](#)

21 In the evening of 26 September 2013, the CSC met to discuss the offer. Choo Liang Haw was in favour of accepting the offer. He was supported by Loke Wan Tche, Lok Kok Poh, and Charles Ng

Pooh Cheok (who was absent but represented by Loke Wan Tche). Choo Liang Haw opined that a vote should be taken on the matter. However, Warren Khoo disagreed and stated that the CSC did not have any power to accept the offer, and hence it was not a matter that could be voted upon.

22 In the meantime, in September 2013, Gary Darwin, one of the signatory SPs, was contacting SPs to promote the acceptance of DLPL's offer, [\[note: 40\]](#) and preparing a petition to the STB for more time to negotiate. [\[note: 41\]](#)

23 On 1 October 2013, at the third session before the STB, three main "groups" were in attendance. First, there was the group that supported acceptance of DLPL's offer, namely, Loke Wan Tche, Lok Kok Poh, Charles Ng Pooh Cheok, Choo Liang Haw, four of the members of the CSC, and Gary Darwin, a signatory SP. Secondly, there was DLPL, represented by Mr Lee, who was allowed to sit in for the session. [\[note: 42\]](#) Thirdly, there were the remaining CSC members, namely Warren Khoo and Chan Ju-Lian. Sally Ching was otherwise engaged and hence absent. [\[note: 43\]](#)

24 Gary Darwin's petition for an extension of time was presented to the STB, but it was rejected. The STB then issued a stop order pursuant to s 84A(6A)(b) of the Act. [\[note: 44\]](#)

OS 941 and OS 982

25 On 7 October 2013, Choo Liang Haw, along with the three other CSC members who were in favour of accepting DLPL's offer, filed OS 941 before the High Court. The non-signatory SPs, curiously save for Edric Pan and his wife (owners of Unit 50A), were named as the defendants. However, the rest of the signatory SPs were not joined. There was no claim that the plaintiffs also represented the signatory SPs or that they were acting in their capacity as the CSC. When I asked counsel for the plaintiffs in OS 941, Mr Lim Seng Siew, about this, he could not provide an answer and simply accepted that there were shortcomings in the OS. [\[note: 45\]](#)

26 Warren Khoo deposed that OS 941 was filed, in effect, to his "great surprise". [\[note: 46\]](#) On 16 October 2013, Warren Khoo filed an application of his own, OS 982. Sally Ching and Choo Liang Haw were named as co-plaintiffs. The defendants initially comprised the non-signatory SPs, DLPL, and the three CSC members (other than Choo Liang Haw) who supported DLPL's offer. As noted above, OS 982 was later amended to remove Choo Liang Haw as a plaintiff and added as a defendant. Gary Darwin, too, was added as a defendant. Warren Khoo's reasons for these actions in relation to Choo Liang Haw and Gary Darwin were as follows:

(a) In relation to Choo Liang Haw, Warren Khoo "entertained the hope that it might be possible to bring Mr Choo back to the true position of the CSA" based on their past relationship. As such, he was retained as a co-plaintiff. However, given the difference in views on many of the prayers in OS 982, Warren Khoo eventually came to the view that the "Mr Choo could not be retained as a [co-plaintiff], as you cannot have plaintiffs in any proceedings holding contradictory views". [\[note: 47\]](#)

(b) In relation to Gary Darwin, Warren Khoo claimed that he had been campaigning for the acceptance of DLPL's offer and for the non-signatory SPs to be relieved of their liability under the clauses of the CSA, thereby breaching his duties and obligations under the CSA. [\[note: 48\]](#)

27 The amended OS 982 was filed on 17 February 2014. The key prayers sought have been set out above (at [3]) but can be summarised as follows:

- (a) an order that the collective sale be ordered to proceed, subject to any orders made by the court;
- (b) a declaration that the Objectionable Clauses are valid;
- (c) an order that the non-signatory SPs are bound by the CSA, and that they are liable to pay the amounts owing pursuant to the Objectionable Clauses;
- (d) a declaration that DLPL breached cl 37 of the S&P Agreement by making the offer of \$135,000; and
- (e) an order that DLPL pay to the plaintiffs liquidated damages in the sum of \$15,016,800, pursuant to cl 37.

28 The rest of the prayers pertained to the schism that arose within the CSC, and the efforts of Gary Darwin to allegedly engage in activity incompatible with his position as a signatory SP. In its amended form as at 17 February 2014, OS 982 contained a total of 19 prayers. As pointed out by the opposing parties, oddly, even at this point, it was unsupported by any affidavit. The affidavit in support of OS 982 was only filed on 18 February 2014, about four months after the OS was filed.

29 Between the filing of OS 941 and the amended OS 982, a further general meeting was held. This meeting was requisitioned by Gary Darwin, along with about 16 other SPs. [\[note: 49\]](#) When questioned on the basis of the requisition, Gary Darwin cited the First Schedule to the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA"). [\[note: 50\]](#) Warren Khoo pointed out through his email dated 20 December 2013 that collective sale meetings are governed by the Act, and not the BMSMA. [\[note: 51\]](#) Nevertheless, a notice of the meeting was issued that same day, [\[note: 52\]](#) and the meeting was held on 11 January 2014. Twenty-five SPs attended the meeting, which was chaired by Sally Ching. Twenty-two SPs voted in favour of a resolution to allow the CSC to waive any claims against an SP arising under the Objectionable Clauses. Of the remaining three SPs, two abstained and one left early. [\[note: 53\]](#)

30 Following the general meeting, a CSC meeting was held on 20 February 2014. Neither Sally Ching nor Warren Khoo attended this CSC meeting. Chan Ju-Lian was also absent, "with apologies". [\[note: 54\]](#) At the CSC meeting, the four members present voted in favour of resolutions to the effect that court approval for the collective sale should be sought, and that the prayers in OS 982 unrelated to the approval of the collective sale should be withdrawn. [\[note: 55\]](#)

Hearings in court

7 April 2014

31 Parties first appeared before me on 7 April 2014. By then, there were six "groups":

- (a) Choo Liang Haw and the three other CSC members who were in favour of the Objectionable Clauses being declared not binding on the non-signatory SPs and who supported acceptance of DLPL's offer (the plaintiffs in OS 941 and the 10th to 13th defendants in OS 982), represented by Mr Lim Seng Siew;
- (b) Sally Ching and Warren Khoo, chairperson and secretary of the CSC respectively, (plaintiffs in OS 982), represented by Mr Michael Khoo SC;

(c) Edric Pan and Quek Chia-Min Valeria, non-signatory SPs who owned Unit 50A (the 7th and 8th defendants in OS 941 and the 1st and 2nd defendants in OS 982), represented by Edric Pan himself, a practising lawyer;

(d) Chua Seet Mui, Lim Sui May Petrina, Lim Li Meng Dominic, Loke Ah Meng, Soh Lay Bee and Koh Nai Hock, the remaining non-signatory SPs (the first six defendants in OS 941 and the 3rd to 8th defendants in OS 982), represented by Mr Adrian Tan;

(e) DLPL (the 9th defendant in OS 982), represented by Mr Davinder Singh SC and his colleague Mr Jaikanth Shankar; and

(f) Gary Darwin (the 14th defendant in OS 982), represented by Ms Winifred Gomez.

Parties informed me that the 3rd to 8th defendants in OS 982 had taken out Summons No 1126 of 2014 on 4 March 2014 to strike out OS 982, on the grounds that, *inter alia*, the plaintiffs in OS 982 did not have the authority to commence proceedings.

32 There was also an application, Summons No 1169 of 2014 filed on 5 March 2014 by Choo Liang Haw and the three other CSC members who supported DLPL's offer, to strike out certain portions of OS 982, namely, the prayers that did not pertain to seeking court approval of the sale.

33 Shortly after the first oral hearing, on 10 April 2014, counsel for Gary Darwin also applied, in Summons No 1678 of 2014 to strike out certain portions of OS 982, namely the prayers pertaining to himself (prayers 13 and 14 of the amended OS 982 filed on 17 February 2014, replicated above at [3(m)] and [3(n)]). [\[note: 561\]](#)

34 Not unlike other collective sale disputes, relationships between the factions became very fractious. Positions became more entrenched and many applications were filed. To save time, I proposed to counsel that we deal with all the applications and the substantive applications serially so that any appeals to the Court of Appeal can be dealt with comprehensively. This was agreed to by all counsel and I proceeded accordingly.

7 July 2014

35 On 7 July 2014, parties appeared before me again. As this was still a relatively early stage in the litigation, and given the dreadful prospects of increased costs and fees and satellite litigation, I encouraged parties to consider mediation since all the SPs did not object to the collective sale *per se* but simply disagreed over whether the Objectionable Clauses should bind the non-signatory SPs. They seemed amenable to the prospect, and agreed to try that course.

36 I must record my appreciation to Choo Han Teck J who volunteered to be the mediator, and at short notice. Unfortunately, despite the valiant efforts of Choo Han Teck J, the mediation efforts were not entirely successful.

11 August 2014

37 Parties appeared before me again on 11 August 2014, and informed me that the mediation was unsuccessful but that a settlement had been reached with the 1st and 2nd defendants of OS 982. The terms reached were for the 1st and 2nd defendants to pay \$12,500 (in total) to the common fund, and to withdraw their objections to the collective sale. In return, the plaintiffs in OS 982 would

discontinue proceedings against them. It was agreed that each party was to bear its own costs in OS 982. [\[note: 57\]](#) Mr Davinder Singh SC said it was questionable how the plaintiffs could “settle out” a party in these circumstances. However, as the matter was between the SPs and did not really involve DLPL, and none of the other parties were objecting, I duly recorded the settlement as between those parties.

25 August 2014

38 Parties next appeared before me on 25 August 2014. At this point, the plaintiffs in OS 982 applied to amend the OS through Summons No 4148 of 2014, which was filed on 22 August 2014. The amendments pertained to the prayers relating to DLPL. The plaintiffs proposed to withdraw their claim for “damages to be assessed or alternatively \$15,016,800” and seek, instead, specific performance on the part of DLPL. Mr Davinder Singh SC contested this application. After hearing arguments from either side, I dismissed the application for the following reasons:

(a) First, the application for amendment was filed in a tardy manner. On 11 August 2014, when parties appeared before me, Mr Michael Khoo SC informed me of his clients’ intention to amend the OS to include a claim for specific performance. I directed that the plaintiffs file their application for amendment and supporting affidavit no later than 15 August 2014. Warren Khoo filed an affidavit “in support of the [plaintiffs’] intended application for leave to make a claim for specific performance by [DLPL] of the contract for the purchase of [the Development]”. [\[note: 58\]](#) Oddly, this affidavit was filed in support of OS 982. The application for amendment, Summons No 4818 of 2014, was only filed on Friday, 22 August 2014. The hearing was scheduled for Monday, 25 August 2014. Nevertheless, on 25 August 2014, I allowed the application to go on as I did not want to hold up proceedings and I commend opposing counsel for agreeing to go so.

(b) Secondly, with respect, I found this to be an unnecessary application. There was no basis whatsoever for the plaintiffs to make such a claim when there were clear, categorical and consistent statements by DLPL through their counsel at various stages of the proceedings that DLPL fully intended to honour its contractual obligations in the event the court approved the sale. For instance, as early as 27 March 2014, when parties met before the assistant registrar, Mr Jaikanth Shankar, who appeared on behalf of DLPL, stated: [\[note: 59\]](#)

My client’s position is this: if the Court sanctions the [sale], they will of course abide by the Court’s directions and will proceed with the sale and comply with all related obligations. If the Court says no to the sale, then obviously there will be no sale.

This was repeated at two further hearings before assistant registrars held on 7 April and 27 May 2014, in hearings before me on 7 July and 11 August 2014, and in affidavits filed on behalf of DLPL. [\[note: 60\]](#)

(c) Thirdly, I am not convinced that DLPL has, or is likely to, breach its obligations. The plaintiffs’ claims that DLPL may or will choose to breach the S&P Agreement are, in my view, contrived. It is clear that “[w]here there is no breach to be remedied (whether actual or anticipatory), the question of specific performance does not arise” (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 23.074).

(d) Fourthly, whether there was to be specific performance or not depended on whether the court approves the collective sale in the first place and secondly upon the terms of the sale and purchase agreement. To my mind, the application was more like a disguised attempt by the

plaintiffs to abandon their claims for damages or alternatively \$15,016,800. If so, the proper procedure was to ask for leave to withdraw those prayers. I should also add that I entertain severe doubts as to whether claims of this nature belong within an OS taken out under a s 84A application under the Act.

I hence found that the amendments were entirely unnecessary and dismissed the application. I awarded costs to DLPL in the sum of \$9,000.

39 During the same hearing, counsel for the remaining non-signatory SPs, Mr Adrian Tan, made submissions as to why OS 982 should be struck out. First, he emphasised how it was not supported by any affidavit when it was filed, and remained so for about four months. Secondly, Warren Khoo lacked the authority to bring proceedings—particularly because he named Choo Liang Haw as one of his co-plaintiffs without his knowledge [\[note: 61\]](#) and it was clear, as Choo Liang Haw’s subsequent conduct showed, that he was against the stand taken by Warren Khoo. When OS 982 was filed, the requisite three office bearers, who were designated as the authorised representatives of the signatory SPs pursuant to cl 13.2 of the CSA, were named as plaintiffs. However, as Mr Adrian Tan informed the court, Warren Khoo had simply included the names of Sally Ching and Choo Liang Haw when he filed OS 982, without their knowledge. Furthermore, Choo Liang Haw had subsequently been removed as a co-plaintiff, thereby leaving only two office bearers as plaintiffs in OS 982. I reserved judgment on this application to consider the objections and also because the time fixed for the hearing had run out.

1 September 2014

40 Parties next appeared before me on 1 September 2014. I dismissed Mr Adrian Tan’s striking out application (Summons No 1126 of 2014) for the following reasons:

(a) First, I did not think this constituted a plain and obvious case that warranted striking out (see *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]).

(b) Secondly, although it is usual for an OS to be filed together with an affidavit, this is not invariably the case. An application is “made” for the purposes of s 84A(2B) when an OS is filed under O 100 r 2(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“RSC”). Order 100 r 3 provides that the OS together with the supporting affidavits must be served on every defendant. No specific time is set for service in O 100, and as such the default rule of six months under O 7 r 5 read with O 6 r 4 must apply. Order 100 r 4 states that where a plaintiff intends to adduce evidence in support of an OS, it does so by affidavit which must be filed and served on every defendant not later than seven days after service of the OS on the last such defendant. OS 982 (Amendment No 1) was served on 17 February 2014 and the supporting affidavit was filed and served the next day, on 18 February 2014. Consequently, the plaintiffs’ filing and service of the affidavits some four months of the filing of the original OS 982 does not invalidate the OS or the application under s 84A(2B) of the Act.

(c) Thirdly, as for the alleged lack of authority to commence OS 982, it is true that Sally Ching and Choo Liang Haw’s permission had not been sought before their names were included as plaintiffs. However, Sally Ching has since ratified the use of her name as plaintiff and when it was clear that Choo Liang Haw was not of the same mind as Sally Ching and Warren Khoo, Choo Liang Haw was removed as a plaintiff and added as a defendant.

I reserved costs.

41 Mr Michael Khoo SC, counsel for Warren Khoo and Sally Ching, then informed me that his clients had withdrawn the prayers in OS 982 that pertained to DLPL and to that end, he had sent a letter to DLPL's counsel. Mr Jaikanth Shankar objected and submitted that the plaintiffs required leave of court to withdraw the prayers. Instead of a withdrawal, he argued the court should dismiss those prayers, with costs to DLPL. After hearing extensive submissions from both sides, I gave the plaintiffs leave to withdraw prayers eight and nine of OS 982 on the condition that they were not permitted to bring another claim in relation to those prayers. [\[note: 62\]](#) I fixed costs at \$20,000, based on the tabulated account of work done tendered by Mr Jaikanth Shankar (in which he asked for \$45,000), payable by the plaintiffs to DLPL. [\[note: 63\]](#)

42 I then proceeded to hear Mr Adrian Tan. He first argued that the Objectionable Clauses affected the method of distribution of the sale proceeds in such a manner that the transaction was not in good faith. He also argued that there was no valuation report, which brought the sale price into doubt. He referred to s 84A(9) of the Act, to submit that in light of these issues, the court should not order the sale. The relevant portions of s 84A(9) read:

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

In response to Mr Adrian Tan's allegation that there was no valuation report, Mr Michael Khoo SC tendered a valuation report dated 17 June 2013 [\[note: 64\]](#) to the court. He also referred to a letter sent by Warren Khoo to all SPs (entitled "A Guide for Owners") which explained how the reserve price was fixed, [\[note: 65\]](#) to make the point that the SPs were not kept in the dark, and that no one had objected to the reserve price at any point in the sale process. This point then fell away.

43 Secondly, Mr Adrian Tan argued that there was a lack of transparency in quantifying both the funds needed to initiate the sale process and the contributions solicited through cl 7 of the CSA. In relation to the former, he argued that the architect's fees only amounted to \$50,000, less than half the amount forecast by Warren Khoo. [\[note: 66\]](#) In relation to the latter, he took offence primarily with the "penalty" that non-contributors incurred—in that they would have twice the amount (of \$1,000) deducted from their portion of the sale proceeds if the sale were to go through. He then went further to speculate, and I use that term intentionally, that some of the signatories *may only* have signed (and contributed to the fund) because of the Objectionable Clauses—thereby impugning the *bona fides* of the entire process. However, when queried by me, he candidly admitted that he did not have any proof, *eg*, in the form of affidavits or any other evidence by "coerced" signatory SPs, to support his submission. I told Mr Adrian Tan that I did not consider this to be a point he could really pursue as there was no evidence to support such a submission. Without evidence or substantiation, it may amount to nothing more than speculation. Mr Adrian Tan frankly and fairly accepted that he could put it no higher than this.

44 Thirdly, Mr Adrian Tan pointed to the instances during the sale process when directions under the Act were not followed. The examples he cited included the lack of meetings with the SPs, the restrictive tender process in which expressions of interest and offers to negotiate terms were prohibited, [\[note: 67\]](#) and the fact that DLPL did not place the deposit with a law firm. He also lamented how fundamental documents were missing, such as the original execution pages of the CSA (which exhibited the signature of each signatory SP).

45 It seemed clear by the end of the hearing on 1 September 2014 that only Mr Adrian Tan's clients took issue with the sale moving ahead.

3 November 2014

46 On 3 November 2014, parties came back before me for the last time. This was a short hearing, dealing primarily with Gary Darwin's case to strike out prayers 13 and 14 of OS 982 (Summons No 1678 of 2014). Ms Winnifred Gomez argued that the action against her client, Gary Darwin, was taken out for a collateral purpose—to "shut everyone up". Gary Darwin was a suitable target to achieve this purpose, she argued, because he was identified as the "ring leader", through his petitioning to the STB for more time and convening a general meeting among the SPs. Ms Winnifred Gomez explained that Gary Darwin had taken it upon himself to call for a meeting because the plaintiffs in OS 982 were reluctant to do so. His interest was to see the sale through, and to keep costs low.

47 I reserved judgment. I gave leave to the plaintiffs in OS 982 to file a further affidavit exhibiting all the documents that were tendered to me in court during the course of oral arguments. This affidavit was filed on 10 November 2014. It included copies of:

- (a) the valuation report (dated 17 June 2013, by Lock Property Pte Ltd); [\[note: 68\]](#)
- (b) written advice on the method of distribution (dated 17 June 2013, by Lock Property Pte Ltd); [\[note: 69\]](#) and
- (c) the original execution pages of the CSA signed by the majority of the SPs. [\[note: 70\]](#)

My Decision

48 As mentioned above, this case was unique in that from the onset, until the hearing before me, none of the parties seemed to object to the sale *per se*. Before the STB, the non-consenting SPs, who eventually became objectors, only voiced concerns about the applicability of the Objectionable Clauses. It was only when this matter came before the High Court that the objectors attempted to impugn the *bona fides* of the collective sale process. Raising new grounds of objections before the High Court runs contrary to the express wording of s 84A(4A), which provides that an objector "who filed an objection to the [STB] (but no others) may re-file his objection to the sale, stating the same grounds of objection, to the High Court".

49 In any case, these objections would only gain traction if they amount to a lack of good faith, within the meaning of s 84A(9)(a)(i) of the Act. This is because the requisite 80% majority, pursuant to s 84A(1)(b) of the Act, has already been reached. This will be considered below. As a preliminary point, however, Mr Adrian Tan mentioned that the Objectionable Clauses had the effect of coercing the signatory SPs into signing. As such, he speculated that many would not have signed were it not for the presence of these clauses in the CSA. However, he did not have any evidence from the signatory SPs to support this claim. The closest he had was a rather bald statement by Lim Li Meng

Dominic, in his affidavit, that “[t]he Penalty Clauses caused many SPs to sign the CSA who would otherwise have refrained from doing so. SPs were fearful that, if they did not sign the CSA, they would be penalised”. [\[note: 71\]](#) Given the dearth of evidence, as well as the fact that these allegations were being raised for the first time before the High Court, I am of the view that the signatory SPs had indeed signed the CSA on their own volition. The requisite majority has hence been reached, and the only question is whether the sale should nevertheless be stopped as a result of a lack of good faith.

The collateral issues

50 Before dealing with the crux of the matter, the Objectionable Clauses, I turn first to what I consider the collateral issues that occupied much of counsels’, and the court’s, time.

51 First, the deviations from procedure. Although I accept that this sale process left much to be desired, as well as deviations from the requirements under the First Schedule to the Act, these were largely trivial and did not result in prejudice to any of the SPs. For instance, it was highlighted that in the lead up to the sale, notices were not placed around the Development in the four official languages, [\[note: 72\]](#) as required under paragraph 1(b) of the First Schedule. As Mr Michael Khoo SC pointed out, no one in the Development spoke or read only Malay, and therefore no prejudice was caused by the fact that there were no notices in Malay. [\[note: 73\]](#) Where no prejudice is suffered, the court should not allow a “truly technical objection” to frustrate the wishes of the majority (see *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 2 SLR(R) 597 (“*Ng Swee Lang*”) at [35]). I also note that under s 84A(7C), the STB “shall not invalidate an application [for a collective sale] by reason only of non-compliance with any requirement in the First, Second or Third Schedule if the [STB] is satisfied that such non-compliance does not prejudice the interest of any person”. I am satisfied that there is no evidence of anyone having been prejudiced by any non-compliance that occurred in this case.

52 Secondly, the raising of new objections. Most of the objections raised by Mr Adrian Tan’s clients seemed to be engineered *ex post facto*. This was telling from the contrast between their objections to the STB and their position in these proceedings. For instance, in Lim Li Meng Dominic’s affidavit, he states that “[f]or those of us who live in Gilstead Court, it is impossible to replace”. [\[note: 74\]](#) This sentiment was noticeably absent in his objection to the STB, which is understandable given that “impossibility of replacement” would not amount to a legitimate objection (see ss 84A(7)–(9) of the Act and *Ng Swee Lang* at [36]). Rather, his objection to the STB centred on the Objectionable Clauses, and this should rightly have been his, and his fellow objectors’, only point of contention before this court (see s 84A(4A) of the Act).

53 Thirdly, the issues pertaining to DLPL’s offer to make a payment of \$135,000. The starting point is that the law does not prohibit such “incentive payments” *per se* (see *Chua Choon Cheng and others v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724 (“*Allgreen*”) at [91]). The CSA and the S&P Agreement, however, did contain express provisions that prohibited such payments. In this sense, the CSC appeared to be heeding the call of the Court of Appeal in *Allgreen* (at [92]) to provide expressly by contract what the appellants in *Allgreen* tried, in vain, to have implied into their agreement. I have dealt with this above, and have not found any breach of cl 37 on the facts. I accept DLPL’s submission that what it did was a “sensible and practical solution to bridge the gap among the subsidiary proprietors ... which appeared to be causing the rift among the subsidiary proprietors, provided that all the subsidiary proprietors agreed”. [\[note: 75\]](#) I was also of the view, with respect, that the claims for damages or alternatively \$15,016,800 against DLPL were entirely misplaced, both as a matter of fact and law and that it did not have any place in an OS asking for

approval of a collective sale under s 84A of the Act.

54 At this juncture, I note that the breach of a term such as cl 37, which a CSC may have chosen to contractually provide for, does not *ipso facto* translate to an instance of bad faith vitiating the transaction pursuant to s 84A(9)(a)(i) of the Act. The breach of a contractual clause, however, may be one of the circumstances which a court takes into account when determining if the transaction was not in good faith (see *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 at [131]–[133]). In any case, these issues have since fallen away and I say no more of them.

The Objectionable Clauses

55 I turn now to the crux of the matter, the applicability or enforceability of the Objectionable Clauses. In answering this issue it would be useful to examine the legal nature of a CSA.

56 The legal nature of a collective sale under s 84A of the Act has been explored in various contexts and ruled upon by a series of Court of Appeal judgments. In *Ng Swee Lang* (at [5]), the collective sale was described as a “statutory construct to give effect to the Government’s policy to facilitate urban renewal by enabling old apartment blocks to be redeveloped by the private sector”. The Court of Appeal further noted (at [7]) that:

(a) The “basic idea of the collective sale scheme is to enable majority owners to sell the subject property to a purchaser without the consent of the minority owners, subject to the approval of the [STB]”.

(b) The sale takes effect “by virtue of the [STB’s] order, and not by virtue of the sale and purchase agreement. In short, the collective sale is not a contractual sale, but a new form of statutory sale”.

(c) Once the STB “approved the collective sale application by the majority owners, the [STB’s] order binds all the minority owners”, and both the minority and majority owners would be “under an obligation to transfer their respective lots and the common property to the purchaser in accordance with the terms of the sale and purchase agreement”.

Building upon the Court of Appeal’s observations, where a stop order is issued by the STB and the High Court subsequently orders the sale through, the same principles apply.

57 The process of a collective sale starts with a general meeting of the management corporation, duly convened in accordance with the Second Schedule to the Act, where the SPs vote to embark on a collective sale. A CSC is appointed with its composition, constitution, members and proceedings constituted and carried out in accordance with the Third Schedule to the Act. Section 84A(2) provides that not more than three persons from the CSC are to act jointly as the authorised representatives of the SPs in any s 84A(1) application for an order for sale of all the lots and common property in the strata title plan. The appointment of these representatives occurs before the signing of any CSA (see s 84A(1A)). In the usual course of events, a lawyer is appointed and the CSC proceeds to have a CSA, and simultaneously or shortly thereafter, a sale and purchase agreement is drafted by the lawyers. These drafts are circulated to all SPs and are exhibited on the Management Corporation’s Notice Board. The collection of signatures of SPs who are in favour of the collective sale then ensues.

58 The Act does not prescribe the form of the CSA but it must be in writing and must contain

certain provisions, viz, s 84A(1) of the Act and the First Schedule at paras 1 and 3:

- (a) It must be for the sale of all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement.
- (b) It must state the reserve price for the development.
- (c) It must specify the proposed method of distributing the sale proceeds to all the SPs, whether in cash or kind or both.
- (d) It must state the fees payable to the lawyer, the marketing agent and other persons involved in handling the collective sale.
- (e) It must state the amount of the compensation fund, if any.
- (f) It must identify the person entitled to any interest derived from moneys held by any stakeholder.
- (g) It must state the date of delivery of vacant possession of the lot or flat.
- (h) It must be made subject to an order being made by the STB under s 84A(6) or the High Court under s 84A(7).
- (i) It must be executed by at least the requisite majority within the time limit specified but in no case more than 12 months before the application is made to the STB.

59 The Act is silent as to whether these are the only terms that can be included in the CSA or whether these are the minimum the CSA must provide for and if so, what other terms can be included in the CSA. Does that extend to the Objectionable Clauses as in this CSA? In *Ng Swee Lang*, the Court of Appeal presciently observed (at [9]) that “[a]lthough the collective sale scheme is relatively straightforward, unfortunately, the legislation giving effect to it – viz, Pt VA of the Act – is not free from difficulty”.

60 In answering this question, we look to the role and powers of the STB or the High Court in dealing with a collective sale where there are dissenting SPs. It goes without saying that if there is unanimity in a collective sale, then recourse to the STB or the High Court is not necessary.

61 However, there are those cases where there are some SPs who are not willing to sell and will refuse to sign the CSA. It can even be a single objecting SP. The requisite majority would then have no alternative but to make an application to the STB under s 84A(1) for an order for the collective sale of the strata title plan. For one reason or another, the most common being not having valid grounds under s 84A to object, these non-signatory SPs may not file an objection. If an invalid objection is filed, eg, one based on non-financial grounds like personal sentiment, the STB can disregard the same. Section 84A(6) provides that where no objection has been filed under s 84A(4), the STB shall, subject to s 84A(9) (the good faith provision), order the sale of all the lots and common property in the strata title plan.

62 There can be little doubt that these words in s 84A(6) do not mean that the STB is to rubber stamp the collective sale without satisfying itself, for example, that the proposed sale does comply with the good faith provisions in s 84A(9). Its powers must include reviewing the terms and conditions of the CSA as it is expressly empowered to impose such conditions as it may think fair and reasonable

in approving the application under s 84A(5)(c). Under s 84A(11), the STB (or High Court) may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under s 84A(6) and s 84A(7) and these include, but are not limited to, directions apportioning all reasonable costs and expenses incurred in connection with the sale that is the subject of any order to be borne by all or any SPs, whether or not they are objectors. On the other hand, if the requisite majority of SPs have signed the CSA, and there is no fraud or breach of the good faith provisions, the STB's power to alter the terms of the CSA is limited (see *eg*, the powers conferred by s 84A(5)(c) and s 84A(11) of the Act). It certainly cannot extend to re-writing the terms of the CSA or the sale and purchase agreement without the consent of the requisite majority SPs. If there are fairly minor adjustments required, such as minor adjustments to the apportionment of reasonable costs and expenses incurred in connection with the sale, there is little doubt that it rests within the jurisdiction and power of the STB to do so. There is however a whole range of possibilities between re-writing the CSA and making minor adjustments that falls within a grey area. As this does not arise on these facts, I will say no more. In the final analysis, when the STB or High Court forms the view that the CSA is substantively flawed, but that it is unable to correct the flaws without substantially re-writing the parties' contract, it should withhold giving its sanction for the collective sale of the development.

63 It would be apposite to note that under s 84A(10), where no objection has been filed under s 84A(4) or under s 84A(4A), the STB or the High Court, as the case may be, shall make its determination on whether the good faith provisions of s 84A(9) have been observed *on the basis of the facts available to it*. There is therefore, to my mind, no obligation for the STB or the High Court to embark on an investigative journey on its own initiative unless there are good grounds for doing so.

64 It is important to remember that the collective sale scheme envisages that only the majority owners are parties to the CSA and that the minority owners need not be parties (see *Ng Swee Lang* at [8]). The non-signatory SPs have the *right* to withhold their consent by not signing the CSA. However in the event the requisite majority wish to press on with the collective sale, they are entitled to apply, in the first instance, to the STB under s 84A(1) for approval of and an order for the sale.

65 When an application to approve a collective sale is made to the STB under s 84A(1), any SP who has not signed the CSA (and any mortgagee or chargee or other person (other than a lessee) with an estate or interest in the land and whose interest is notified on the land register), *may* file an objection to the collective sale within 21 days from the service of the notice of the application to the STB (see s 84A(4)). Accordingly, non-signatory SPs have a choice at the STB stage as to whether they wish to file an objection or hold their peace but without signing or assenting to the terms and conditions of the CSA. If they do not lodge an objection, then they run the risk that the STB may approve the collective sale as it stands.

66 In my judgment, if a non-signatory SP does not lodge any objection and otherwise leaves it to the STB to order the sale, the signatory SPs cannot hold the non-signatory SP liable for the costs of the STB application. An SP has every right to choose not to sign a CSA, for whatever reason he or she may have. Provided he or she does not cause the incurring of unreasonable costs, *eg*, by making strenuous objections on frivolous grounds, that non-signatory SP cannot be held liable for all the costs of the ensuing STB proceedings. That SP may, however, be made to bear, along with all other SPs, a proportionate cost, as part of the overall cost, of the collective sale of the development.

67 In keeping with the policy behind the Act, the type of objections that can be lodged with the STB and Court are limited to financial grounds. This limitation can be found in s 84A(7) the Act, *eg*, the court must be satisfied that an objecting SP will incur a financial loss or the proceeds to be

allocated to the objecting SP are insufficient to redeem any mortgage or charge on his or her unit. Another limitation is set out in s 84A(9)(a)(ii)—the court will not approve an application where the sale and purchase agreement would require the non-signatory SP to be a party to any arrangement for the development of the lots and common property comprised in the strata title plan. Personal factors like proximity to schools, shopping facilities, age of the SPs and sentimental attachment to the place are not valid objections (see *eg, Tan Hui Peng and Others v Chow Ai Hwa and Another* [2006] SGSTB 2 at [33]). In *Tan Sook Yee, Tang Hang Wu & Kelvin F K Low, Tan Sook Yee's Principles of Singapore Land Law* (Lexisnexis, 3rd Ed, 2009) at para 22.96, the learned authors state:

... Although during the parliamentary debates and the representations made to the Select Committee, arguments were addressed to the personal factors when a subsidiary proprietor is compelled to sell his home ... these arguments did not deflect the course of the Government. As reiterated by the then Minister of Law, Professor Jayakumar, the interest of the public in maximising the use of scarce resources must prevail over personal factors. The safeguarding of the individual interest comes in the form of ensuring that the subsidiary proprietors all get a fair allocation of the proceeds of sale and the review by the Board of all applications, even where there are no objections, to ensure that the transaction is in good faith and at arm's length, taking into account certain factors as set out in section 84A(9) of the Land Titles (Strata) Act.

68 The Act also prescribes the limits within which the High Court can redress the objection on financial grounds. Under ss 84A(7), (7A) and (7B), if the court is satisfied that it would be just and equitable to increase the share of an objecting SP on financial grounds, it can do so with the consent of the CSC, provided that the total sum ordered by the High Court does not exceed the aggregate sum of 0.25% of the proceeds of sale for each lot or \$2,000 for each lot, whichever is the higher.

69 Where there are objections or disputes, the STB's role is to mediate in matters that are in dispute between the objecting SPs and the signatory SPs to try and achieve a resolution of those disputes (s 84A(6A) of the Act). If mediation proves unsuccessful or if there is no agreement within 60 days from the first day set aside for mediation, the STB will issue a stop order (s 84A(6A)). A collective sale application must then be made to the High Court within 14 days after the stop order is issued, failing which the collective sale process will come to an end.

70 When the matter comes before the High Court, s 84A does not give much guidance as to what the High Court can do. The relevant provisions are:

(a) s84A(5A)(c), which provides that the High Court has, without prejudice to such other powers it may have under law, the power to impose such conditions as it may think fair and reasonable in approving the application;

(b) s 84A(9)(a), which provides that the High Court shall not approve an application for collective sale if it is satisfied that the transaction is not in good faith taking into account only:

- (i) the sale price for the lots and the common property in the strata title plan;
- (ii) the method of distributing the proceeds of sale; and
- (iii) the relationship of the purchaser to any of the subsidiary proprietors;

(c) s84A(9)(b), which provides that there can be no increase in the share of the proceeds of sale of an objecting SP, even if the High Court is satisfied that it is just and equitable to do so, unless the CSC consents to the same (and subject to a cap under s 84A(7B));

(d) s 84A(11), which provides that the High Court may:

(i) make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under s 84A(7) (objections on financial grounds); and

(ii) the foregoing includes but is not limited to apportioning all reasonable expenses incurred in connection with the sale under an order under s 84A(7) to be borne by all or any SPs, whether or not they are objectors; and

(e) s 84A(12), which provides that the High Court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under s 84A and may vary any term or condition upon or subject to which any such order has been made.

71 Like the powers of the STB, I have little doubt, given the legal framework within which the collective sale operates, that the High Court does not have the power to re-write the contract for the parties. This is because any such major amendment would result in a CSA being very different from what the signatory SPs agreed upon for the collective sale. For example, the High Court might think that a certain division of the proceeds of sale would be fair, but the requisite majority might not agree and on that basis, might not be prepared for the sale to go through on such amended terms. For that reason, upward adjustments to the allocation of sale proceeds to some SPs, modest as they may be under ss 84A(7), (7A) and (7B), must be agreed to by the CSC (see s 84A(9)(b)), failing which the High Court cannot make such adjustments.

72 Bearing these principles in mind, I now come to the Objectionable Clauses.

Clause 7 – SPs’ contribution towards the costs and expenses of a collective sale

73 Clause 7 called for *all* SPs in the Development to contribute \$2,000 towards the costs and expenses that will be incurred in a collective sale (this sum was subsequently reduced to \$1,000 so as to encourage more SPs to sign the CSA). The fees incurred to date were stated at cl 3.3.2 of the CSA to be \$140,632 (comprising the architect’s fees of \$120,000, the URA processing fee of \$15,015 and a topographical survey fee of \$5,617). An SP who chose not to sign the CSA could still make the contribution before the Closing Date for signing the CSA. Upon the successful completion of the collective sale, the SPs who contributed would be refunded this contribution of \$2,000 or \$1,000 or such greater sum they chose to contribute together with simple interest at the rate of 12% per annum. In the event the collective sale did not go through, there would be a proportionate refund to the contributors after paying off the aborted expenses. Under cl 7.5, for those SPs who did not make this upfront contribution, a default contribution of double the amount of \$2,000 (later reduced to \$1,000) would be deducted from their share of the sale proceeds upon a successful completion of the collective sale and paid over to a common fund which would be shared by the contributing SPs without prejudice to any other liability the non-contributing SP may incur under other provisions of the CSA.

74 Bearing in mind the legal attributes of a collective sale under s 84A, in my judgment this clause is unsustainable and unenforceable and must be struck down. This is for the following reasons:

(a) First, the non-signatory SPs are entitled not to join in the collective sale. This must include an entitlement not to have to make an upfront contribution to necessary front-end expenses to be incurred to get the collective sale process going.

(b) Secondly, they are not signatories to the CSA and are not bound by the CSA. In my view,

the signatory SPs cannot impose such financial obligations upon the non-signatory SPs by a contract signed only as between themselves.

(c) Thirdly, the non-signatory SPs may not, in the first place, want to sell at all. If for any reason the collective sale falls through, which is something the signatory SPs embarked upon against the wishes of the minority, pursuant to the mandated contributions, the minority would have to bear a portion of the expenses of their venture. This cannot be right, otherwise a majority can embark on an ill-advised collective sale and yet call upon the detractors to contribute to the costs therefor.

(d) Fourthly, I do not know of any principle of law that allows a contract made between the signatory SPs to impose nothing short of a penalty upon third parties (such as the non-signatory SPs) for having failed to contribute to what they did not agree to. Here, if the collective sale is successful, a non-signatory, non-contributing SP has to contribute double the amount called for and such sums are to be shared amongst those who contributed. The sum may be modest, but that does not affect the principle behind this reasoning. Perhaps these are the reasons that caused Warren Khoo to note that cl 7 was "not drafted in as sufficient detail as might have been desired". [\[note: 76\]](#)

75 As noted above, the non-signatory SPs are not parties to the CSA and are not bound by its terms. When a sale is sanctioned by the High Court, it is a statutory sale that comes into being and it is that order from the High Court that binds the non-signatory SPs to sell their units along with the common property.

76 The objections filed by the non-signatory SPs before the STB are telling and all of them (except for Koh Nai Hock (owner of Unit 54K) who additionally stated that as a foreigner, the sale would unfavourably affect his chances of finding a similar apartment in the same vicinity and he may not be able to afford a replacement apartment in District 11 where his family and children having been living for the past 12 years) are almost identically worded, as follows: [\[note: 77\]](#)

1. I am not objecting to the spirit of the collective sale however I am objecting to certain clauses as stated in the [CSA]...
2. The transaction is not in good faith as the proposed method of distributing the proceeds of sale penalises the minority owners. This is prejudicial to and unfairly discriminates against the minority owners...
3. The [CSA] unjustifiably seeks to impose financial penalties and sanctions against the minority owners, for no reason other than that they have exercised their legal prerogative not to participate in the collective sale process.
4. The following provisions in the CSA... that I am objecting:
 - Clause 7.3: Seeks to refund contributions to the majority owners together with interest of 12% per annum, at the expense of the minority owners.
 - Clause 7.5: Seeks to penalise the minority owners by withholding twice the Contribution amount from their sale proceeds, with no refund or interest payable to them. The amount withheld from the minority owners in this manner is then intended to be distributed among the majority owners.

- Clause 7.5 also unfairly describes the minority owners as "Defaulting Owners".
- Clause 11: Unilaterally seeks to make the minority owners bear the costs of the STB and High Court approval proceedings. Also seeks to allow the majority owners to sue the minority owners for "delay in the receipt of the Sale Proceeds" due to the need for STB and/or High Court approval.
- Clauses 8.4(b), 8.5(a), 8.5(b), 9.2(d), 9.4.1, 9.4.2: these are related to the objections above.

...

Edric Pan and Quek Chia-Min Valerie (owners of Unit 50A) additionally objected to the "Notice of Proposed Application" dated 1 July 2013, where the CSC stated that it intended to apply under s 84C of the Act for an attorney to be appointed to effect the transfer of their unit and receive their share of the Net Sale Proceeds. According to them, such an application would be oppressive and completely without basis. [\[note: 78\]](#)

77 I am of the view that the High Court has the power to strike down this clause as unenforceable on the following basis:

- (a) First, this is a power the High Court has at common law. It stems from the "blue pencil" doctrine, and the court can, as such, remove this clause from the CSA.
- (b) Secondly, it is clear that s 84A(5A) of the Act does not purport to restrict such power, as is apparent from the phrase "without prejudice to such other powers it may have under law".
- (c) Thirdly, and alternatively to sub-paragraph (a) above, there is also power conferred by s 84A(5A)(c) to impose such conditions as I think fair and reasonable in approving the application.

78 Although having struck down cl 7.5 of the CSA as unenforceable, I would add the following view, albeit *obiter*. When the requisite majority obtain an order of the STB or High Court for the collective sale, I cannot see anything objectionable that all SPs (including those who are not in favour of a collective sale), bear the costs and expenses of the collective sale in proportion to the share values and their unit area. This is but a consequence or necessary incidental cost in the creation of the sale proceeds which are divided between all SPs. I also accept that as a matter of practicality, those SPs who want a collective sale may have to put up the funds for the initial expenditure necessary to start the process going. The question then is—should they be compensated for making the funds available upfront? On the one hand, if some SPs embark on such a venture without having everyone on board, they have to bear the consequences of the venture failing, which includes bearing the costs therefor. If for any reason a collective sale initiative fails to come to fruition, it is difficult to see why those who object to it have to bear part of the cost. On the other hand, if the signatory SPs obtain a bank overdraft to fund these initial costs and expenses, it is equally difficult to see why, if the collective sale succeeds, the cost of the overdraft should not form part of the costs and expenses to be born proportionately by all. However, "compensating" the signatory SPs who put upfront money for the collective sale at a very high rate of 12% per annum (when compared to the cost of funds), even though it is shared by all signatory SPs, should not be allowed. This is because it essentially amounts to attractive returns to those SPs who bet on the collective sale going through. *A fortiori*, the signatory SPs should not be allowed to share the "penalty" that the non-signatory SPs have to pay under cl 7.5.

Clause 11 – Abuse of Process

79 Under cl 11, if a collective sale is approved by the STB or High Court, the non-signatory SP who did not file any objection to a s 84A application to the STB or High Court, or who withdrew or abandoned his objection or did not have his objection recognised expressly or impliedly by the STB or High Court, shall be liable for the entirety or an appropriate part of the costs and expenses of and in connection with the approval proceedings before the STB or High Court. This would be chargeable against the non-signatory SPs and withheld from their share of the sale proceeds and paid over to the common fund to account for the costs and expenses of the collective sale.

80 As noted above, one of the original prayers in OS 982 was for the non-signatory SPs to bear the costs of \$27,000 at the stage of the STB application. \$27,000 represented each non-signatory SP's portion of the \$135,000 incurred, the breakdown of which is provided above (at [13]). This \$135,000 was the same sum DLPL offered to pay so that the remaining non-signatory SPs would not have to bear the costs and expenses under cl 11 and proceed to sign the CSA.

81 In my judgment, cl 11 is likewise unenforceable and should be struck down. As I have noted above, an SP *is* entitled to withhold signing the CSA in the event he does not want, for whatever reason, whether personal or otherwise, to sell his unit. For example, Lim Li Meng Dominic deposed that “[f]or those of us who live in Gilstead Court, it is impossible to replace”. [\[note: 79\]](#) This non-signatory SP is unable to raise this personal reason as a valid objection before the STB or the High Court because he is constrained by statute which limits objections to financial grounds. Even after the requisite majority is attained, an application is required in any case for the STB or the High Court to sanction the collective sale under s 84A, even if the non-signatory SP chooses not to lodge any objection. In such an event, it is normal and fair that all SPs are made to share the costs and expenses of a successful collective sale that is invariably proportionate to their unit share value and area. However it is unjust and impermissible, by a contract amongst the requisite majority signatory SPs, to make the non-signatory SPs bear these costs.

82 What the signatory SPs are in effect doing is forcing the minority to agree to the sale so that there is no need to resort to the statutory scheme for the collective sale before the STB or High Court, failing which they will be liable for the costs of the STB application. There is some evidence of this from the following paragraphs in the Notice of Proposed Application to the STB by the CSC to the non-signatory SPs:

The ground for this application is that there is substantial doubt whether you will co-operate in the implementation of the order for sale expected to be issued. Your prevaricating attitude towards the sale, *including your final decision to refuse, without good cause, to sign the CSA even after the requisite 80% of the owners had done so, gives rise to such doubts.* [emphasis added]

83 Unfortunately this is something a requisite or even overwhelming majority cannot do. As noted above, a collective sale under s 84A *takes away* the right of an SP to refuse to sell his unit if the requisite majority SPs wish to sell. However, it *does not* require a non-consenting SP to sign a CSA so that an application to the STB or High Court becomes unnecessary. Until the statutory collective sale in s 84A came into being, a single SP could exercise his right not to sell his unit and scuttle any collective sale of the whole development.

84 I also note that cl 11 does not state who is to decide whether the non-signatory SP bears the entirety or appropriate part of the costs and expense in connection with the approval proceedings before the STB or High Court. The parties cannot by contract take away the power of the court to

decide the question of costs. Costs are, first and foremost, at the discretion of the court. Any agreement between parties that purports to deal with the apportionment of legal costs would constitute only one of the many factors that the court can take into account in exercising its discretion. Who is to bear what proportion of the costs of a s 84A application to the High Court is something that is entirely within the purview of the court, not the CSC or the signatory SPs.

Clause 12 – Sanctions against corrupt behaviour

85 A rather unfortunate view was taken of DLPL's offer to pay a sum of \$135,000 in an effort to end the dispute over the costs incurred by the STB application. Sally Ching and Warren Khoo decided that this was an "intrusion" on the part of DLPL amounting to an "extraneous" payment. [\[note: 80\]](#) Choo Liang Haw and the other CSC members and SPs disagreed. Clause 37 of the S&P Agreement has been set out above. The operative words describing the prohibited payment caught by that clause are

... if [DLPL] should give to any Owner any consideration in money or in kind which is, or would be, extraneous to what the Owner would properly be entitled to under the CSA, (1) as an inducement to do or abstain from doing or (2) as reward for doing or abstaining from doing any of the following things ...

86 As pointed out by DLPL, it had simply made an offer to break the deadlock, which was made openly to members of the CSC and was an offer to *all* the SPs. There was no surreptitious offer to any individual SPs. The first email dated 12 September 2013 was to the CSC, for the attention of Warren Khoo. It followed upon a report in The Straits Times of the dispute which specifically mentioned the unhappiness of the five objecting owners over CII 7 and 11. DLPL offered \$50,000 "for the benefit of all owners" to meet the costs of the STB proceedings and asked for full disclosure of its offer to all SPs. This sum, following upon STB hearings set out above, was increased to \$100,000 and then \$135,000 by way of emails from DLPL to the CSC dated 25 and 26 September 2013. As pointed out in DLPL's submissions, there was no response from the CSC that DLPL's offers were improper or contravened the S&P Agreement.

87 Unfortunately, Mr Davinder Singh SC stated at the hearing before me on 25 August 2014 that DLPL was no longer prepared to maintain the offer of \$135,000. [\[note: 81\]](#)

88 To put this matter to rest, there was nothing that occurred here to trigger any issue arising under cl 12 of the CSA or cl 37 of the S&P Agreement.

The Thinking behind the CSA

89 The CSA is a very comprehensive and admirably drawn up contract. I am satisfied that Warren Khoo wanted to draft a "perfect" document for a "perfect" collective sale which would sail through without undue hitches and would treat everyone equally. All the alternatives were thought out. There was even a mechanism for adjusting the share of the proceeds of sale to deserving SPs. Under cl 10 of the CSA, a Sales Facilitation Committee was set up to "[assist] and [give] support to Affected Owners or their next of kin to remove obstacles to the signing of this Agreement arising from death, mental disability, insolvency or other disabilities, including where necessary assisting in making applications to court" as well as to "[assist] and [give] support to Affected Owners who have special reasons not to sign the Agreement". Clause 10 also provided for increasing the share of an SP but not more than what a court can award under ss 84A(7A) and (7B) and subject to approval by all the SPs through an EOGM and passing of an ordinary resolution.

90 Warren Khoo argued that the principle behind the Offending Clauses was equality. He explained this as follows: [\[note: 82\]](#)

The new CSA also seeks to cope with the emerging trend of allegedly “unwilling” owners who have no reason not to sign up but could be persuaded to do so by being given special privileges, such as waiver of the contribution to common expenses of the sale. We proceeded on the assumption that all Owners must be treated equally in a collective sale. They must share the risks of failure and the fruits of success equally with everybody else. This is the underlying basis for CSA Clause 7.5 and 11. ...

91 Although borne out of benevolent intentions, the Objectionable Clauses unfortunately caused strife. The idea behind the Objectionable Clauses, specifically “that all Owners must be treated equally in a collective sale”, as I have set out above, fails to recognise the basic rights of objecting SPs at law.

92 I agree with the non-signatory SPs that the Objectionable Clauses cause an unjustifiably unequal distribution of the sale proceeds but, I hasten to add, not to the extent of impugning the *bona fides* of the transaction.

93 The simple point is, returning to Warren Khoo’s quote, that there was never “equal treatment” among the SPs from the outset. There never is “equal treatment” in any case that requires resort to s 84A of the Act. The very notion of a statutory sale implies that consent from some of the owners is lacking, and that the majority’s wishes are prioritised, subject to certain safeguards. In fact, Warren Khoo’s quote on equal treatment is contained in the portion of his affidavit sub-headed “Prevention of oppression by the minority”. With respect, it can and should also be “prevention of oppression of the minority by the majority”, because in taking away the right of the minority not to sell their units, the law gives them some safeguards and allows them to object by not signing the CSA, but once the requisite majority comply with the statutory provisions and obligations, they are entitled to ask the High Court to sell all the units and common property in a strata title plan, including the units of those who object to the sale.

94 I find that the principle of “equal treatment”, which allegedly underpinned cl 7, may have been erroneously pursued. Although the sums involved in the arguments over cl 7 were rather small, in the region of \$2,000 per unit, this same misguided pursuit of “equality” seemed to be the foundation of the plaintiffs’ arguments on cl 11, which involved significantly greater sums.

95 Having identified the problems with the Objectionable Clauses, I can either (1) allow the sale through subject to conditions that I may think fair and reasonable, pursuant to s 84A(5A)(c), or (2) refuse to allow the sale through. Although the latter would be simpler and neater, it would not be in the interests of the requisite majority of the SPs, not least given the present state of the property market. With this in mind, I find that the former approach, though more tedious, is the fair one. Noting that it is not the function of the court to meddle unduly with an agreement that was essentially meant to be as between, at the very least, 80% of the SPs, I propose to allow the sale subject to the minimal conditions as discussed above, and reiterated below at [103] and [104].

Want of Authority

96 Although not directly concerned with the issue of the Objectionable Clauses, one point raised by Mr Adrian Tan was that the plaintiffs in OS 982 lacked the authority to initiate proceedings. This was a serious allegation that could have led to the striking out of the OS. His main reason for this was that the OS was not brought by all three members of the Exco, as was required by cl 13.2 of the

CSA. [\[note: 83\]](#)

97 Although OS 982 was in fact commenced in the names of the requisite three members of the Exco (as plaintiffs), Choo Liang Haw's name was simply "provisionally retained" as one of the plaintiffs at that time. [\[note: 84\]](#) In fact, Choo Liang Haw was not even aware that he was named as a plaintiff in OS 982 at that point. It was only after OS 982 was filed that he stated he "would have no objections" to be a plaintiff in OS 982, "if it was only about the [s 84A] approval". [\[note: 85\]](#) However, he objected to the remaining prayers in OS 982, and it was this difference in views that led to him being removed as a plaintiff and named as a defendant. As stated above, no issue arises with regard to Sally Ching, who although not originally consulted before she was named as a plaintiff, she subsequently ratified Warren Khoo's act in so naming her as a plaintiff and it is plain in subsequent events, she agreed with the stand and actions of Warren Khoo.

98 Although I find the manner in which these proceedings were commenced rather unsatisfactory, notably the use of a party's name as co-plaintiff without his or her prior consent, I find that to derail this sale on a such a technicality would be to the prejudice of most, if not all, of the parties. I accept there have been no meetings of the CSC to vote in new office holders. However, I find that I have before me all but one the members of the CSC including the three office holders, albeit under two OSs. The crux of the issue is the enforceability of the Objectionable Clauses as more than the requisite majority has been attained and they are asking for a collective sale under s 84A. It is an absolute waste of time and costs to ask these parties to go away and regularise the proceedings. Much harm has already been done, much animosity has been unfortunately generated, legal expenses have been wracked up and it is in nobody's interest to have this re-litigated. In my view, the essential issues are clear, the parties have made their submissions and I am therefore able to give my decision thereon.

Gary Darwin

99 This issue can be shortly disposed of. The plaintiffs' prayers against Gary Darwin (that relate to him breaching his duty to other signatory SPs to observe and uphold all the provisions of the CSA) are entirely misplaced and should never have been brought in these proceedings under s 84A of the Act. In any case, Gary Darwin's convening of the EOGM was of no effect not only because it was convened pursuant to the wrong statute and provisions but also because the EOGM was not entitled to pass the resolutions that it purported to do. In fact, it was Warren Khoo who pointed out that, because the EOGM was convened pursuant to the wrong statute, it was therefore legally invalid. [\[note: 86\]](#) Given that the EOGM was invalid, and that Gary Darwin's actions were futile from the onset, it would be difficult to establish that he had contravened any obligation he owed to observe and uphold the provisions of the CSA.

100 I also do not find that Gary Darwin was doing anything other than trying to resolve the situation and not allowing the dispute and the costs to escalate as is the case now. He was certainly willing to waive the applicability of the Objectionable Clauses to the non-signatory SPs and so were the other signatory SPs who voted for the purported resolution at the EOGM. I have now found and held the Objectionable Clauses to be unenforceable.

101 I should repeat that I find it a shame that DLPL's offer was not accepted and so put to rest any disputes arising between the signatory and non-signatory SPs. None of these disputes would have escalated if this had been done.

102 Rather than accede to a striking out of the plaintiffs' claims against them in OS 982, I dismiss

the plaintiffs' application for the declarations set out at [3(m)] and [3(o)] and their prayer for an injunction at [3(n)] above.

Conclusion

103 Having considered all the submissions and evidence before me, I order that all the lots and common property in the Development be sold collectively to DLPL according to the terms and conditions of the conditional contract of sale concluded on 17 June 2013, the S&P Agreement and the CSA, subject to the following:

- (a) Clause 7.5 and related clauses pertaining to the consequences that SPs who failed to pay contributions, pursuant to cl 7.1 are struck out;
- (b) SPs who have paid contributions pursuant to cl 7.1 will be reimbursed pursuant to either cl 7.3 or cl 7.4 but only with reasonable interest which I fix at 4% per annum;
- (c) Clause 11 is similarly struck out; and
- (d) Costs and expenses for the collective sale, other than costs of the proceedings before the STB and this Court, shall be paid by all SPs proportionately to their share according to their unit share value and area as set out in Schedule 4 to the CSA. Any dispute or doubt as to the costs and expenses for the collective sale as set out herein shall be heard and decided by me through subsequent applications under OS 982.

104 For the avoidance of doubt, the prayers set out in OS 982 are dealt with as follows:

- (a) Prayers 1 and 2 (above at [3(a)] and [3(b)]), have been dealt with above at [103].
- (b) Prayers 3 and 4 (above at [3(c)] and [3(d)]), which deal with giving effect to the Objectionable Clauses, are dismissed.
- (c) No order is made in relation to prayers 5, 6 and 7 (above at [3(e)], [3(f)] and [3(g)]), which deal with the leadership of the CSC.
- (d) Prayers 8 and 9 (above at [3(h)] and [3(i)]), which deal with DLPL, have already been withdrawn, and were dealt with at the hearing on 1 September 2014 (see above at [41]).
- (e) Prayers 10, 11 and 12 (above at [3(j)], [3(k)] and [3(l)]), which deal with the other CSC members' actions in attempting to overcome the Objectionable Clauses, are dismissed.
- (f) Prayers 13 and 14 (above at [3(m)] and [3(n)]), which deal with Gary Darwin, are dismissed.
- (g) No order is made in relation to prayer 15 (above at [3(o)]), which deals with the EOGM.
- (h) As to prayers 16 and 17 (above at [3(p)] and [3(q)]), which deal with costs, unless agreed, the parties are to file written submissions on liability for costs as well as on quantum including disbursements within three weeks from this judgment. I shall hear the parties on costs on a date to be fixed by the Registrar.
- (i) No order is made in relation to prayers 18 and 19 (above at [3(r)] and [3(s)]), which deal with consequential orders and liberty to apply. However, I grant parties liberty to apply in relation

to any issue arising as to the completion of the collective sale or the implementation of any of my orders made herein as well as generally. There shall also be liberty to apply in the event there are any disputes or differences in interpretation or implementation of any of the clauses of the CSA as a result of the orders made herein.

105 There shall be no orders made for OS 941. Submissions on costs for OS 982 should include costs for OS 941, and all related applications and matters.

[\[note: 1\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 20.

[\[note: 2\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 24.

[\[note: 3\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 57.

[\[note: 4\]](#) Gary Darwin's Affidavit dated 3 April 2014 at para 5 and Warren Khoo's Affidavit dated 17 April 2014 at para 10.

[\[note: 5\]](#) Warren Khoo's Affidavit dated 18 February 2014 at paras 5 and 58.

[\[note: 6\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 59.

[\[note: 7\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 68.

[\[note: 8\]](#) Lim Li Meng Dominic's Affidavit dated 18 March 2014 at para 12 and Warren Khoo's Affidavit dated 17 April 2014 at paras 17–18.

[\[note: 9\]](#) For the minutes of this meeting, see Warren Khoo's Affidavit dated 18 February 2014 at pp 260–266.

[\[note: 10\]](#) Warren Khoo's Affidavit dated 18 February 2014 at pp 202–211.

[\[note: 11\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 211.

[\[note: 12\]](#) For the Appointment Agreement, see Warren Khoo's Affidavit dated 18 February 2014 at pp 280–287.

[\[note: 13\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 72.

[\[note: 14\]](#) For the minutes of this meeting, see Warren Khoo's Affidavit dated 18 February 2014 at pp 268–274.

[\[note: 15\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 77.

[\[note: 16\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 83.

[\[note: 17\]](#) Warren Khoo's Affidavit dated 15 August 2014 at pp 27–29.

[\[note: 18\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 347.

[\[note: 19\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 324.

[\[note: 20\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 77.

[\[note: 21\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 90.

[\[note: 22\]](#) Pan Xingzheng Edric's Affidavit dated 18 March 2014 at paras 41–42 and p 49.

[\[note: 23\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 289 and Warren Khoo's Affidavit dated 17 April 2014 at para 91.

[\[note: 24\]](#) For the objection filed by Chua Seet Mui, see Warren Khoo's Affidavit dated 18 February 2014 at p 449. For the objection filed by Lim Li Meng Dominic, see Warren Khoo's Affidavit dated 18 February 2014 at p 466. For the objection filed by Lim Sui May Petrina, see Warren Khoo's Affidavit dated 18 February 2014 at p 472. For the objection filed by Pan Xingzheng Edric and Quek Chia-Min Valerie, see Warren Khoo's Affidavit dated 18 February 2014 at p 446. For the objection filed by Soh Lay Bee and Loke Ah Meng, see Warren Khoo's Affidavit dated 18 February 2014 at p 455. For the objection filed by Koh Nai Hock, see Warren Khoo's Affidavit dated 18 February 2014 at p 478.

[\[note: 25\]](#) This was contained in the objections filed by Chua Seet Mui and Koh Nai Hock (Warren Khoo's Affidavit dated 18 February 2014 at pp 450 and 479 respectively).

[\[note: 26\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 79.

[\[note: 27\]](#) For the talking points of the meeting, see Warren Khoo's Affidavit dated 18 February 2014 at pp 80–85.

[\[note: 28\]](#) Warren Khoo's Affidavit dated 18 February 2014 at pp 86–87 and Lee Liat Yeang's Affidavit dated 18 March 2014 at para 6.

[\[note: 29\]](#) Chong Chou Yuen's Affidavit dated 20 March 2014 at para 17.

[\[note: 30\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 94.

[\[note: 31\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 88.

[\[note: 32\]](#) Lee Liat Yeang's Affidavit dated 18 March 2014 at p 9.

[\[note: 33\]](#) Lee Liat Yeang's Affidavit dated 18 March 2014 at para 7(d).

[\[note: 34\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 99 and Lee Liat Yeang's Affidavit dated 18 March 2014 at para 8.

[\[note: 35\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 99.

[\[note: 36\]](#) Lee Liat Yeang's Affidavit dated 18 March 2014 at para 8.

[\[note: 37\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 100 and Chong Chou Yuen's Affidavit dated 20 March 2014 at paras 9–10.

[\[note: 38\]](#) Warren Khoo's Affidavit dated 18 February 2014 at pp 94–95.

[\[note: 39\]](#) Warren Khoo's Affidavit dated 18 February 2014 at pp 97–98 and Chong Chou Yuen's Affidavit dated 20 March 2014 at paras 9–10.

[\[note: 40\]](#) Pan Xingzheng Edric's Affidavit dated 18 March 2014 at p 14.

[\[note: 41\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 107.

[\[note: 42\]](#) Lee Liat Yeang's Affidavit dated 18 March 2014 at para 9.

[\[note: 43\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 108.

[\[note: 44\]](#) Warren Khoo's Affidavit dated 18 February 2014 at pp 120–121.

[\[note: 45\]](#) Minute Sheet dated 1 September 2014 at p 24.

[\[note: 46\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 113.

[\[note: 47\]](#) Warren Khoo's Affidavit dated 5 February 2014 at paras 12–22.

[\[note: 48\]](#) Warren Khoo's Affidavit dated 5 February 2014 at paras 26–27.

[\[note: 49\]](#) Gary Darwin's Affidavit dated 3 April 2014 at para 21 and Warren Khoo's Affidavit dated 18 February 2014 at pp 167–168.

[\[note: 50\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 171.

[\[note: 51\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 176.

[\[note: 52\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 177.

[\[note: 53\]](#) Choo Liang Haw's Affidavit dated 6 March 2014 at para 24. See also Warren Khoo's Affidavit dated 18 February 2014 at p 184.

[\[note: 54\]](#) Choo Liang Haw's Affidavit dated 6 March 2014 at para 26.

[\[note: 55\]](#) Choo Liang Haw's Affidavit dated 6 March 2014 at pp 51–52.

[\[note: 56\]](#) The application was originally made on 3 April 2014. Summons No 1678 of 2014 (Amendment No 1) was filed on 10 April 2014.

[\[note: 57\]](#) Minute Sheet dated 11 August 2014.

[\[note: 58\]](#) Warren Khoo's Affidavit dated 15 August 2014 at para 2.

[\[note: 59\]](#) Minute Sheet dated 27 March 2014.

[\[note: 60\]](#) See, eg, Chong Chou Yuen's Affidavit dated 20 August 2014 at para 8.

[\[note: 61\]](#) Minute Sheet dated 25 August 2014 at p 6.

[\[note: 62\]](#) Minute Sheet dated 1 September 2014 at p 6.

[\[note: 63\]](#) Minute Sheet dated 1 September 2014 at p 7.

[\[note: 64\]](#) Warren Khoo's Affidavit dated 10 November 2014 at pp 7–19.

[\[note: 65\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 237.

[\[note: 66\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 242.

[\[note: 67\]](#) Clause 5(a) of the S&P Agreement (Warren Khoo's Affidavit dated 18 February 2014 at p 317).

[\[note: 68\]](#) Warren Khoo's Affidavit dated 10 November 2014 at pp 7–19.

[\[note: 69\]](#) Warren Khoo's Affidavit dated 10 November 2014 at pp 21–25.

[\[note: 70\]](#) Warren Khoo's Affidavit dated 10 November 2014 at pp 27–79.

[\[note: 71\]](#) Lim Li Meng Dominic's Affidavit dated 18 March 2014 at para 16.

[\[note: 72\]](#) Minute Sheet dated 25 August 2014 at p 12 and Opening Statement of the Objectors at paras 79–82.

[\[note: 73\]](#) Minute Sheet dated 25 August 2014 at p 12.

[\[note: 74\]](#) Lim Li Meng Dominic's Affidavit dated 18 March 2014 at para 10.

[\[note: 75\]](#) Written Submissions of the 9th Defendant in OS 982 dated 22 August 2014 at paras 6 to 8.

[\[note: 76\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 84.

[\[note: 77\]](#) This is based on the objection filed by Chua Seet Mui (Warren Khoo's Affidavit dated 18 February 2014 at p 449). For the objection filed by Lim Li Meng Dominic, see Warren Khoo's Affidavit dated 18 February 2014 at p 466. For the objection filed by Lim Sui May Petrina, see Warren Khoo's Affidavit dated 18 February 2014 at p 472. For the objection filed by Pan Xingzheng Edric and Quek

Chia-Min Valerie, see Warren Khoo's Affidavit dated 18 February 2014 at p 446. For the objection filed by Soh Lay Bee and Loke Ah Meng, see Warren Khoo's Affidavit dated 18 February 2014 at p 455. For the objection filed by Koh Nai Hock, see Warren Khoo's Affidavit dated 18 February 2014 at p 478.

[\[note: 78\]](#) Warren Khoo's Affidavit dated 18 February 2014 at p 448

[\[note: 79\]](#) Lim Li Meng Dominic's Affidavit dated 18 March 2014 at para 10.

[\[note: 80\]](#) Warren Khoo's Affidavit dated 18 February 2014 at paras 96–102.

[\[note: 81\]](#) Minute Sheet dated 25 August 2014 at p 19.

[\[note: 82\]](#) Warren Khoo's Affidavit dated 18 February 2014 at para 52.

[\[note: 83\]](#) Opening Statement of the Objectors at paras 10–11.

[\[note: 84\]](#) Warren Khoo's Affidavit dated 5 February 2014 at para 17.

[\[note: 85\]](#) Choo Liang Haw's Affidavit dated 6 March 2014 at para 17.

[\[note: 86\]](#) Warren Khoo's Affidavit dated 17 April 2014 at para 26.

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