IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 28

Civil Appeal No 230 of 2018

Between

(1) Kok Yin Chong
(2) Ng Yuen Yau Olivia
(3) Ng Khee Shen
(4) Michelle Ang Suan Choo
(5) Lim Choo Hwee
(6) Poon Meng Mee
(7) Tan Thiam Yee
(8) Goh Lay Hoon (Wu Lifen)
(9) Gan Seng Hong
(10) Toh Wai Ling, Kathleen (Zhuo Weiling, Kathleen)
(11) Ang Ann Kiat
(12) Wong Lai Fun

… *Appellants*

And

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

… *Respondents*

In the matter of Originating Summons No 841 of 2018

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

And

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

And

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

And

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

Between

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

… *Plaintiffs*

And

(1) Kok Yin Chong
(2) Ng Yuen Yau Olivia
(3) Ng Khee Shen
(4) Michelle Ang Suan Choo
(5) Lim Choo Hwee
(6) Poon Meng Mee
(7) Chong Chiah Joo
(8) Tan Thiam Yee
(9) Goh Lay Hoon (Wu Lifen)
(10) Gan Seng Hong
(11) Toh Wai Ling, Kathleen (Zhuo Weiling, Kathleen)
(12) Ang Ann Kiat
(13) Wong Lai Fun

… *Defendants*

GROUNDS OF DECISION

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

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v
Lim Hun Joo and others

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Court of Appeal — Civil Appeal No 230 of 2018
Tay Yong Kwang JA, Steven Chong JA and Belinda Ang Saw Ean J
7 March 2019

30 April 2019

Tay Yong Kwang JA (delivering the grounds of decision of the court):

Introduction

1 This appeal concerns the collective sale of a residential development known as Goodluck Garden ("the Property"). The respondents are three members of the collective sale committee ("CSC") appointed by the Property's subsidiary proprietors to act jointly as their authorised representatives in connection with the collective sale application. In the proceedings below, the respondents applied for an order for the collective sale of the Property, pursuant to s 84A(1) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("LTSA"). The appellants are the subsidiary proprietors who filed objections to the collective sale.

2 The respondents' application was allowed by a High Court Judge ("the Judge"). Although the Judge found the conduct of the CSC and its agents

wanting in various respects, he concluded that the transaction was in good faith, taking into account the sale price, which was $68m (or 12.55%) higher than the valuation determined by an independent valuer. The Judge's full written grounds can be found at *Lim Hun Joo and others v Kok Yin Chong and others* [2019] SGHC 03 ("the GD").

3 The appellants submitted that the Judge was wrong to do so. Their principal contention was that the Judge had erred in placing too much emphasis on the sale price. They contended that the CSC's conduct during the entire collective sale process was relevant. Relying on the Judge's findings, they submitted that the CSC had breached its duty to act with conscientiousness. They argued that a better-than-expected sale price cannot be a "Get Out of Jail" card for the CSC.

4 We agreed with the appellants that the CSC's conduct of the collective sale left much to be desired. However, we also agreed with the Judge that the evidence before the court did not support a finding that the transaction was thereby not in good faith under s 84A(9)(*a*) of the LTSA. Accordingly, we dismissed the appeal with a brief oral judgment and indicated to parties that we would deliver detailed grounds. We now do so.

Background

5 The key facts are undisputed and have been set out comprehensively by the Judge in the GD. We repeat only the salient facts here.

6 On 27 May 2017, Knight Frank Pte Ltd ("Knight Frank") gave the Property's subsidiary proprietors an overview of the collective sale process. Knight Frank informed them that the estimated sale price was at least $455.8m

and that the estimated development charge ("DC") payable for the redevelopment of the Property was $48.4m.

7 Knight Frank's estimation of the DC was an important issue in this appeal. Essentially, the DC is a tax payable by developers to the relevant authorities when planning permission is granted to carry out a development project which increases the value of the land. This Court explained in *Chua Choon Cheng and others v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724 as follows:

> 4 Development charges are charges levied on the enhancement in land value resulting from the State approving a higher value development proposal… Generally, a development charge is payable where the "development ceiling" exceeds the existing "development baseline" (the formula is: Development Charge payable = Development Ceiling – Development Baseline – Development Charge Exemption). Therefore, the higher the existing development baseline of a project is, the lower the development charge will be. A lower development charge would, in turn, ordinarily translate into a higher realisable sale price for the land.

8 On 1 July 2017, an extraordinary general meeting ("EGM") of the management corporation was convened. The CSC was constituted at this EGM to act jointly on behalf of the subsidiary proprietors for the purposes of a collective sale. The CSC comprised six members, including the three respondents. The first respondent, Mr Lim Hun Joo ("Mr Lim") became the chairman of the CSC. Sometime in early July 2017, the CSC appointed Knight Frank as the marketing agent and Rajah & Tann Singapore LLP ("R&T") as the legal advisors for the collective sale.

9 On 9 September 2017, an EGM of the management corporation was convened. It was attended by subsidiary proprietors, in person or by proxy, who collectively own 135 units in the Property. At the EGM, Knight Frank shared a

proposed reserve price of $500m for the collective sale and an estimated DC of around $58.5m, subject to verification. Knight Frank explained the apportionment method of sale proceeds while R&T went through the terms and conditions of the collective sale agreement ("CSA"). The CSA stated that the reserve price was $500m but was subject to change. However, no formal vote was held at the EGM for the approval of the apportionment of sale proceeds and the terms and conditions of the CSA. Instead, subsidiary proprietors who collectively own 76 units signed the CSA after the EGM was concluded, on the same day.

10 On or around 24 November 2017, Knight Frank sent letters to the subsidiary proprietors to inform them that the CSC had resolved to increase the reserve price to $550m.

11 By 15 January 2018, subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots had signed the CSA. In other words, the 80% consent threshold required for making any collective sale application pursuant to s 84A(1)(*b*) of the LTSA was reached.

12 On 25 January 2018, an owners' meeting was convened and Knight Frank informed the subsidiary proprietors that the Property would be launched for sale by way of public tender on 26 January 2018, that the estimated DC was $63.19m and that it had appointed an architect to carry out the DC verification.

13 On 26 January 2018, the Property was launched for sale by way of public tender, which would close on 7 March 2018. When the Property was launched for sale, Knight Frank's sent emails to 652 potential bidders on its

database to notify them of the launch. In the emails, Knight Frank mentioned that the reserve price was $550m, that there was an additional estimated DC of approximately $63.2m and that Knight Frank was awaiting a reply from the authorities on a matter relevant to the verification of the DC.

14 On 26 February 2018, it emerged that no DC would be payable for the Property. Knight Frank immediately began updating potential bidders (but not the subsidiary proprietors) that no DC was payable. There were also urgent discussions between Knight Frank and the CSC. Knight Frank advised that there was no reason to extend the closing date of the tender which was on 7 March 2018. Instead, Knight Frank stated that if any potential bidder requested an extension of the closing date, Knight Frank would discuss the matter with the CSC. The CSC did not disagree with this approach. As it turned out, there was no request for extension of the closing date.

15 On 7 March 2018, the tender closed as scheduled and the tender box was opened. There were:

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

(b) one bid at $580m; and

(c) a second bid at $610m.

16 In addition, an independent valuation report dated 7 March 2018 prepared by Colliers International Consultancy & Valuation (Singapore) Pte Ltd ("Colliers") was opened. Taking into account the fact that no DC was payable, Colliers valued the Property at $542m.

17 The next day, the CSC awarded the tender to the joint-bidders which had submitted the bid of $610m. Thereafter, Knight Frank sent a letter dated 8 March 2018 to the subsidiary proprietors to inform them that a sale and purchase agreement (amended as at 8 March 2018) ("the SPA") had been entered into that day in respect of the Property for the sale price of $610m. Knight Frank did not mention in this letter that there was no DC payable.

18 On 19 March 2018, an owners' meeting was convened. It was at this meeting that the CSC informed the subsidiary proprietors for the first time that there was no DC payable. Although queries were raised as to why they were not informed more promptly, no assenting subsidiary proprietor sought to withdraw from the CSA. Subsequently, subsidiary proprietors of another ten units added their signatures to the CSA.

19 On 25 April 2018, the respondents applied to a Strata Titles Board ("the Board") for an order for the collective sale of the Property. Various objections to the collective sale were filed. On 27 June 2018, the Board ordered a discontinuance of all proceedings before it in connection with the respondents' application. On 10 July 2018, the respondents applied to the High Court for an order for the collective sale of the Property. On 20 August 2018, the appellants filed their objections to the collective sale.

20 The Judge heard the application from 12 September 2018 to 14 September 2018 and reserved judgment. He was informed that the respondents had to obtain an order for the collective sale by 26 November 2018, failing which the purchaser who entered into the SPA might treat it as rescinded. He therefore delivered an oral judgment on 26 November 2018 in which he granted the respondents' application for the collective sale.

The decision below

21 In a detailed written judgment that followed on 2 January 2019, the Judge addressed the many grounds of objections which the appellants had raised in the hearing before him.

22 As a preliminary point, the Judge decided that the appellants were not allowed to raise grounds of objection to the collective sale before the High Court which were not stated in the objections that they had filed to the Board pursuant to s 84A(4). The Judge reasoned that this followed from the plain and ordinary meaning of s 84A(4A), which permits an objecting proprietor to re-file his objection to the High Court, "stating the same grounds of objection". The Judge highlighted that this would prevent the collective sale application process from being complicated or delayed by the raising of new grounds of objection before the High Court which should have been raised before the Board: GD at [39]–[53]. The appellants did not appeal against this aspect of the Judge's decision and we need only say that we see no reason to disagree with the Judge's decision on this point.

23 Moving to the substantive grounds of objection, the appellants argued, first, that the application before the Judge by all three respondents was *ultra vires* as all three were to act jointly in bringing the application. However, the respondents could not have done so because the appointments of Mr Lim (the first respondent) and Mr Chan Keng Siang Gregory ("Mr Chan") (the third respondent) as members of the CSC were void. This was because Mr Lim and Mr Chan had each failed to declare an actual or a potential conflict of interest before their election into the CSC. In particular, Mr Lim has a relative and Mr Chan has two relatives, all of whom come within the meaning of "associate",

who each owns another unit in the Property. As a result, under para 2(2) of the Third Schedule, each of their appointments as members of the CSC was void. The Judge did not accept this submission. He held that even if Mr Lim's and Mr Chan's appointments were void, the second respondent, Mr Awe Ying Fatt ("Mr Awe"), would have become the sole authorised representative and the sole plaintiff below: GD at [54]–[72].

24 Second, the appellants submitted that there was a breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule of the LTSA because the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA were not given at a general meeting of the management corporation (in particular, the EGM on 9 September 2017). They submitted that this was such a flagrant breach that the collective sale process and the CSA were invalidated. The Judge rejected this submission as well. He held that such non-compliance would not, in and of itself, necessarily invalidate an application to the High Court. Instead, the non-compliance would result in the dismissal of an application to the High Court if the circumstances pertaining to the non-compliance amounted to an absence of good faith under s 84A(9)(*a*)(i). Thus, the failure to obtain approval at the EGM was considered under the deliberations of whether the transaction was in good faith: GD at [73]–[96].

25 The third broad ground of objection related to whether the transaction was not in good faith within the meaning of s 84A(9)(*a*)(i). The parties were, however, not in agreement as to whether the burden was on the appellants to prove lack of good faith or on the respondents to prove that the transaction was in good faith. The Judge decided that since the respondents were seeking a court order for the collective sale under s 84A(1), as a matter of general principle, it should be they who had the burden of persuading the court to grant the order.

The Judge noted that in cases where no objection is filed to the High Court, the determination of good faith under s 84A(9) is to be made by the court on the basis of the facts available to it. He reasoned that if the legal burden of proof were not on the assenting proprietors, it would follow that the court would grant the order for collective sale whenever no objection was filed, contrary to what appears to be contemplated by s 84A(9): GD at [107]–[119].

26 Turning to the various factors which the appellants relied on to establish that the transaction was not in good faith, they relied, first, on Mr Lim's and Mr Chan's failures to declare their actual or potential conflicts of interest: see [23] above. The Judge held that ownership by a candidate and/or his associate of a lot in a strata development does not necessarily raise an actual or a potential conflict with his duties or interests as a member of the CSC. He held that since there was no suggestion that the apportionment of sale proceeds was unfair or that Mr Lim and Mr Chan had or potentially had extra interest and urgency to push through the collective sale solely because they have associates who each owns another unit, there was no conflict of interest: GD at [121]–[169].

27 Second, the appellants relied on the failure to put the apportionment of sale proceeds and of the terms and conditions of the CSA to a vote at a general meeting. Similarly, the Judge did not accept that this was evidence of lack of good faith. He noted that the respondents had acted on the basis of legal advice and there was no evidence that the legal advisers acted in bad faith. There was also no prejudice to any subsidiary proprietor. It was not disputed that a simple majority of the subsidiary proprietors who attended the EGM signed the CSA that day, after the EGM was concluded. Further, as at the date of the hearing, subsidiary proprietors of lots with not less than 80% of the share values and not less than 80% of the total area of all the lots had signed the CSA and made an

application for an order for the collective sale pursuant to s 84A(1)(*b*): GD at [180]–[190].

28 Third, the appellants relied on the failure of the CSC to inform and consult the subsidiary proprietors about a material change in the actual DC for the Property and its failure to extend the closing date of the public tender. The Judge accepted that the CSC had breached its duties to the subsidiary proprietors in these aspects. However, he concluded that the transaction was in good faith, taking into account the sale price, which was $68m (or 12.55%) higher than Colliers' valuation: GD at [321]–[327]. As a result, he granted the order for the collective sale.

29 The Judge also rejected various other grounds of objection raised by the appellants. These were that the CSC members were elected as a "6-man bloc", that the CSC appointed Knight Frank as the marketing agent in undue haste and with undue preference for Knight Frank, that the CSC failed to keep and/or display the minutes of three meetings, that the CSC failed to allow minority owners to raise valid concerns over the collective sale on multiple occasions throughout the collective sale process and that Colliers' valuation was fundamentally flawed or was at an undervalue. The appellants did not appeal against the Judge's decision on these grounds of objection and we need say no more about them.

Parties' submissions

30 The appellants' submissions on appeal were largely similar to the submissions they had made before the Judge. They crystallised their grounds of appeal into three issues, namely, the "Voting Issue", the "DC Issue" and the "Conflict of Interest Issue".

31 On the "Voting Issue", the appellants agreed with the Judge that the CSC's failure to obtain the approvals for the apportionment of sale proceeds and of the terms and conditions of the CSA at a general meeting was in breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule. They submitted that compliance with the Third Schedule is a "threshold requirement" for the application for a collective sale. In other words, so long as those provisions are breached, the "statutory jurisdiction of the Court to order the sale [will] not be activated".[1] In the appellants' view, compliance with the Schedules of the LTSA is a jurisdictional issue. The respondents disagreed. They highlighted the absence of authority for this proposition. They emphasised that neither the appellants nor the other subsidiary proprietors were prejudiced – it was not disputed that more than 80% of the subsidiary proprietors had signed the CSA and continued to support the collective sale.[2]

32 On the "Conflict of Interest Issue", the appellants submitted that the Judge erred in interpreting para 2(1) of the Third Schedule to mean that candidates standing for election to the CSC need not declare any ownership interests held by associates unless those interests raise a potential or actual conflict of interest. They further contended that since Mr Lim and Mr Chan had breached para 2(1), their elections to the CSC were void and they had no standing to bring the application before the Judge.[3] On the other hand, the respondents submitted that the Judge did not err in his interpretation of para 2(1), because family members do not always operate as a block and may have differing views on a collective sale. They also adopted the Judge's holding that even if the appointments of Mr Lim and Mr Chan to the CSC were void as a

1 Appellant's case at paras 12–13, 26.

2 Respondent's case at paras 79–82.

3 Appellant's case at paras 91–111.

result of their failure to declare a conflict of interest, the application before the Judge would not have been *ultra vires* because Mr Awe would have become the sole plaintiff.[4]

33 As for the "DC Issue", the appellants supported the Judge's finding that the CSC should have informed the subsidiary proprietors promptly when it emerged that no DC was payable and that it should have extended the closing date of the tender by at least a week to allow potential bidders to respond to the new information. However, they disagreed with the Judge's conclusion that notwithstanding these breaches and the breaches of the provisions of the Third Schedule referred to above, there was no evidence of lack of good faith, taking into account the sale price. They submitted that the sale process was highly relevant and that the CSC had clearly breached its duty to act with conscientiousness. They argued that this was evidence of lack of good faith.[5] Conversely, the respondents submitted that the Judge was wrong to find that the CSC had breached its duties by failing to keep the subsidiary proprietors updated or by failing to extend the tender. They argued that the Judge should have accepted Knight Frank's "expert" evidence to the contrary.[6]

34 In addition, the respondents disagreed with the Judge on the issue of burden of proof. They submitted that the burden was on the appellants to prove that the transaction was not in good faith and not on the respondents to prove that the transaction was in good faith.[7]

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4 Respondent's case at paras 63–65.

5 Appellants' case at paras 63–90.

6 Respondents' case at paras 83–113.

7 Respondents' case at paras 50–53.

Issues

35 Having regard to the parties' evidence and submissions and the need to examine the issue of good faith holistically, the following issues arose for determination:

(a) The "Conflict of Interest Issue": whether the respondents' application to the Board or the High Court was *ultra vires* by virtue of Mr Lim's and Mr Chan's failure to declare their conflict of interest;

(b) The "Voting Issue": whether a breach of a provision in the Schedules of the LTSA deprives the court of its jurisdiction to hear a collective sale application; and

(c) whether the transaction was in good faith.

Our decision

The "Conflict of Interest Issue": whether the application was ultra vires

36 To succeed on this issue, the appellants needed to establish that:

(a) Mr Lim and Mr Chan failed to declare actual or potential conflicts of interest prior to their election to the CSC; and

(b) as a result, their appointments were void and the application before the High Court was *ultra vires* as they could not have represented the assenting subsidiary proprietors.

37 On the first point, it was not disputed that Mr Lim's brother and Mr Chan's brother and mother each owned another unit in the Property and that the units they owned were the same type as those Mr Lim and Mr Chan owned

respectively: GD at [121]. It was also not disputed that Mr Lim's and Mr Chan's relatives were "associates" within the meaning of para 2(6) of the Third Schedule.

38 However, we agree with the Judge that, contrary to the appellants' submissions, a person who is standing for election to the CSC does not have to declare the mere fact that his associate owns or possesses any lot that may be the subject of the collective sale. As the Judge noted, this is clear from para 2(1) of the Third Schedule, which states:

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

39 Like the Judge, we are of the view that the words "if any" in para 2(1) must mean that the circumstances set out in paras 2(1)(*a*)–(*g*) will not necessarily give rise to an actual or potential conflict of interest and that whether a conflict arises will depend on the facts of each case. Otherwise, those words would be otiose. In the circumstances, the appellants must show how the

associates' ownership of other lots in the Property gave rise to an actual or potential conflict of interest.

40 In this regard, we agree with the Judge that, on the evidence before the court, this was simply not demonstrated. The facts in this case can be contrasted with those in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Horizon Towers*"). In that case, two members of the sale committee had purchased additional units with the assistance of substantial financing in the period leading up to their appointment. Further, those members elected not to testify to explain their non-disclosure. As a result, this court concluded that there was no reasonable explanation for the hasty decision to sell the property and that their decision had been influenced by a conflict of interest. In contrast, there was nothing in the evidence to suggest that Mr Lim's and Mr Chan's relatives owned lots in the Property otherwise than as residents. It was not a case where they had purchased lots with the aim of taking advantage of the collective sale. Thus, there was nothing to show that as a result of their associates' ownership, Mr Lim and Mr Chan had conducted the sale in a hasty or otherwise unsatisfactory manner.

41 We also agree with the Judge that there is no merit in the appellants' submissions that the associates' ownership of the same type of unit as Mr Lim's and Mr Chan's resulted in an overrepresentation of that type of unit in the CSC: GD at [123]. At the hearing before us, counsel for the appellants, Mr Adrian Tan ("Mr Tan"), accepted that the appellants were not challenging the apportionment of the sale proceeds. In these circumstances, we do not see how the associates' ownership of the same type of unit could by itself give rise to a conflict of interest.

42 The appellants argued that the disclosure requirement was imposed to enhance the transparency of the CSC election process. While we agree that it is important for the CSC to be transparent, we think that this consideration loses its force here since no actual or potential conflict of interest was shown in this case. The appellants also submitted that the inquiry of whether there may be an actual or potential conflict of interest would introduce an additional layer of complexity and that a stricter approach would be desirable to extinguish all possibility of temptation and to deter fiduciaries.[8] In our view, the appellants overstated the difficulties of assessing whether there could be actual or potential conflict because a reasonably clear answer can usually be obtained by applying logic and common sense. Further, para 2(2) of the Third Schedule provides that the consequence of a failure to declare a conflict of interest is that the candidate's election to the CSC would be void. This is a significant deterrence against potentially errant fiduciaries.

43 In the circumstances, we agree with the Judge that on the available evidence, neither Mr Lim nor Mr Chan had any conflict of interest which they should have declared. As a result, it is strictly not necessary for us to consider the hypothetical question of whether the application before the Judge would have been *ultra vires* if such conflict of interest had existed. However, we make some brief comments as this issue was argued rather strenuously.

44 As stated above, the Judge held that even if Mr Lim's and Mr Chan's appointments to the CSC were void, Mr Awe, the second respondent, would have become the sole plaintiff in the proceedings in the High Court. The appellants disagreed and submitted that the subsidiary proprietors had appointed Mr Lim, Mr Chan and Mr Awe to be their authorised representatives jointly and

8 Appellants' case at paras 95–101.

not Mr Awe solely. However, there is nothing in s 84A of the LTSA which states that an application under s 84A(1) would be *ultra vires* if any of the jointly-appointed representatives turns out to have been wrongly appointed or if the number of persons fell below three. Section 84A(2) of the LTSA states:

> (2) The subsidiary proprietors referred to in subsection (1) shall appoint not more than 3 persons from the collective sale committee referred to in subsection (1A) to act jointly as their authorised representatives in connection with any application made under subsection (1).

45 In our view, the Judge's approach is both practical and sensible. In the circumstances, we affirmed the Judge's holding that the application before him would not have been *ultra vires* even if Mr Lim's and Mr Chan's appointments to the CSC had been void.

46 Notwithstanding the above, we think that the CSC could have been more forthcoming and accommodating at the EGM on 9 September 2017 when some questions were asked about whether Mr Lim and Mr Chan had relatives who owned other lots in the Property. After all, the subsidiary proprietors were all living together in the same residential development and some goodwill and neighbourliness would have smoothened the pathway to a collective sale. As the Judge noted, it would have been a simple matter for Mr Lim and Mr Chan to state the ownership by their associates in the interest of avoiding suspicion while maintaining their stand that there was no conflict of interest. In situations such as this, it was natural that any reticence in disclosing associate ownership would arouse the suspicions of the objectors.

47 In addition to the events at the EGM, R&T's omission to answer subsequent written queries on the potential conflict of interest added fuel to the objectors' suspicions. The respondents explained to the Judge that their

omission to respond was the result of R&T's oversight arising from what appeared to have been a lack of communication between the conveyancing lawyers and the litigation lawyers: GD at [130]. However, we do not think that this sufficiently explains why, after the appellants' solicitors wrote to R&T on 12 July 2018 to ask for documents and a reply on the conflict of interest issue, R&T's reply of 19 July 2018 addressed the first request relating to documents but not the second one regarding the conflict of interest issue.

The "Voting Issue": whether breach of Schedule provisions deprives court of jurisdiction

48 It was not disputed that the approvals of the apportionment of sale proceeds and of the terms and conditions of the CSA were not given at a general meeting of the management corporation, in this case, the EGM on 9 September 2017. This was a clear breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule, which provide:

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

49 The only dispute was over the consequences that flowed from the said breach. As mentioned earlier, the appellants submitted that the breach struck at the heart of the High Court's jurisdiction to hear the application for the collective sale of the Property. This was because these provisions are

conditions-precedent, non-compliance of which would deprive the court of its statutory jurisdiction to hear such an application. In support of this submission, the appellants relied on s 84A(3) of the LTSA, which states:

> (3) Subject to subsection (7C), no application may be made to a Board under subsection (1) by the subsidiary proprietors referred to in subsection (1) unless they have complied with the requirements specified in the First, Second and Third Schedules and have provided an undertaking to pay the costs of the Board under subsection (5).

50 The respondents pointed out, on the other hand, that s 84A(3) is subject expressly to s 84A(7C), which states:

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

51 However, s 84A(7C) refers only to the Board and not to the High Court. At this juncture, it would be apposite to provide some background on the roles of the Board and the High Court when faced with disputes over collective sales. Prior to 2010, the Board's role was to assess all collective sale applications and ensure that each application was made in good faith and complied with the regulations under the LTSA. The Board mediated and adjudicated objections filed by minority owners in collective sales. An appeal then lay to the High Court. This changed in 2010, pursuant to amendments to the LTSA made by the Land Titles (Strata) (Amendment) Act 2010 (Act 13 of 2010). The role of the Board in collective sale disputes is now set out in s 84A(6A) of the LTSA, which provides:

> (6A) Where an application is made under subsection (1) to a Board, and one or more objections have been filed under subsection (4) in relation to that application —
>
> > (a) the Board shall mediate matters that are in dispute between the objectors and the applicants to achieve a resolution of the dispute; and
> >
> > (b) if —
> >
> > > (i) at the end of a period of 60 days starting from the first day set aside for mediation; or
> > >
> > > (ii) mediation has proceeded as far as it reasonably can in an attempt to achieve a resolution of the dispute but has nevertheless failed to resolve the dispute,
> >
> > whichever first occurs, one or more of those objections are not withdrawn, the Board shall, subject to subsection (6B), order a discontinuance of all proceedings before it in connection with that application (referred to in this section as a section 84A stop order).

52 Thus, instead of hearing the merits of the dispute, the Board will attempt to mediate the dispute. If mediation fails, the Board will issue a "stop order" and an application must be made to the High Court for the collective sale of the property within 14 days after the issue of the stop order: s 84A(2B).

53 In the light of the different roles of the Board and the High Court, Mr Tan submitted at the hearing before us that s 84A(7C) applies only when none of the owners objects to the collective sale. In contrast, when there is even one objection, the Board has no power to determine the dispute and (if mediation fails) may only issue a "stop order" so that an application could be made to the High Court. Thus, s 84A(7C) does not apply when the dispute is heard by the High Court. However, counsel for the respondent, Mr Adrian Wong ("Mr Wong"), pointed out that s 84A(7C) was present in the LTSA even before the 2010 amendments, when the Board heard collective sale disputes at first

instance. He submitted that for this reason, the appellants were wrong to rely on the present distinction between the roles of the Board and the High Court.

54 We reject the argument that because s 84A(7C) mentions the Board but not the High Court, it follows that the High Court does not have the power to validate and approve the application if there was non-compliance with the Schedules. The Board derives its powers principally from the LTSA and the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed). Thus, the Board's power is delineated by what Parliament has conferred through those Acts. In contrast, the High Court's jurisdiction and powers are derived principally from Art 93 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) and the provisions of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). The High Court also possesses inherent powers, *ie*, powers that are not expressly conferred through legislation: see *Li Shengwu v The Attorney-General* [2019] SGCA 20 at [98]–[103], a judgment delivered after the hearing of this appeal. Thus, the fact that the LTSA does not expressly confer certain powers on the High Court does not necessarily mean that the High Court does not have those powers. In the circumstances, since there is nothing in s 84A(7C) or elsewhere in the LTSA which suggests otherwise, we hold that the High Court has the power to approve the application although there was non-compliance with the Schedules when considering whether the transaction was in good faith under s 84A(9)(*a*) of the LTSA.

55 The irregularities that we have in mind do not encompass statutory requirements which are fundamental to the conduct of a collective sale. For instance, in a situation envisaged by s 84A(1)(*b*) of the LTSA, if the subsidiary proprietors of all the lots have just marginally less than 80% of the share values or of the total area of all the lots, the court will not countenance granting an

order for collective sale. Without the requisite numerical majority stipulated in the LTSA, there could be no collective sale by the "majority of subsidiary proprietors" in the way contemplated in s 84A.

56 Our decision is consistent with the previous decisions of this court. For example, we held in *N K Rajarh and others v Tan Eng Chuan and others* [2014] 1 SLR 694, a case concerning whether para 7(3) of the Third Schedule required the 80% threshold to be reached before a public tender is launched, that:

> 54 …adherence to the procedural requirements laid down by Parliament in the LTSA by SCs and their advisers and agents is undeniably important (see also s 84A(3) of the LTSA), and if a breach of those requirements results in prejudice, an application for a collective sale would not be allowed to proceed.

57 We also held in *Lim Li Meng Dominic and others v Ching Pui Sim Sally and another and another matter* [2015] 5 SLR 989 ("*Gilstead Court*") that:

> 52 … Whilst s 84A(1) implicitly requires the sale and purchase agreement that is entered into between the majority owners and the purchaser to specify the distribution method, the failure to do so is not necessarily fatal to an application for collective sale if the method is already set out in the collective sale agreement. **There is no prejudice since the SPs would have already been provided with the information** necessary to decide whether or not to object to the sale and the STB would also have the necessary information to "carry out its duty under s 84A(9) to determine whether the sale was in good faith"… [emphasis added in bold]

58 In both cases, we accepted that breach of provisions in the LTSA may not be fatal to a collective sale application if no prejudice is occasioned. We did not hold that we would have no jurisdiction to hear the matter if the statutory requirements were not complied with.

59 Against these, the appellants submitted that strict compliance of the LTSA provisions is required as a matter of policy, because otherwise the majority assenting proprietors will develop "the attitude that they can ignore statutory provisions". We think that the appellants' concerns are somewhat overstated. Where it is clear that the CSC has ignored the requirements set out in the LTSA deliberately, the court may refuse to approve the application and decide to invalidate it since the circumstances might demonstrate that the transaction was not in good faith.

60 Returning to the facts of this case, we find it fair and appropriate to approve the application despite the CSC's failure to comply with paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule. It was not disputed that a simple majority of the subsidiary proprietors who attended the EGM signed the CSA that day, after the EGM was concluded. It is also clear that subsidiary proprietors of lots with not less than 80% of the share values and not less than 80% of the total area of all the lots had signed the CSA and made an application for an order for the collective sale pursuant to s 84A(1)(*b*). As a matter of common sense, the subsidiary proprietors would not have voted differently if a formal vote had been held at the EGM. Therefore, in our view, the breach of paras 7(1)(*b*) and 7(1)(*c*) of the Third Schedule was technical in nature and did not prejudice the subsidiary proprietors on the evidence before us.

61 In this vein, we do not accept the appellants' submissions that prejudice was occasioned because Mr Lim "made it clear in his messages to the owners in the Chat Group that there would be no voting on the terms of the collective sale and no variations to the draft CSA" – "[t]he method of apportionment and terms and conditions of the CSA were presented to the owners as a *fait accompli*". The appellants submitted that these words "had a chilling effect on

owners", some of whom "might be put off from attending the EGM [on 9 September 2017]".[9] However, any subsidiary proprietors who were dissatisfied with Mr Lim's conduct could have chosen not to vote in favour of the sale. The fact remains that the requisite number of owners nonetheless consented.

62 In the circumstances, we think it right to approve the application despite the failure to put the apportionment of sale proceeds and the terms and conditions of the CSA to a formal vote. Of course, we are not saying that there is no longer a need to put such matters to a vote for future collective sales. Whether an application will be invalidated or approved in any particular case depends on its facts and circumstances.

Whether transaction was in good faith

The law on good faith

63 The starting point is section 84A(9)(*a*)(i) of the LTSA, which provides:

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

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9 Appellants' reply at paras 30–31.

64 The above provision enjoins the court to consider whether the transaction was "not in good faith". Occasionally, the parties and the Judge reframed the question to whether the transaction was "in bad faith": see, for example, the GD at [118], [120], [121], [168], [179], [188]. The terms "not in good faith" and "in bad faith" were used interchangeably in *Horizon Towers* (at [200] – "once *prima facie* evidence of bad faith is produced, the applicants have the task of disproving such bad faith and establishing that the transaction was in good faith") and *Gilstead Court* (at [64] and [95]) as well. In our view, a transaction that is not in good faith may not necessarily be in bad faith. It would thus be preferable to adopt the language of the statutory provision and consider whether the transaction is in good faith or not. However, nothing turns on this distinction in this case.

65 We now move on to the relevant case law. While s 84A(9)(*a*)(i) makes explicit reference to only the sale price, this court held in *Horizon Towers* that "the entire sale process, including the marketing, the negotiations and the finalisation of that sale price (all of which steps ought to be evaluated in the context of prevailing market conditions), culminating in the eventual sale of the property" ought to be examined in determining whether the sale price is fair (at [130]). Relevant to this enquiry are evidence on the sale price, the length of time the property had remained unsold, the number and interest level of bidders and the valuations supporting the fairness of the price (at [129]). The test of good faith in relation to the sale price of the Property is ultimately concerned with whether it was the best price reasonably obtainable in the prevailing circumstances (at [201]).

66 This court also affirmed in *Horizon Towers* that a collective sale committee is subject to the duty to act with conscientiousness, the duty on which the appellants hinged their case. It elaborated on this duty as follows:

> 153 An SC clearly has a duty to act conscientiously in exercising the power of collective sale. We note that trustees owe a duty of care to their beneficiaries and are bound to take all precautions in the management of the trust property as an ordinary prudent man of business would take in his own affairs… Similarly, it was formerly customary to state that even gratuitous agents owed a duty to their principals to act with such skill and care as persons would ordinarily exercise in their own affairs (although recently the more open formulation that the agent's duty is "that which may be reasonably expected of him in all the circumstances" has been used…). The core common law content of an agent's duty of conscientiousness to his principal is not irreconcilably dissimilar from that owed by a trustee in equity to his beneficiaries. It is the paramount duty of trustees "to exercise their powers in the best interests of [all] beneficiaries of the trust"... The relevant circumstances must be assessed in deciding whether the appropriate standard of care has been observed.

67 The pronouncements in *Horizon Towers* were "generally affirm[ed]" by this court in *Ramachandran Jayakumar and another v Woo Hon Wai and others and another matter* [2017] 2 SLR 413 ("*Shunfu Ville (CA)*") but with the following clarifications (at [59] and [61]):

> (a) Absent any reason for thinking that members of a collective sale committee are actuated by any improper motives or any conflict of interest and absent clear evidence that the transaction is tainted by unfairness towards some subsidiary proprietors, in particular the dissenting subsidiary proprietors, or by some deficit in the transaction, the transaction will less likely be refused approval. This follows because "good faith" under s 84A(9)(*a*)(i)(A) of the LTSA entails considerations of good faith as a matter of common law and equity; this usually entails

a finding of some want of probity on the part of the relevant parties, although this can be inferred from aspects of the transaction itself.

(b) There is generally little to be gained in slicing up the sequence of events and attempting to argue that any one of them goes towards establishing lack of good faith; rather, it is through a holistic assessment of the entire circumstances of the transaction that the court may determine whether there is in fact an absence of good faith which would bar the sale from proceeding. It was necessary in *Horizon Towers* and will generally be necessary in other cases, to consider the facts holistically instead of suggesting that any single one of the grounds relied on in *Horizon Towers* would suffice to cross the lack of good faith threshold in and of itself.

(c) The question of whether the "best price" was obtained was reframed to "whether the price obtained is appropriate in the circumstances". This is because determining what the best price is can entail a theoretical inquiry. Thus, the real task for the court is to analyse all the circumstances, including the price, and then consider whether, in that light, it is appropriate to permit the sale to proceed. It always entails a fact-sensitive inquiry. Finally, a party seeking to make the argument that the price obtained is not an appropriate one for the purpose of letting the sale proceed should particularise the steps that should have been but were not taken and explain how the taking of those steps would have realised a better price.

Burden of proof

68 A preliminary issue is whether the burden is on the appellants to prove that the transaction was not in good faith, or on the respondents to prove that the transaction was in good faith. As stated above at [25], the Judge was of the opinion that the legal burden in applications under s 84A of the LTSA is on the applicants (the respondent in this appeal) to establish that the collective sale transaction is in good faith: GD at [116] and [118].

69 The respondents disagreed. The submitted that the burden should be on the appellants to prove lack of good faith, because:[10]

(a) the LTSA was intended to facilitate collective sales and to promote the public interest for urban renewal and the creation of more homes;

(b) section 84A(9)(*a*)(i) provides that the court shall not grant a sale order if it is satisfied that the sale was "not in good faith" – given this language, the burden must be for the objecting proprietors to prove lack of good faith; and

(c) section 84A(10) of the LTSA merely sets out how a court should approach an application if no objection was filed.

70 Three days after the Judge delivered oral judgment on 26 November 2018, this court stated the following in *Low Kwang Tong v Karen Teo Mei Ling and others* [2018] SGCA 86 at [2], which involved the Citimac Industrial Complex collective sale:

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10 Respondents' case at para 52.

> In our opinion, an applicant under s 84A of the Act complies with his duties under the law if he has complied with all relevant statutory requirements for collective sales and has spelt out all relevant facts which show purported compliance with his duties and nothing untoward appears on the face of the record. It is then for any objector to point out by credible evidence that some or all of the stated facts are inaccurate or even false or that there are some other facts which will demonstrate that the transaction is not in good faith within the meaning of the Act. The applicant will have to respond to these assertions and the Court will make its determination of the facts and express its view on whether the transaction is or is not in good faith on the facts.

71 The above seems to us to be a practical guide as to the burden of proof before the Board or the High Court. It was thus for the appellants to point out by credible evidence that the transaction was not in good faith.

The "DC Issue"

72 To establish the want of good faith, the appellants relied on, among other matters, the failure of Mr Lim and Mr Chan to declare ownership of other units by their associates and the failure to put the approval of the apportionment of sale proceeds and the terms and conditions of the CSA to a formal vote at the EGM. We have considered these two points above and concluded that they do not affect the legitimacy of the collective sale: see [36]–[62]. However, we think that the appellants' strongest points are those which relate to the DC. This is because the DC has a clear bearing on the price of the Property, which is a factor which the court must consider in determining whether there was good faith: s 84A(9)(*a*)(i)(A) of the LTSA.

(1) The relationship between the DC and price

73 In this regard, we find it baffling that the respondents sought to downplay the importance of the relationship of the DC to the sale price. In the

respondent's case, they submitted that there was no direct correlation between the DC and the sale price. They highlighted Knight Frank's evidence that potential purchases of the Property:

> … are companies of substantial means and resources and they do not approach the purchase of a land parcel with a "budget". Instead, a developer would conduct its own feasibility study and determine its bid based on what the developer considers to be the market sentiments in the future when the redeveloped property would be launched and sold. Any developer would be purchasing land for redevelopment and is targeting to recoup its expenditure and to profit from the redeveloped property. If a developer is bullish about the market when the redeveloped property would be sold, it would be prepared to submit a higher bid for the acquisition regardless of the DC payable. Any acquisition cost (including DC) incurred for the redevelopment would simply be recouped by passing it on to the future purchasers.

74 The respondents submitted that the Judge should have accepted Knight Frank's evidence because no expert evidence to the contrary was adduced.[11] However, we point out that Knight Frank is not an independent witness as it was involved heavily in the marketing of the Property. Its evidence must therefore be viewed in this light.

75 In any event, the Judge's conclusion that the DC influenced the bid price (GD at [266]) accords with logic and common sense. The DC is a cost that must be paid as a result of acquiring the Property. Insofar as Knight Frank or the respondents suggested that the cost of acquisition is not relevant at all to the bid price, this cannot be right. The fact that potential purchasers are of "substantial means and resources" does not mean that cost ceases to be a consideration.

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11 Respondents' case at para 91.

76 Indeed, Knight Frank took a different stance in its correspondence to the subsidiary proprietors. In a "situational update" dated 18 October 2017 provided by the CSC (which was drafted "with inputs from Knight Frank"),[12] it is stated:

> When deriving at the current Reserve Price, the following factors were taken into consideration:
>
> …
>
> - Development Charge
>
> …

77 Further, Knight Frank represented in a letter dated 8 December 2017 to the subsidiary proprietors that the DC would affect the price of the land:[13]

> It is ideal to lock in a buyer before further [DC] rates increment, as this directly affects the land rate – developers may factor in potential [DC] increase during tender and discount the price to owners.

78 Finally, as the Judge noted, "the fact that Knight Frank had to act urgently to inform potential bidders that there was no DC payable proved that the DC was material information to such parties": GD at [259]. Accordingly, we agree with the Judge that there is a clear relationship between the DC with the reserve price as well as the bid price and we think it would be absurd to suggest otherwise.

(2) Missteps relating to the DC

79 The Judge held that Knight Frank should have obtained the DC verification before the launch of the Property for sale. We agree with the Judge. As we have found above, the DC is an important factor when determining the

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12 Appellants' core bundle, volume II, pp 112–113.

13 Appellants' core bundle, volume II, p 120 (page number at centre top).

reserve price. Obtaining the DC first would enable subsidiary proprietors to make an informed decision as to what reserve price to set.

80 Before us, the respondents highlighted Knight Frank's evidence that it was "market practice" for tenders to be launched concurrently while the DC is being verified.[14] However, the respondents did not challenge the Judge's finding that Knight Frank's own terms of appointment envisaged that the DC verification was to have been carried out and concluded before the launch of the Property for sale: GD at [266]–[270].

81 Second, the Judge held that when the CSC discovered that no DC was payable, it should have informed and consulted the subsidiary proprietors about this material development. Instead, the CSC updated only the potential bidders and informed the subsidiary proprietors only on 19 March 2018, after the tender was awarded. We agree with the Judge. The respondents pointed out that no prejudice was caused by the delay in updating the subsidiary proprietors.[15] However, this submission misses the point. As a fiduciary, the CSC is required to act in a transparent manner: *Horizon Towers* at [106] and [169]. This court also held in *Horizon Towers* that "whenever there is reasonable doubt as to the proper course to adopt, the [CSC] ought to seek fresh instructions or guidance from the consenting subsidiary proprietors from whom it draws its mandate" (at [166]).'' The CSC should have informed the subsidiary proprietors to allow them to decide whether the reserve price should be raised.

82 Third, the Judge held that the CSC should have extended the closing date of the tender by at least one week, as the information that no DC was

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14 Respondents' case at paras 93–94.

15 Respondents' case at paras 95–100.

payable was received barely nine days before the close of the tender. He held that extending the closing date of the tender by at least one week would have given Knight Frank more time to disseminate this material information concerning the DC and potential bidders would have had more time to absorb such information and respond if they so wished: GD at [279]–[280]. The respondents disagreed. They pointed out that after the potential bidders were informed on 26 February 2018 that no DC was payable, five other developers requested site inspection from 26 February 2018 to 7 March 2018. They submitted that "[t]he fact that such requests had been made indicated that there was sufficient time (around 10 days) for any serious developer/potential purchaser to react to the news that no DC was payable".[16] However, the fact that some potential purchasers could respond in time does not necessarily mean that all potential purchasers could. In the circumstances, we agree with the Judge that the tender period should have been extended.

(3) Whether missteps were evidence of lack of good faith

83 We now turn to the pivotal question in this appeal. We note at the outset that the Judge's findings relate to negligence on the part of the CSC and its agents. The Judge did not find that they were dishonest or actuated by improper motives. The appellants did not challenge this aspect of the Judge's findings. Instead, they relied solely on the CSC's failure to discharge its duty to act with conscientiousness.[17] They argued that this court did not hold in *Shunfu Ville (CA)* that want of probity is a "necessary" requirement for bad faith to be found. Instead, the word used by this court was "usually": *Shunfu Ville (CA)* at [61(a)].

16 Respondents' case at para 104.

17 Appellants' case at paras 43–45, 72–73, 111.

84 The appellants' reliance on the duty to act with conscientiousness was not without basis. Indeed, this court held in *Horizon Towers* that the CSC is subject to such a duty. However, *Horizon Towers* has to be read in light of the clarifications made by this court in *Shunfu Ville (CA)* (at [61(b)]):

> … "good faith" under s 84A(9)(a)(i)(A) of the LTSA entails considerations of good faith as a matter of common law and equity; this usually entails a finding of some want of probity on the part of the relevant parties, although this can be inferred from aspects of the transaction itself.

85 We accept, as the appellants pointed out, that the court did not hold that there must always be want of probity on the part of the relevant parties before a lack of good faith can be established. However, the court was leaving open the possibility that sheer recklessness on the part of the CSC could amount to lack of good faith, if such recklessness showed that the CSC simply did not care very much about its duties. In our judgment, it is clear from the reference to good faith "as a matter of common law and equity" that a finding of want of probity will be present in the vast majority of cases where want of good faith is found.

86 The appellants also cited *Gilstead Court* in support of their submission that want of probity is not a necessary condition before lack of good faith can be found. They pointed out that in *Gilstead Court*, "[t]he CSC was held to have breached their duty of good faith not because of a want of probity, but simply because they had breached their duty to hold an even hand between consenting and objecting owners, and prejudiced the interests of the minority". They highlighted that "no one was dishonest" because "the majority of the CSC had the real belief that they were permitted to act in a discriminatory manner".[18] In that case, the impugned clauses of the collective sale agreement permitted the

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18 Appellants' case at para 113.

deduction of various costs and expenses from the share of the sale proceeds that would have been payable to the non-signatory subsidiary proprietors but for the fact that they had not signed the CSA. The intention was to punish the non-signatory subsidiary proprietors. That is an improper motive which demonstrates lack of probity on the part of the CSC. Thus, *Gilstead Court* does not stand for the proposition which the appellants sought to advance.

87 Returning to the facts of this case, having regard to the missteps in relation to the DC ([79]–[82] above) together with the failure to put the approval of the apportionment of sale proceeds and the terms and conditions of the CSA to a formal vote at the EGM, we do not think that there was sufficient material before us to establish that the transaction was not in good faith. We think that the missteps were the result of eagerness (or perhaps anxiety) on the part of the CSC, R&T and Knight Frank to conclude the sale, especially after receiving a bid which was much higher than what was initially expected. The CSC also did not wilfully deny the subsidiary proprietors the right to a formal vote – it did so only because of R&T's advice, which was based on the previous paras 7(1)(*b*), 7(1)(*c*) and 7(2) of the Third Schedule in operation prior to the Land Titles (Strata) (Amendment) Act 2010: GD at [185]. In the circumstances, we do not think that there was any dishonest intention or improper motive on the part of those involved. At its highest, it can only be said that they had acted negligently. As we pointed out at the hearing, there is a difference between someone who is negligent and one who is not acting in good faith.

88 Moving on to the sale price, we reiterate that the test is not whether it is the "best possible price" or even the "most appropriate" price (as the appellants contended),[19] but simply "whether the price obtained is appropriate in the

[19] Appellants' case at para 76.

circumstances"; "[t]he real task for the court is to analyse all the circumstances, including the price, and then consider whether, in that light, it is appropriate to permit the sale to proceed". We also emphasise that "a party seeking to make the argument that the price obtained is not an appropriate one for the purpose of letting the sale proceed should particularise the steps that should have been but were not taken *and* explain how the taking of those steps would have realised a better price": *Shunfu Ville (CA)* at [61(c)].

89 As the Judge noted, the sale price of $610m is 12.55% higher than the independent valuation of $542m and 10.9% higher than the reserve price of $550m. The difference between the sale price and the reserve price is $60m, which is close to the expected DC of $63.2m stated in publicity materials prepared by Knight Frank. We find this significant because a potential bidder which could not afford to submit a bid of $550m at the start of the tender would similarly be unable to submit a bid much higher than the winning bid of $610m even after it became clear that no DC was payable. This suggests that in all likelihood, no higher bid would have been received even if the CSC had acted conscientiously.

90 The appellants submitted that the CSC had failed to obtain the most appropriate price because they did not extend the tender period after it emerged that no DC was payable. Thus, "potential bidders did not have enough time to absorb the information about the drastic change in DC and to make a bid if they wished"; "[f]our working days is simply not enough time for developers to evaluate the news, and rearrange their finances, or negotiate facilities, or seek approvals, before making a bid of such magnitude".[20]

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[20] Appellants' case at para 80.

91 First, it is not entirely accurate to state that potential bidders had only four working days to make the necessary arrangements. Knight Frank and the CSC learnt about the fact that no DC was payable on 26 February 2018, and Knight Frank emailed potential bidders on the same day.[21] The tender then closed on 7 March 2018. Thus, potential bidders had seven working days to respond.

92 Second, it is speculative to say that a higher bid would have been received if the tender period had been extended. There is simply no evidence to support this assertion. In particular, there was no request for the tender period to be extended. We think that, on balance, an interested bidder would have at least enquired about an extension within the seven working days available to them. Thus, the appellants had not shown that extending the tender might have realised a better price. It was fortuitous that despite the CSC's failure to extend the tender period, a bid significantly higher than the reserve price was received. In any case, as the appellants' counsel acknowledged quite candidly before us, the appellants would have objected to the collective sale even if a higher price had been obtained.

93 In the circumstances, we are of the view that on the evidence, the appellants failed to establish that the transaction was not in good faith. We should add that it is not true, as the appellants submitted, that allowing the Judge's decision to stand would hand "a 'Get Out of Jail' card to all CSCs" in the sense that "so long as the sale is above valuation, the process does not matter".[22] The process clearly matters and we have explained why we were not

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21 Record of Appeal, Vol III, Part D, p 172 (page number at centre top).

22 Appellants' case at para 90.

satisfied that the process, flawed in the several aspects highlighted, established that the transaction was not in good faith.

Conclusion

94 For the foregoing reasons, we dismissed the appeal.

95 Ordinarily, costs of the appeal should follow the event. However, we agree with the Judge's view (GD at [331]) that in deciding the issue of costs and disbursements, the court should take into account the "missteps and the way in which the litigation was conducted by both sides". Like the Judge, we were concerned about the "missteps" and, in particular, were surprised by the suggestion before the High Court that the DC to be imposed on a property has little or no bearing on the reserve price or the bid price for that property.

96 In addition to the costs of the appeal, we decided to hear the parties on the issue of costs of the proceedings in the High Court. We did so even though the Judge had not dealt with the question of costs before him yet at the time of the appeal before us. This was to put a finality to the court proceedings for the sake of all involved.

97 Having heard the parties' submissions, we ordered the parties to pay their own costs for the proceedings in the High Court and in the Court of Appeal. For the avoidance of doubt, we directed that the appellants did not need to contribute to the costs and disbursements payable by the assenting subsidiary proprietors to the solicitors acting for the respondents in respect of the said two sets of proceedings. The costs of the proceedings in the Court of Appeal included the costs of the application for an expedited appeal taken out by the respondents. We also made the usual consequential orders.

Our comments on privately-agreed court timelines

98 As just alluded to, this appeal was heard and decided on an expedited basis, less than four months after the Judge delivered his oral judgment on 26 November 2018. In addition, the Judge delivered judgment less than three months after hearing oral arguments in September 2018. The High Court and the Court of Appeal dealt with this matter on accelerated timelines because of the following Special Conditions in the SPA:

> **8 Statutory Sale Order – High Court**
>
> 8.1 If at the end of five (5) months mentioned in Special Condition 7.2 above, the High Court has not given a final decision the Purchaser shall have the discretion to extend the deadline as appropriate for the High Court to give its final decision and at the expiry of the aforesaid period(s) the SPA is thereby treated as rescinded.
>
> 8.2 If the High Court dismisses the Vendors' application, the Vendors shall, unless directed otherwise by the Purchaser (acting reasonably) appeal to the Court of Appeal.
>
> **9 Statutory Sale Order – Court of Appeal**
>
> 9.1 If the Court of Appeal fails to make a decision within four (4) months after the date of High Court decision (or such longer period as mutually agreed by the Vendors and the Purchaser ("the Parties")), the SPA is treated as rescinded.
>
> 9.2 If the Court of Appeal either refuses to grant or cancels the Statutory Order made, the SPA is thereby treated as rescinded.

99 The five months referred to in Special Condition 7.2 began running from 27 June 2018 when the Board issued the "stop order". The Judge delivered his oral judgment on 26 November 2018, one day before the five-month period expired. Pursuant to the above stated agreement, this court would have until 25 March 2019 (four months after 26 November 2018) to deliver its decision, failing which the SPA would be treated as rescinded unless the parties in the

SPA agreed to extend the deadline. As things turned out, we were able to give our decision immediately after the hearing on 7 March 2019.

100 During the hearing of this appeal, we pointed out that this four-month period for the appeal to conclude was unrealistic and did not appear to take into consideration the rules regulating appeals from the High Court to the Court of Appeal. The Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") provide for the following timelines for appeals:

(a) Every notice of appeal must be filed and served within one month from the date of the High Court's judgment or order (O 57 r 4).

(b) Within two months after service of the Registrar's notice that the record of proceedings is available, the appellant must file and serve the record of appeal, the Appellant's Case and a core bundle of documents (O 57 r 9(1)).

(c) The respondent must file the Respondent's Case within one month after service of the documents stated in paragraph (b) above (O 57 r 9A(2)).

(d) The appellant must file an Appellant's Reply within two weeks after service on him of the Respondent's Case if certain conditions apply (O 57 r 9A(5A)).

101 It can be seen from the above timelines that an appellant has at least three months to complete the first two stages of an appeal. This is on the assumption that the record of proceedings can be ready immediately after the appellant files his notice of appeal. It can be fairly said that a subsidiary proprietor who is objecting to a collective sale and who is aware of the agreed

timelines is most likely to insist on utilising the maximum time periods given to him under the Rules of Court. That way, he could even stymie the collective sale by the mere lapsing of the time period in the SPA unless the vendors and the purchaser agree mutually to an extension of time. Any application for an expedited appeal is likely to involve the truncation of the time periods conferred on the appellant and that may not be fair since the unrealistic timeline in the SPA was not something he had assented to.

102 On the further assumption (and we emphasise that this is a big assumption) that the respondent is able to file his Respondent's Case immediately after service of the requisite documents by the appellant, the first three stages would already take at least three months to complete. Based on the twin assumptions mentioned above and coupled with the possibility of an Appellant's Reply becoming necessary, the four stages would require at least three months and two weeks to complete. Even if hearing dates are immediately available, the appeal hearing cannot possibly be fixed immediately or very soon thereafter as the Court of Appeal will need time to study the documents filed by both parties. Whether the parties take the minimum of three months or most likely more, it is obvious that the Court of Appeal will be left with an extremely short period of time to have the appeal heard and to consider and then render its decision.

103 We would like to highlight two points for future collective sales committees and their advisors to note. First, even if all the requisite documents can be filed very quickly, an early hearing date before the Court of Appeal may not be available. The timeline of four months was agreed between the vendors and the purchaser for their own private purposes. This court hears many cases involving private disputes as well as cases which involve the public interest and

issues of life and liberty. There is little justification for conferring priority on private matters such as this where the urgency arises only because the parties to a collective sale agree on unrealistic timelines. It was only fortuitous that an early hearing date could be made available for this appeal.

104 Second, even if an early hearing date is made available, the Court of Appeal may not be able to arrive at its decision within a very compressed time span, especially if the appeal involves many parties and complex issues. For instance, in a development of 500 units, 50 subsidiary proprietors may object to a collective sale. The objectors could have different individual or group interests and grounds of objection and they are entitled to instruct their own lawyers and be represented separately. In such a situation, it is foreseeable that the appeal hearing could last more than a day because of the multiple parties and the multiple issues. The court may need time after the hearing to consider and to discuss all the issues and may not be able to deliver its decision before the deadline agreed by the parties under the SPA. The court may also decide to call for further submissions from the parties on particular issues. In the present case, it was again fortuitous that the 12 appellants were represented by one set of solicitors who helpfully distilled the more pertinent issues for decision on appeal. We were therefore able, fortunately, to arrive at a unanimous decision at the conclusion of the hearing of the appeal on 7 March 2019, well before the privately-agreed deadline of 25 March 2019.

105 Accordingly, if a future collective sale committee agrees to unrealistic timelines for court proceedings which, if not met, could result in the rescission of the agreement for sale, that collective sale committee and its advisors will have to bear the consequences of that agreement. It cannot be right that the Registry is pressurised to arrange for an early hearing date and the court is given

a very short span of time to render its decision simply because the parties in a collective sale desired it to be so for their own private purposes.

106 Our observations apply equally to proceedings in the High Court. While a five-month deadline for the High Court proceedings may be less unrealistic than a four-month deadline for the Court of Appeal hearing, it may also be insufficient, for instance, in complex cases with multiple objectors who are represented separately or if one of the parties applies for certain witnesses to be cross-examined and the court approves.

Tay Yong Kwang	Steven Chong	Belinda Ang Saw Ean
Judge of Appeal	Judge of Appeal	Judge

Tan Gim Hai Adrian, Ong Pei Ching and Goh Qian'En Benjamin (TSMP Law Corporation) for the appellants;
Wong Soon Peng Adrian and Ang Leong Hao (Rajah & Tann Singapore LLP) for the respondents.