Goh Teh Lee v Lim Li Pheng Maria and Others
[2009] SGHC 242

Case Number : OS 1627/2008

Decision Date : 27 October 2009

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : The plaintiff in person; Cheah Kok Lim (Sng & Co) and Leong Kwok Yan (Leong Kwok Yan) for the defendants

Parties : Goh Teh Lee — Lim Li Pheng Maria; Liew Yeow Siang; Gobindram s/o Ramchand Chandumal Thadhani

Land – Strata Titles – Collective Sales

27 October 2009

Andrew Ang J:

Introduction

1 This was an appeal against the Order of the Strata Titles Board ("the Board") dated 4 December 2008 in Strata Titles Board No 33 of 2008 ("STB 33/2008") pursuant to an application under s 84E of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") (as it stood prior to the Land Titles (Strata) (Amendment) Act 2007 (No 46 of 2007) and the Statutes (Miscellaneous Amendments) (No 2) Act 2008 (No 30 of 2008)) in respect of the development known as Nos 134/134A/B/C/D/E/F/G/H/J/K/L and Nos 136/136A/B/C/D/E/F/G/H/J/K/L (known as Koon Seng House) and Nos 124/126/128/130/132/138/140/142/144 Koon Seng Road ("the terrace houses") comprised in Land Lot No 6329V of Mukim 26 ("the Development").

2 The plaintiff, Goh Teh Lee, sought the following orders in these proceedings:

(a) that the order of the Board under s 84E of the Act in respect of the Development on 4 December 2008 in STB 33/2008 be set aside;

(b) that the costs of and incidental to this application and at the Tribunal below be paid by the defendants to the plaintiff; and

(c) such further and/or other relief as the court deems fit.

3 The Development comprised Koon Seng House, a 4-storey block containing 24 flats, and nine terrace houses on one piece of freehold land that was not subdivided. The flats were not strata subdivided but were comprised in 999,999 year leases with no share in the land. Koon Seng House Residents' Association (the "Residents' Association"), whose members were the owners of the 24 flats, provided for the maintenance of the flats and the car parks. The nine terrace houses were owned by the landowner.

4 To understand how the mixed development came about, it would be best to set out a brief history. The nine terrace houses were already sitting on freehold land comprised in Lot 2139 Mukim 26 (from which the present Lot 6329 is derived from) prior to the 1960s. On 2 December 1960, Lot 2139 was conveyed by Asia Realty Company Ltd to Ng Guan Cheong. Ng Guan Cheong erected a block of 4-storey flats comprising 24 flats on the said lot. Subsequently, Lot 2139 was conveyed to Tai Hong

Realty Co Ltd which then applied to subdivide the block of flats into 24 separate units. As the law then stood (prior to the introduction of strata subdivision) that could only be done by creating long leases of each flat, in this case for 999,999 years. Lot 2139 was thereafter conveyed to Tan Tok Phuang "together with the houses erected thereon … subject to the existing leases for 999,999 years granted to the owners of the 24 flats …". Lot 2139 was later sub-divided into Lots 2147 and 2148 Mukim 26. On 29 August 1968, Lot 2147 Mukim 26 was conveyed by Tan Tok Phuang to Lim Cher Joo, "TOGETHER with the houses erected thereon … Subject to the existing leases for 999,999 years granted to the owners of the 24 flats …". Eventually Lot 2147 Mukim 26 itself was subdivided into Lots 6328 and 6329 Mukim 26 with Lot 6329 being that upon which the flats and terrace houses stand.

5 The plaintiff was the co-owner of unit 136D Koon Seng Road (one of the flats) and sole dissenter in the collective sale of the Development. (The plaintiff is currently involved in divorce proceedings with his wife, the other co-owner of unit 136D, who agreed to the collective sale.) The defendants were members of the sale committee and representatives of the proprietors forming the majority in the application for the collective sale of the Development.

6 The idea of a collective sale was first mooted in the last quarter of 2006 when a real estate agent approached certain owners of the flats to consider the matter. At a meeting (loosely described as an "Extraordinary General Meeting") held on 18 November 2006, 18 flat owners agreed to proceed with the matter by appointing the second and third defendants to form part of the sale committee. At the first meeting on 23 November 2006 convened by the Residents' Association to discuss a possible collective sale of the flats together with the terrace houses, the owner of the nine terrace houses and 18 owners of the flats agreed to a collective sale of the property. The first defendant, representing the estate of the landowner Lim Cher Joo (deceased), was therefore appointed to the sale committee. Subsequently, a team headed by Lim Choo Koon from ERA Realty Network was appointed to market the property. There was a second meeting on 29 December 2006 where the marketing agents explained the collective sale procedure. The first collective sale agreement ("CSA") stipulated an initial reserve price of $21,780,000. The first signature was thereunto appended on 29 December 2006. By 29 January 2007, the owners of 27 out of 33 units (including the nine terrace houses) had signed the agreement.

7 Subsequently, however, when bids were invited for purchase of the property, there was only one offer for $18,800,000. Realising that the reserve price then was too high, the owners agreed (after discussion) to reduce the reserve price to $19,800,000. To effect this variation in the CSA, a supplemental agreement was signed. The first signature to the supplemental agreement was appended on 24 March 2007. By 7 May 2007, the owners of 27 out of 33 units (including the nine terrace houses) had signed the agreement. Other owners progressively added their signatures so that by 6 September 2007, the owners of 30 out of 33 units had validly signed the supplemental agreement. This included the owners of 21 out of 24 flats.

8 On 29 May 2007, an option to purchase ("the Option") for $21,200,000 was granted to KS Development Pte Ltd.

9 Sometime in September 2007, the majority owners recognised that despite the additional signatures, they were unlikely to obtain unanimous agreement to the CSA and that there might be the need to apply for a collective sale order. On 20 September 2007, there was a third owners' meeting convened by the sale committee to discuss this issue.

10 On or about November 2007, the majority owners took steps with a view to applying for a collective sale order. As there were no share values attaching to the flats units, they applied for an

allotment of notional share value for each unit with the Singapore Land Authority ("SLA") pursuant to s 84E(2) of the Act. In such application, they also asked for allocation of a notional share value for each of the terrace houses. Upon valuation and survey of the Development, the proposed share values were approved by the SLA on 7 March 2008. The allocation was seven share values for each flat and six for each terrace house. On 14 March 2008, an application to the Registrar of Titles pursuant to s 84E(2) and approval for notional shares in land under s 84E of the Act was made.

11 On 16 April 2008, an application to the Board for a collective sale order was lodged. On 24 April 2008, the plaintiff, together with Han Jung Kuang Lawrence and Lee Woei Shyuan (the co-owners of unit 136H) objected to the application. However, on the day of the hearing before the Board, Han Jung Kuang Lawrence and Lee Woei Shyuan withdrew their objections.

12 The Board made an order for the collective sale of the Development on 4 December 2008. The Board applied to the Minister, under s 92(9) of the Building Maintenance and Strata Management Act 2004 (No 47 of 2004) ("BMSMA"), and obtained an extension of time to issue its grounds. The Board delivered its grounds of decision on 4 February 2009.

13 Being dissatisfied with the order of the Board, the plaintiff brought this action. On 24 February 2009, the plaintiff and defendants entered into a consent order (Summons No 581 of 2009) that the order of the Board be stayed pending the outcome of this hearing.

14 The plaintiff's grounds of objection to the collective sale were as follows:

(a) whether it was possible to determine if the requisite majority had been obtained if notional share values were assigned after the execution of the CSA by the majority owners;

(b) that the method of distribution for the sale proceeds stipulated in the CSA (which was that each unit share equally the sale proceeds) was unfair because it did not take into account the notional share value or floor area of each unit and, pursuant to s 84E(11) of the Act, the single owner of the nine terrace houses was not entitled to the proceeds of the collective sale;

(c) that the application to the Board for a collective sale order was out of time because the application was not made within 12 months from the date the agreement of the owners representing 80% of the notional share values to the first CSA was reached;

(d) that there were numerous instances of serious non-compliance with the mandatory statutory provisions of the Act which could not be waived by the Board; and

(e) that the STB did not have the power to override the order of a Subordinate Court ordering that the plaintiff be prevented from disposing of his assets (including the flat).

15 During the hearing, I asked for submissions to include consideration of the issue whether the application for a collective sale order in respect of the Development came within the provisions of s 84E of the Act, given that the sale included the nine terrace houses standing on the land.

Purposive interpretation of the Act

16 The courts have taken a purposive approach towards interpreting the statutory provisions of the Act. Section 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) mandates as follows:

Purposive interpretation of written law and use of extrinsic materials

9A. — (1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.

17 The purposive interpretation of statutory provisions was considered in *PP v Low Kok Heng* [2007] 4 SLR 183 ("*Low Kok Heng*"). V K Rajah JA, sitting in the High Court, held at [39]:

> In Singapore, any discussion on the construction of statutes necessarily takes place against the backdrop of s 9A of the Interpretation Act. The provision seeks to highlight the importance of adopting a purposive approach in the course of the courts' interpretation of statutes in order to promote the underlying purpose behind the legislation (see Singapore Parliamentary Debates, Official Report (26 February 1993) vol 60 at col 517). …

18 A few points may be made with respect to the application of s 9A. First, s 9A mandates that a construction promoting legislative purpose be preferred over one that does not promote such purpose or object: see Brady Coleman, "The Effect of Section 9A of the Interpretation Act on Statutory Interpretation in Singapore" [2000] Sing JLS 152 at 154; cited in *Low Kok Heng* at [41]. Second, s 9A requires that the purpose or object of the statute be taken into account even if the meaning of the words are neither ambiguous nor inconsistent: see *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1 at [22]; *Low Kok Heng* at [43], [45] and [46]. Third, s 9A(2) permits consideration to be given to extrinsic material when confirming or ascertaining that the meaning of the statutory provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law: see *Low Kok Heng* at [44]. There are, however, limits to purposive interpretation of statutes. Statutory provisions should not be construed in a manner that goes against all possible and reasonable interpretation of the express literal wording of the provision. Courts must be cautious to observe the limitations on their power and to confine themselves to administering the law: see *Low Kok Heng* at [52].

19 Section 9A of the Interpretation Act has been applied in the context of collective sales pursuant to the Act: see *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 1 SLR 522 ("*Ng Swee Lang*") and affirmed by the Court of Appeal in *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR 597.

20 In *Kok Chong Weng v Wiener Robert Lorenz (Ankerite Pte Ltd, intervener)* [2009] 2 SLR 709, the appellants argued that s 84A of the Act did not apply to privatised HUDC estates because, for the computation of the age of the development, there was a requirement for a temporary occupation permit ("TOP") or certificate of statutory completion ("CSC") under s84A(1) which, owing to an exemption from the requirements of the Building Control Act (Cap 29, 1999 Rev Ed), HUDC estates do not have. The Court of Appeal, upholding the decision of Choo Han Teck J held at [25]:

> In our view, the issue of the applicability of s 84A(1) to privatised HUDC estates therefore boils down to this question: Why would Parliament want to exclude privatised HUDC estates from the collective sale scheme when the object or purpose of the scheme was to rejuvenate old estates and to improve the quality of housing in Singapore? Parliament must also know that HUDC estates would need rejuvenation sooner than private strata developments, and therefore they should be prime candidates for the scheme. …

Therefore, despite the literal wording of s 84A seeming to preclude its applicability to privatised HUDC estates, the Court of Appeal took a purposive interpretation of the provision to allow for the collective sale of the HUDC estate in question.

21 In *Mohamed Amin bin Mohamed Taib v Lim Choon Thye* [2009] 3 SLR 193, two subsidiary proprietors of a unit in Regent Court objected to the collective sale on the ground that they would incur a financial loss as the proceeds of sale of their unit would be less than the price they had paid for it. In light of that objection, the purchaser furnished an undertaking as well as entered into a supplemental agreement with the sale committee to pay the objectors an additional sum on completion. However, the Board found that the objection had been made out on the basis that s 84A(7) provided that the Board shall not approve of an application for collective sale where any minority owner will suffer a financial loss and dismissed the application. Before Judith Prakash J, the question was whether the phrase "proceeds of sale for his lot" in s 84A(8)(*a*) referred specifically to the amount that an individual proprietor could expect to receive for his lot on the basis of the sale price mentioned in the sale. The Board's view was that in order to determine whether any objector would incur a "financial loss" within the meaning of s84A(7), the "proceeds of sale" referred to in s84A(8) meant strictly the proportion of the sale price in the collective sale agreement which was payable to that objector and would not include any additional amount which the purchaser had agreed to pay the objector. The plaintiffs, however, submitted that the approach taken by the Board in construing s 84A(8) undermined the legislative purpose behind the Act. This was because on the Board's interpretation, any subsidiary proprietor with a paper loss of any amount would be entitled to refuse any offer made to compensate him, and thereby prevent the collective sale from going through. Therefore, the proper and purposive interpretation of "proceeds of sale for his lot" under s 84A(8) would be that this phrase referred to the moneys which subsidiary proprietors would receive for their lot upon the completion of the collective sale. This submission was accepted by Prakash J in [27]:

> I accepted the above submission. I considered that the Legislature would not have intended the adverse consequences to future *en bloc* sales that would arise from a strict construction of 'proceeds of sale'. I also agreed that the interpretation propounded by the plaintiff was not a strained interpretation of the Act. There was no reason why 'proceeds of sale' should be limited to simply looking at the 'purchase price' set out in the sale and purchase agreement. Adopting the wider interpretation would further the legislative purpose of the Act by taking into account efforts to make good the financial loss of individual subsidiary proprietors and to ensure that no individual subsidiary proprietor would be prejudiced by the collective sale. …

22 Therefore, I observe that where necessary to effect the legislature's purpose behind the statutory provision, the courts are willing to depart from its literal interpretation.

Purpose of the statutory provisions relating to collective sale schemes

23 It would be useful at this juncture to set out the purpose of the statutory provisions relating to

the collective sale of a development. In *Ng Swee Lang* ([19] *supra*), I made the following observations at [49]–[51]:

> 49 From a review of the provisions of the Act ([1] *supra*) dealing with *en bloc* sales and the Schedule, it is obvious that the main purpose of the legislation is to make it easier for *en bloc* sales to take place. This is achieved by dispensing with the need for unanimity and requiring in lieu thereof the consent of only the requisite majority of the subsidiary proprietors more particularly set out in s 84A(1) of the Act. At the second reading of the Land Titles (Strata) (Amendment) Bill (Bill 28 of 1998) containing the provisions for *en bloc* sales, the Minister of State for Law, Assoc Prof Ho Peng Kee, said (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at col 601):
>
> > I had informed this House on 19th November last year that Government would be amending the law *to make it easier for en-bloc sales to take place. The current position is that a single owner, for whatever reason, can oppose and thwart the sale*. Government has received many appeals and feedback from frustrated owners whose desires to sell their flats or condominiums en-bloc have been so thwarted. *As a result, these buildings cannot take advantage of enhanced plot ratios to realise their full development potential, which would have created many more housing units in prime 999-year leasehold or freehold areas for Singaporeans. A secondary benefit is that these developments, especially the older ones, could have been rejuvenated through the en-bloc process*.
> >
> > I said that the law would be amended to remove the need for unanimous consent. …
> >
> > [emphasis added]
>
> 50 Cogent reasons behind this move were cited by the Minister of State: 'I emphasised that in land-scarce Singapore, such an approach was … imperative as it would make available more prime land for higher-intensity development' (*ibid*). Without such an approach, as long as even a single owner objected, properties could not take advantage of enhanced plot ratios to yield more housing units; neither could old residential buildings be replaced by new and better housing.
>
> 51 As the Minister explained, safeguards were introduced in the legislation to protect the interests of minority owners. Hence, the detailed procedures set out in the legislation. As stated by the Minister, the purpose of these procedures is to (*id* at col 603):
>
> > … ensure that all relevant parties will have adequate notice of the sale and its terms, *in order to decide whether or not to lodge objections with the Strata Titles Board*. [emphasis added].
>
> The procedures were not built in as absolute obstacles to be surmounted on pain of the Board being precluded from exercising jurisdiction if any of the procedural requirements were not met, regardless of whether and to what extent the interests of the minority were affected.
>
> [emphasis in original]

24 In the same vein, the Court of Appeal in the same case held (at [5]–[8]):

The policy on collective sales

5 Before we deal with these grounds of appeal, we should understand the policy considerations applicable to the collective sale of condominiums and flats in Singapore. The collective sale, under which all the units and the common property in a condominium development or a block of flats ('subject property') may be sold if a sufficient number of subsidiary proprietors agree to it (for ease of exposition, we will refer to the requisite body of consenting subsidiary proprietors as 'majority owners' in this judgment), notwithstanding the objections of dissenting subsidiary proprietors ('minority owners'), is a peculiar feature of the property market in Singapore. *It is a statutory construct to give effect to the Government's policy to facilitate urban renewal by enabling old flat blocks to be redeveloped by the private sector*. Initially, a collective sale could take place only if the subsidiary proprietors of all the lots in the subject property consented to the sale. However, due to rapid changes in the economic and environmental landscape of Singapore, the Government decided to modify its policy on collective sales by relaxing the strict statutory conditions applicable to such sales. At the second reading of the Land Titles (Strata) (Amendment) Bill 1998 (Bill 28 of 1998) ('the Bill') to enact these changes ('the Second Reading'), the Minister of State for Law [Associate Professor Ho Peng Kee] said (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 ('*Singapore Parliamentary Debates*') at col 601):

> [The court then quoted the excerpt of the Minister of State's speech quoted in [23] above.]

6 The new scheme outlined above was enacted by the Land Titles (Strata) (Amendment) Act 1999 (Act 21 of 1999) ('the 1999 Amendment Act'). It modified two main qualifying conditions for a collective sale. The first concerns the age of the subject property; the second concerns the proportion of the subject property's share value and the total area of the lots held by majority owners. These two conditions are reflected in s 84A(1) of the Act as follows:

> (a) if the subject property is less than ten years old, the majority owners must hold not less than 90% of the share values and not less than 90% of the total area of all the lots in the subject property;
>
> (b) if the subject property is ten years old or more, the majority owners need only hold not less than 80% of the share values and not less than 80% of the total area of the lots in the subject property.

7 *The 1999 Amendment Act also introduced a large number of procedural steps and substantive safeguards to protect the interests of minority owners, such as ensuring that they are kept fully informed by the subject property's collective sale committee of the progress of the sale and any developments in relation thereto*. …

8 … *The legislative amendments made to the collective sale scheme in 1999 are intended to facilitate – and not to place unnecessary obstacles in the way of – collective sales, as can be seen from the ministerial speech quoted earlier (at* [5] *above)*.

[emphasis added]

25 Although the comments in *Ng Swee Lang* ([19] *supra*) were made in relation to s 84A of the Act, they are equally apposite with reference to s 84E. The Minister of State's speech, in any event, was made with reference to the collective sale regime in general. Therefore, the collective sale scheme is intended to facilitate the sale and rejuvenation of old developments, whilst ensuring adequate safeguards to protect the interests of minority owners. This is also reflected in the wording of ss 84A, 84B, 84C, 84D, 84E, 84F and 84G of the Act, all of which are provisions that would help facilitate the process of effecting a collective sale.

Whether s 84E applied to the Development

26 Section 84E of the Act provides as follows:

> **Application for collective sale where proprietors of flats own leasehold estate of at least 999 years or other estate in flats not registered under Act but do not own the land**
>
> **84E**. — (1) This section shall apply where there are subsisting leases of flats in a development registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 157) for a leasehold estate of 999 years or more or for such other estate as the Minister may, by notification in the *Gazette*, specify and where the proprietors of the flats do not own the land comprised in the development.
>
> (2) The proprietors of 25% of the flats to which this section applies may apply to the Registrar for notional shares in the land to be assigned to each of the flats based on the method used by the Commissioner for the allocation of share values.
>
> (3) An application to a Board for an order for the sale of all the flats and the land in a development to which this section applies may be made by —
>
> > (a) the proprietors of the flats who own not less than 90% notional share of the land where less than 10 years have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later; or
> >
> > (b) the proprietors of the flats who own not less than 80% notional share of the land where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later,
>
> who have agreed in writing to sell all the flats in the development to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the proprietors of the flats (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).
>
> (4) The proprietors of the flats referred to in subsection (3) shall also serve a copy of the notice to be served pursuant the Fourth Schedule on the proprietor of the land and every mortgagee, chargee or other person with an estate or interest in the land and whose

interest is notified on the land register for that land.

(5) A proprietor of any flat in the development who has not agreed in writing to the sale referred to in subsection (3) and any mortgagee, chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified on the land register for that flat may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Schedule or such further period as the Board may allow.

(6) Where an application has been made under subsection (3) and no objection has been filed under subsection (5), the Board shall, subject to subsection (9), approve the application and order that the flats and the land in the development be sold.

(7) Where one or more objections have been filed under subsection (5), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (3) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that —

(a) any objector, being a proprietor, will incur a financial loss; or

(b) the proceeds of sale for any flat to be received by any objector, being a proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the flat.

(8) For the purposes of subsection (7) (*a*), a proprietor —

(a) shall be taken to have incurred a financial loss if the proceeds of sale for his flat, after any deduction allowed by the Board, are less than the price he paid for his flat;

(b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his flat will be less than the other proprietors.

(9) The Board shall not approve an application made under subsection (3) if the Board is satisfied that —

(a) the transaction is not in good faith after taking into account only the following factors:

(i) the sale price for the flats and the land in the development;

(ii) the method of distributing the proceeds of sale; and

(iii) the relationship of the purchaser to any of the proprietors; or

(b) the sale and purchase agreement would require any proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the flats and the land in the development.

(10) Where no objection has been filed under subsection (5), the determination under subsection (9) shall be made by the Board on the basis of the facts available to the Board.

(11) Where a Board has made an order for the sale of the flats and the land, the proprietor

of the land shall be deemed to have transferred his estate and interest in the land to the purchaser without consideration upon the registration by the Registrar of the transfers of all the flats (except the flats deemed to be owned by the proprietor under subsection (14)) in the development and the Registrar shall enter a notification of the vesting of the land in the purchaser on the land register.

(12) The proprietors of the flats who have not agreed in writing to the sale, the proprietor of the land, a mortgagee, chargee or other person with an estate or interest in land, where applicable, shall produce the title deeds for the flats or the land to the person having conduct of the sale, the representatives appointed under section 84A (2) or to their solicitors.

(13) If the title deeds for the flats or the land are not produced under subsection (12), the person having conduct of the sale shall not be required to produce to the purchaser any title deed other than a certified true copy of the title deed or a subsidiary certificate of title.

(14) Where the proprietor of the land in a development referred to in subsection (1) has granted leases for some but not all the flats in the development, he shall be deemed to be the proprietor of the flats which are still owned by him.

(15) Sections 84A (2), (3), (5), (11), (12) and (13), 84B and 84C shall apply, with the necessary modifications, to any application or order made under this section.

(16) For the purposes of this section —

"development" means any parcel of land with one or more buildings;

"proprietor" includes a successor in title.

27 It is clear that the paradigm case which s 84E caters to is one where the only premises on the land are the flats each of which has been leased for 999 years. In these circumstances, given that the reversionary interest of the landowner is *de minimis*, it is not unfair to require, as sub-s (11) does, that once the Board makes an order for collective sale of the flats, the landowner is deemed to have transferred his estate and interest in the land to the purchaser without consideration. (Exceptionally, where the landowner retains ownership of one or more of the flats, he is deemed to be the proprietor of those flats and would be entitled to a share of the *en bloc* sale proceeds as such: see sub-s (14).)

28 It might be argued, on a strict interpretation, that s 84E does not apply to a mixed development such as the present one, where the terrace houses are part of the freehold land. In such a case, the landowner owns more than a reversionary interest in the land. Section 84E, which contemplates the landowner giving up the land without consideration, therefore would appear inapplicable.

29 However, to achieve a sale of the flats together with the terrace houses on the land, a two-stage approach could have been adopted. First, the owner of the land could have sold to the developer the land (together with the nine houses thereon) subject to the existing leases. For the developer's protection the sale would be on condition that the flat owners agreed unanimously to sell, or that an order for collective sale was obtained. Failing unanimity, the flat owners could have applied for notional share values under s 84E(2) and, after having attained the agreement of flat owners

holding not less than 80% of the aggregate notional share values, gone on to apply for a collective sale order pursuant to s 84E. However, that was not the approach adopted. Had it been adopted, there would have been no doubt as to s 84E's applicability.

30 As noted, the Board nevertheless allowed the application under s 84E. Despite the wide definition of "flat", it was inappropriate that the terrace houses were assigned notional share values; in my view, the wording of s 84E(2) contemplated assignment of share values only to the leasehold "flats". The question I faced was whether I ought to overturn the Board's decision on the basis that the owner of the terrace houses should not have shared in the proceeds of sale nor have been counted amongst the majority agreeing to the sale. After deliberation, I came to the conclusion that I ought to uphold the Board's decision and thereby give effect to parliamentary intention. In arriving at that conclusion, I took into account the fact that there would be no prejudice either to the flat owners or to the landowner if I allowed the sale to proceed. Firstly, with or without the landowner's nominal share value, the requisite majority had been attained in any event. Leaving the landowner out, by 6 September 2007 (which was within the time allowed for the supplemental agreement to be executed), all but the owners of two flat units had signed the agreement. Second, as to the sharing of sale proceeds, the landowner would have been able to achieve the same via the two-stage method in any event.

31 On the other hand, if I overturned the Board's decision, the parties would have had to go back to the drawing board and start the process of collective sale all over again adopting the two-stage approach as outlined above. Assuming the majority remained resolute, that would result in the same outcome.

32 I was fortified in my view that the collective sale order should be upheld when I considered the overall purpose of the legislation. From a perusal of ss 84A to 84FA, it was clear that Parliament intended to facilitate collective sale in various conceivable settings.

33 Although the collective sale scheme was not intended to apply to landed properties as such (per Assoc Prof Ho Peng Kee during the second reading of the Land Titles (Strata) (Amendment) Bill (Bill 28 of 1998)) in the present case, the terrace houses and the flats sit on the same land; the owner of the land (and terrace houses) holds his freehold interest subject to the leases of the flats. In such a case, an *en bloc* sale of the flats with a view to redevelopment of the land could not proceed without the concurrence of the landowner. As in *Chang Mei Wah Selena v Wiener Robert Lorenz* [2008] 4 SLR 385, this was an instance where the literal interpretation of the provision would hinder and not achieve the overall object of the statute. In my view, a purposive interpretation was therefore required to facilitate the collective sale of the Development, such interpretation not being prejudicial to the dissentient. I repeat my observation that had the two-stage approach been taken, the same result would have been achieved and the plaintiff would have had no cause for complaint on that score.

Whether the application to the Board for a collective sale order was out of time

34 Paragraphs 1 and 1A of the Schedule of the Act provide that:

1. *Before making an application to a Board, the subsidiary proprietors referred to in section 84A (1) or the proprietors of flats referred to in section 84D (2) or 84E (3), as the case may be, shall —*

(a) *execute within the permitted time but in no case more than 12 months before the date the application is made*, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —

(i) in the case of an application under section 84A, all the lots and common property in a strata title plan; or

(ii) in the case of an application under section 84D or 84E, all the flats and the land in a development to which section 84D or 84E, as the case may be, applies;

…

1A. For the purposes of this Schedule —

(a) the permitted time in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in section 84A (1), 84D(2) or 84E(3), means a period —

(i) starting from the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and

(ii) ending not more than 12 months after the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and

(b) the collective sale agreement shall be regarded as executed notwithstanding that it is executed on separate copies thereof and at different times.

[emphasis added]

35 The plaintiff contended that the application to the Board, which was made on 16 April 2008 for a collective sale order, was out of time. In his view, the application had to be made within 12 months after the first owner appended his signature to the first CSA, that is, by 28 December 2007. This view was erroneous for two reasons.

36 First, where an earlier CSA had failed to achieve its intended purpose, *ie*, to sell the land to a purchaser, the proprietors of the land could not be precluded from making a new agreement with a lower reserve price. Hence, the supplemental agreement constituted a fresh agreement. Therefore, time for the purpose of para 1A(*a*) of the Schedule should be reckoned from the date the first signature was appended to the supplemental agreement.

37 Second, s 84E(3)(*b*) provides that proprietors holding *not less than 80%* of the aggregate share value *may* apply to the Board for a collective sale order. At the earliest, the 12-month period within which application may be made to the Board starts when 80% majority has been reached or first crossed (as the case may be). The plaintiff was therefore wrong to say that time for this purpose

started running from the date of the first signature. There are two distinct 12-month periods. As I said, application *may* be made to the Board as soon as 80% majority has been reached or first crossed. However, this does not mean that the 12-month period within which application must be made to the Board necessarily starts then (see para 1(a) of the Schedule). For example, it could start at a later date when a greater percentage majority is reached so long as the time elapsed from the first signature to the time when such desired majority is reached is also not greater than 12 months (see para 1A of the Schedule).

38 The first signature to the supplemental agreement was appended on 24 March 2007 and the last was on 6 September 2007 (well within the 12-month period within which a majority of not less than 80% had to be reached). The other 12-month period (*ie*, that within which application to the Board had to be made) commenced on 6 September 2007. Therefore, the application made on 16 April 2008 was well within time.

Whether it was possible to determine if the requisite majority had been obtained if notional share values were assigned after the execution of the CSA by the majority

39 The plaintiff contended that it was not possible to determine if the requisite majority by share value had been obtained on the CSA because the notional share values had not been obtained prior to the execution of the CSA by the majority.

40 I dismissed the plaintiff's contention. There is no requirement that the notional share value must be obtained before the owners appended their signatures to the collective sale agreement, in this case the supplemental agreement. What matters is that when the application is made to the Board for a collective sale order, it must be shown that the collective sale agreement (in our case the supplemental agreement) had been signed by the requisite majority (such majority being computed by reference to the notional share values).

Whether the transaction was in good faith given the method of distribution of the sale proceeds

41 The plaintiff alleged that pursuant to s 84E(9)(*a*)(ii) of the Act, the Board erred in approving the collective sale because the transaction was not in good faith due to the unfair method of sharing the share proceeds. In his view, the method of distribution of the sales proceeds stipulated in the CSA (which was that each unit of flats or terrace house took an equal share of the sale proceeds) departed from the established methods of distribution, *ie*, by share value, strata area, valuation or a combination of all three. The plaintiff (relying on his valuer's evidence) contended that the valuation method would be the best method of distribution because the terrace houses were built separately from the flat units and were of a much poorer condition, and the owner of the terrace houses did not contribute to the maintenance or upkeep of the common property.

42 The Board found that, on the facts and upon consideration of the opinion of expert witnesses, the method of distribution agreed to by the majority was "fair" in the circumstances of the case.

43 In the context of *en bloc* sales, the concept of fairness is often both an elusive and subjective one. As between different owners, each might argue that his unit deserves a larger share of the sale proceeds by reason of its larger area, greater share value, superior view, better state of repair or commanding height. If they remained intransigent, no *en bloc* sale could ever be achieved. For this reason, in successful *en bloc* sales, disparate individualistic ambitions give way to group realism in recognition of the fact that no unit sold piecemeal would fetch as much as in a collective sale. Instead of prescribing "fairness" as such, s 84E(9)(*a*)(ii) provides that the Board shall not approve an

application if the Board is satisfied that the transaction is not in good faith. (This does not mean that fairness has no part to play. A transaction struck down for lack of good faith will inevitably reveal aspects of unfairness whether in the sale price or in the manner that it was arrived at or in the method for sharing of the sale proceeds.) For the purposes of this appeal, the relevant question was whether the Board was in error when it determined that the transaction was fair (and therefore presumably in good faith). In this connection, I refer to my earlier decision in *Dynamic Investments Pte Ltd v Lee Chee Kian Silas* [2008] 1 SLR 729 ("*Dynamic Investments*"), where I held at [14]–[15]:

> 14 But in a particular set of circumstances the question whether a transaction was lacking in good faith nevertheless requires an application of the primary facts to the legal criteria as to what 'good faith' is. As such, it is traditional (if somewhat inexact) to describe it as a question of fact. The Board's holding that it was not satisfied that the transaction was not in good faith (regard being had to the method of distributing the proceeds of sale) was a decision on the facts of the case and could not be challenged unless there was an error of law either *ex facie* (as to which there was none) or such as was described in *Edwards v Bairstow*.
>
> 15 I note also that whether or not the transaction was lacking in good faith was something on which the Board had to be 'satisfied'. To my mind, that further suggested that the Legislature, recognising an element of subjectivity in such a decision, intended to preclude challenge to the Board's finding save where there was an error of law.

As I explained in [28] to [30] above, the owner of the terrace houses was entitled to payment for sale of the same. Without his agreement to sell his freehold interest (subject to the leases of the flats), *en bloc* sale of the flats with a view to redevelopment of the land could not proceed: (see [33] above). In any event, comparing the terrace houses' "footprint" on the land with that of the block of flats, it was incomprehensible how the division of sale proceeds could be assailed. It was significant to note that none of the other flat owners (including those with flats similar in size to the plaintiff's) objected to the method of distribution.

44 Bearing that in mind, I found that it was not possible to say that the Board made an error of law or that the Board's finding was such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal": see *Edwards v Bairstow* [1956] AC 14 at 36; *Dynamic Investments* at [16]. There was therefore no basis on which the finding of the Board could be impugned.

Whether the statutory provisions of the Act were complied with

45 Paragraph 1 of the Schedule to the Act sets out the requirements that the proprietors must satisfy prior to making an application to the Board.

> **REQUIREMENTS UNDER SECTION 84A, 84D OR 84E**
>
> **1**. Before making an application to a Board, the subsidiary proprietors referred to in section 84A (1) or the proprietors of flats referred to in section 84D (2) or 84E (3), as the case may be, shall —
>
> (a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —

(i) in the case of an application under section 84A, all the lots and common property in a strata title plan; or

(ii) in the case of an application under section 84D or 84E, all the flats and the land in a development to which section 84D or 84E, as the case may be, applies;

(b) once every 8 weeks after the start of the permitted time, affix to a conspicuous part of each building comprised in the strata title plan or the development to which section 84D or 84E applies, as the case may be, a notice in the 4 official languages specifying —

(i) the number of subsidiary proprietors or proprietors who, immediately before the date of the notice, have signed the collective sale agreement; and

(ii) the proportion (in percentage) that the total share value of such subsidiary proprietors' lots bear to the total share value of all lots comprised in that strata title plan, or that such proprietors' total share or total notional share of the land bears to the total share or notional share of all proprietors in that land, as the case may be;

(c) consider the collective sale either —

(i) at an extraordinary general meeting of the management corporation held in accordance with Part IV of the Act or any other corresponding written law; or

(ii) in the case of land in a development to which section 84D or 84E applies, at a meeting held after sending a notice of the meeting by registered post to all the proprietors to their last recorded addresses at the Registry of Titles or the Registry of Deeds and placing a copy of the notice under the main door of every flat in the development;

(d) advertise in the 4 official languages the particulars of the application in such local newspapers as approved by the Board;

(e) serve notice of the proposed application on all the subsidiary proprietors of all the lots and common property in the strata title plan concerned or on all proprietors of all flats in the development concerned, as the case may be, by registered post and by placing a copy of the proposed application under the main door of every lot or flat, together with a copy each of the following:

(i) the collective sale agreement referred to in sub-paragraph (*a*);

(ii) the sale and purchase agreement which is to be the subject of the application to the Board;

(iii) a statutory declaration made by the purchaser under the sale and purchase agreement on the nature of his relationship (if any) or, if the purchaser is a body corporate, the nature of the relationship of every one of its directors (if any), to any subsidiary proprietor of any lot comprised in that strata title plan or any proprietor of any flat in the development, as the case may be;

(iv) the minutes of the extraordinary general meeting or meeting referred to in sub-paragraph (*c*);

(v) the advertisement referred to in sub-paragraph (*d*);

(vi) a valuation report that is not more than 3 months old;

(vii) a report by a valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement; and

(f) affix a copy of the notice referred to in sub-paragraph (*e*) in the 4 official languages to a conspicuous part of each building comprised in the strata title plan or the development, as the case may be.

46 Before the Board, the plaintiff alleged the following procedural irregularities:

(a) Less than 80% of the units' owners (or only 20 out of 33 units) had signed the CSA as late as 18 July 2007 in breach of the requirements under s 84E(3)(*b*) of the Act. In support of this, the plaintiff alleged that:

(i) there were discrepancies in signatures between the two versions of the CSA and between the CSA and SA; and

(ii) the defendants admitted that in the CSA the signatures of unit 136F in the CSA and unit 136A in the supplementary agreement were faulty. Adding to the allegedly suspicious circumstances was the fact that entire supplemental agreement and some of the signatures on the CSA were not witnessed.

(b) The meeting pursuant to para 1(*c*)(ii) of the Schedule to the Act to consider the collective sale was not held.

(c) The mandatory 8 week notice pursuant to paragraph was not furnished on the dates stated in the Statutory Declaration of the defendants at the time of the application to the Board for a collective sale order. There were discrepancies between the dates of the Notices stated in the application and the dates of the alleged actual Notices.

(d) The valuation report by OPC Valuers Pte Ltd on 14 January 2008 was prepared more than 3 months before the date of the application to the Board on 16 April 2008, in breach of paragraph 1(e)(vi) of the Schedule to the Act.

(e) The CSA contained an illegal clause 22 seeking to post date the commencement date of the CSA to the day when the last owner comprising the 80% majority signs the CSA when the Act specifically provides for the CSA to be dated on the day when the first owner signs the CSA.

At the hearing before this court and in his submissions, the plaintiff raised other procedural irregularities:

(f) The sale committee signed the Option and not a sale and purchase agreement, as required pursuant to s 84E(3)(*b*) of the Act.

(g) The names in the first schedule of the Option differed from the names on the

advertisements pursuant to para 1(d) of the Schedule to the Act (I understood the plaintiff to be saying that there were some errors in the names of the majority owners set out in the first schedule of the Option.

(h) There was a breach of the Option because the deposit should be held by the vendors' solicitors as stakeholder pursuant to cl 2 of the Option and not to the vendors' and purchasers' solicitors as joint stakeholder.

(i) The Minister's approval of the Board's application for an extension of time to carry out its work was out of time.

47 The plaintiff contended that in view of the foregoing, the sales committee never obtained the requisite mandate to sell the estate below its reserve price and that the defendants had therefore no mandate to sell the estate on such terms.

48 I considered each of the alleged irregularities in turn.

49 With respect to (a), where procedural irregularities had been acknowledged, the disputed signatures were not necessary to achieve the required 80% majority. In the supplemental agreement (which was the one relied upon for the application to the Board), even discounting unit 136A, by 6 September 2007 the owners of 21 out of 24 flat units had signed the agreement. This was above the 80% majority required. As for the other allegations, the plaintiff failed to substantiate his claims. There was no evidence adduced to show that the signatures were not genuine. Notably, none of the owners named as signatories to the CSA and supplemental agreement had challenged the authenticity of their signatures.

50 With respect to (b), there was in fact a meeting held on 20 September 2007. At the meeting, the owners were informed of the status of the sale, in particular, that the next step would be to apply to the Board for a collective sale order. In my view, this meeting satisfied the statutory requirement that prior to the application to the Board, a meeting was convened to consider the collective sale. Paragraph 1(*c*)(ii) of the Schedule (which is the relevant provision) does not require that it be an extraordinary general meeting.

51 With respect to (c), at the hearing before the Board, Lim Choo Koon stated the following:

> … Mr Jason Lee [colleague of Lim Choo Koon] and I – or rather, the team, we are constantly aware of this 8-week notice. We are very sure that this is certainly a requirement, is put up. But what I not sure is how long it stays on the wall.

The Board did not make any conclusive finding on this. In any case, the Board was satisfied that the plaintiff was kept aware of the developments in the sale agreement.

52 With respect to (d), under para 1(*e*)(vi) of the Schedule, the 3-month period should be computed by reference to the date of service of notice of the proposed application to the Board and not the date of the actual application to the Board. In other words, the valuation report should have been made no earlier than three months prior to the date of service of the notice to the flat owners. There was therefore no breach of the procedural requirement.

53 With respect to (e), this was a point devoid of any significance and nothing hangs upon it. As I already found, the supplemental agreement was validly executed within the permitted time pursuant to para 1A(*a*) of the Schedule to the Act, and an application to the Board was lodged within the

permitted time pursuant to para 1(*a*) of the Schedule as well.

54 With respect to (f), this was again a hopeless objection. The Option, upon acceptance, became a sale and purchase agreement and fulfilled the requirements of s 84E(3)(*b*). The allegation was therefore misguided.

55 With respect to (g), the minor errors in the names of the majority owners listed in the Schedule to the Option was a matter between the buyer and the sale committee. If at all, this was a point for the purchaser to take up. In any event, in my view, such an error could be easily rectified without vitiating the sale and purchase agreement, as the majority had indeed signed the supplemental agreement.

56 With respect to (h), cll 2, 15 and 16 of the Option provided that:

> 2. Option Money: 1% of Price to Vendors' solicitors as stakeholder.
>
> …
>
> 15. This offer may be accepted by the Purchaser signing hereunder and returning this Option to the Vendors' solicitors M/s Leong Kwok Yan and payment of 5% of the Price (inclusive of the Option Money) as a deposit before expiry of the Option. The said deposit will be held by the Vendors' solicitors M/s Leong Kwok Yan and the Purchaser's solicitors M/s Rajah & Tann as joint stakeholders pending completion of the sale and purchase.
>
> 16. Within 14 working days of the Vendors' solicitor's notification to the Purchaser's solicitors that all the Part II Owners [the owners who have not signed the CSA] have agreed to sell or upon the STB Order being obtained the Purchasers shall pay another 5% of the Price to the joint stakeholders as further deposit. …

The plaintiff's allegation was mere nit-picking as cll 15 and 16 of the Option provided that the deposit would be held by the vendors' and the purchaser's solicitors as joint stakeholders pending completion of the sale and purchase.

57 With respect to (i), s 92(9) of the BMSMA reads as follows:

> (9) A Board shall carry out its work expeditiously and shall make a final order or determination within 6 months from the date it is constituted or within such extension of time as may be granted by the Minister.

The plaintiff's allegation was misconceived, given that the Board had made a determination on 4 December 2008 when they ordered the collective sale of the Development. That was within the 6-month period allowed.

Whether the Board has the power to override the order of a subordinate court ordering that the plaintiff be prevented from disposing his assets including his flat herein

58 The plaintiff contended that because his wife had obtained an injunction against him from disposing of assets owned by him, he was prevented from selling his flat. The Board found that this issue was not relevant in an application for a collective sale before the Board.

59 I agreed with the Board's decision. The plaintiff's wife had agreed to the collective sale.

Therefore, there was no reason why the plaintiff could not apply to court for a variation of the injunction.

Conclusion

60 For the foregoing reasons, I dismissed the plaintiff's application with costs.