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

**[2023] SGHC 158**

Originating Application No 869 of 2022

Between

(1) Mrs Spykerman Chwee Wah Christina née Lim
(2) Yew Wai Kuen
(3) Ong Han Ping (Wang Hanbin)

… *Claimants*

And

(1) Yow Jia Wen
(2) Quek Guat Peck
(3) Foo Kai Ming, Jeffrey (Fu Kaiming)
(4) Daven Wu Yungren
(5) Ong Seng Oh
(6) Long Wee Fong

… *Defendants*

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# JUDGMENT

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[Land — Development — Housing developers]
[Land — Strata titles — Land Titles (Strata) Act]
[Land — Development — Collective sales]
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[Statutory Interpretation — Statutes]

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# v
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26 May 2023

**Kwek Mean Luck J:**

## Introduction

1 Chuan Park (Strata Title Plan No 1278) ("Chuan Park") is a 99-year leasehold development situated along Lorong Chuan and off Ang Mo Kio Avenue 1. Pursuant to a resolution passed at an Extraordinary General Meeting ("EOGM") in October 2019, a collective sales committee ("CSC") was formed on behalf of the subsidiary proprietors ("SPs") of Chuan Park for its proposed *en bloc* through collective sale. The CSC entered into a Sale and Purchase Agreement dated 5 July 2022 ("SPA") for the sale of Chuan Park to a developer ("Developer") at the sale price of $890m (the "Sale Price") (the "Sale").

2 Some SPs objected to the Sale and filed objections to the Strata Titles Board ("STB") between August and September 2022.[1] On 9 December 2022, the STB issued a Stop Order against the collective sale of Chuan Park, pursuant to s 84A(6A) of the Land Titles (Strata) Act 1967 (2020 Rev Ed) ("the LTSA").

3 This led to authorised representatives of the CSC filing the present Originating Application No 869 of 2022 ("OA 869") for orders that Chuan Park be sold in accordance with the SPA, as well as other related orders.

4 Resisting this application, the Defendants submit various grounds of objection before the General Division of the High Court (the "High Court"). Some of these grounds were not included in the Defendants' objections to the STB. This raises the preliminary issue of whether such grounds can be considered by the High Court.

5 The collective sale of Chuan Park requires, among other things, satisfaction of s 84A(1) of the LTSA. Whether this provision was satisfied is disputed by the parties. The parties also dispute whether the transaction was made in good faith in relation to the Sale Price and the method of apportionment ("MOA") adopted by the CSC.

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[1] 1st Joint Affidavit of Mrs Spykerman Chwee Wah Christina Nee Lim, Yew Wai Kuen and Ong Han Ping (Wang Hanbin) dated 16 December 2022 ("1st Joint Affidavit of the Claimants") at p 660.

## Facts

### *Parties*

6 The Claimants, Mrs Spykerman Chwee Wah Christina Nee Lim; Yew Wai Kuen; and Ong Han Ping (Wang Hanbin), are authorised representatives of the CSC appointed pursuant to the collective sale agreement ("CSA").

7 The Defendants, Yow Jia Wen; Quek Guat Peck; Foo Kai Ming, Jeffrey (Fu Kaiming); Daven Wu Yungren; Ong Seng Oh; and Long Wee Fong, are SPs of Chuan Park who filed objections to the STB, objecting to the Sale. The individual objections to the STB filed by each Defendant will be referred to collectively as the "STB Objections". The Defendants did not sign the CSA.

### *Background to the dispute*

8 During an EOGM held in October 2020, the majority of SPs representing 95.2% of share value passed a motion to execute the CSA. The CSA was signed by the first SP on 3 October 2020. By around 28 August 2021, SPs representing a total of 364 units had signed the CSA, specifying a reserve price ("RP") of $938m. These SPs represent 80% of total share value and total strata area. On 6 October 2021, the first public tender exercise was launched with a RP of $938m. No bids were received after the exercise closed on 18 November 2021.

9 At a meeting on 17 December 2021, the CSC resolved to seek a fresh mandate for a revised RP of $860m. Under the terms of the CSA, revision of the RP may be done by drawing up a "supplementary joint agreement" ("SJA") for execution by the SPs. A SJA and the terms contained therein would only be valid and binding if it was executed by SPs representing 80% of total share value

and total strata area. A SJA at the RP of $860m ("1st SJA") was drawn up and first signed by a SP on or about 28 December 2021.

10 On 12 March 2022, the CSC sent a circular letter to all owners to inform them that, as at 11 March 2022, the SPs of 268 units had signed the 1st SJA. These SPs represented 59.85% of total share value and 59.05% of total strata area. The letter stated that the RP of $860m would only take effect if at least 80% of all owners by total share value and total strata area have executed the SJA. Until then, the CSC would only have the authority to accept an offer at or above the RP of $938m.

11 On 15 March 2022, a second public tender exercise was launched with a RP of $938m. This exercise closed on 26 April 2022, with no bids or expressions of interest received.

12 On 17 June 2022, the marketing agent for the CSC, ERA Realty Network Pte Ltd ("ERA"), informed all owners by way of circular letter that the CSC received an expression of interest from the Developer at a sale price of $860m,[2] which was below the RP of $938m which the CSC had an 80% mandate for. On 24 June 2022, the CSC resolved to seek a fresh mandate at a revised RP of $890m by deeming the SPs who had executed the 1st SJA as having consented to the upward revision of the RP to $890m and drawing up the 2nd SJA for execution by SPs who had not executed the 1st SJA but were agreeable to the revised RP. As of that date, owners constituting 72.20% of the total share value and 71.80% of total strata area had signed the 1st SJA, agreeing to a downward revision of the RP to $860m. No more signatures were added to the 1st SJA. Between 25 June 2022 to 5 July 2022, owners representing 8.73%

[2] 1st Joint Affidavit of the Claimants at pp 775–776.

of the total share value and 8.315% of the total strata area executed the 2nd SJA to revise the RP upward to $890m.

13 The SPA for the collective sale of Chuan Park to the Developer at the Sale Price of $890m was signed on 5 July 2022. The Sale Price was arrived at with reliance on a valuation report by one Yick E-Ling (Ms Yick"), whose valuation was based on a gross floor area ("GFA") of 78,152.76m$^2$ based on a plot ratio of 2.1. In relation to the distribution of the proceeds from the Sale to Chuan Park's SPs, the Claimants had adopted a MOA based on 90% valuation, 5% strata area and 5% share value. This MOA was based on calculations done by Ms Yick.

14 The Claimants called Ms Yick as their valuation expert, while the Defendants called one Stella Seow Lee Meng ("Ms Seow") as their valuation expert.

**The law governing collective sales**

15 It would be useful to briefly outline the law governing collective sales, before turning to the objections to the Sale. The LTSA is the governing law for collective sales. The legislative purpose of the LTSA has been set out by the Court of Appeal in *Ramachandran Jayakumar and another v Woo Hon Wai and others and another matter* [2017] 2 SLR 413 ("*Shunfu Ville*") at [4]–[10]. I will not reproduce it here but will refer to specific portions at the relevant parts of the analysis below.

16 The key provisions of the LTSA for the purposes of this application are ss 84A(1)(*b*) and (9) of the LTSA:

> **Application for collective sale of parcel by majority of subsidiary proprietors who have made conditional sale and purchase agreement**
>
> 84A.—(1) An application for an order for the sale of all the lots and common property in a strata title plan may be made by —
>
> …
>
> (*b*) the subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots …
>
> who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).
>
> …
>
> (9) The General Division of the High Court or a Board must not approve an application made under subsection (1) —
>
> (*a*) if the General Division of 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) …
>
> [emphasis added]

As seen from the above, s 84A(1)(*b*) sets out the threshold requirement that SPs representing at least 80% of the share values *and* total area of all the lots must agree to the collective sale in writing (the "80% Requirement"). Section 84A(9)(*a*) provides that the court must not approve an application for a collective sale order if the transaction is not in good faith, taking the factors listed in s 84A(9)(*a*)(i) into account.

**Objection to the Sale**

17 Before the High Court, the Defendants object to the Sale on the following grounds (the "Grounds") (the "HC Objection"):[3]

(a) the 80% Requirement set out in s 84A(1)(*b*) of the LTSA has not been satisfied for the collective sale at the sale price of $890m;

(b) the sale price of $890m was not arrived at by the CSC in good faith, as the CSC (the "Sale Price Ground"):

(i) did not ensure that a Pre-Application Feasibility Study ("PAFS") was carried out (the "PAFS Ground");

(ii) relied on a valuation report from Ms Yick, whose valuation was based on a gross floor area ("GFA") of 78,152.76m$^2$ based on a plot ratio of 2.1 and not a GFA of 82,924m$^2$ based on the development baseline plot ratio of 2.41 (the "Incorrect GFA Ground"); and

(iii) did not take steps to verify the GFA of Chuan Park (the "GFA Verification Ground"); and

(c) the MOA relied on by the CSC, based on 90% valuation, 5% strata area and 5% share value, was not arrived at by the CSC in good faith (the "Apportionment Ground"). In relation to this, the Defendants also submitted that:

[3] Defendants' Written Submissions dated 24 April 2023 ("Defendants' Written Submissions") at para 14.

(i) para 1(*e*)(vi) of the First Schedule to the LTSA has not been complied with, as Ms Yick was not an "independent valuer" (the "Independent Valuer Ground").

**Preliminary issue: Grounds of objections not raised before the STB**

18 At the hearing, the Claimants submitted that there were three Grounds of the HC Objection which had not been filed in the STB Objection pursuant to s 84A(4) of the LTSA:

(a) the PAFS Ground;

(b) the GFA Verification Ground; and

(c) the Independent Valuer Ground.

19 As such, a preliminary issue arose as to whether the Defendants were allowed to raise the above issues before the High Court, when these issues had not been included in the STB Objection. This preliminary issue requires an interpretation of s 84A(4A) of the LTSA, which states that any person who filed an objection to the STB pursuant to s 84A(4) may "re-file the person's objection to the sale, stating the same grounds of objection, to the General Division of the High Court".

20 The Claimants cited *Lim Hun Joo and others v Kok Yin Chong and others* [2019] SGHC 3 ("*Lim Hun Joo*"), where the court held at [50] that where a person re-files his objection to the High Court pursuant to s 84A(4A) of the LTSA, such objection must state the same grounds of objection as those filed before the STB.

21 In response, the Defendants submitted that in relation to:

(a) the PAFS Ground, the Claimants had waived any objection to the Defendants putting forward this issue in the circumstances. Firstly, the Claimants had been aware of this issue from the outset of this application as it had been set out in the affidavit of the 3rd Defendant, Mr Foo Kai Ming, Jeffrey (Fu Kaiming) ("Mr Foo"). Further, the Claimants had included, prior to the hearing, the PAFS Ground in their Scott Schedule of disputed issues as an issue for the parties to address;[4]

(b) the GFA Verification Ground, the Defendants should not be prevented from raising the issue. The failure to verify the GFA of Chuan Park only became apparent in the email correspondence between the Urban Redevelopment Authority ("URA") and ERA around November 2021 ("URA-ERA Emails 2021")[5] that was provided by the Claimants in their 4th Joint Affidavit on 20 April 2023; and

(c) the Independent Valuer Ground, the issue of Ms Yick's independence as a valuer was a matter of statutory compliance and thus could be raised even if it was not in the STB Objection.

***Grounds based on previously unknown facts may be raised to the High Court***

22 In *Lim Hun Joo*, the court held at [50] that under s 84A(4A) of the LTSA, a person who re-files his objection to the High Court must state the same grounds of objections filed to the STB (the "Same Grounds Rule"). This "prevents the collective sale application process from being complicated or

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4 Letter to the Court from the Claimants' Counsel dated 19 April 2023 ("Letter from the Claimants' Counsel"), Parties' Scott Schedule, item 6.

5 4th Joint Affidavit of Mrs Spykerman Chwee Wah Christina Nee Lim, Yew Wai Kuen and Ong Han Ping (Wang Hanbin) dated 20 April 2023 (4th Joint Affidavit of the Claimants") at pp 78–79.

delayed by the raising of new grounds of objection before the High Court which should have first been raised before the Board": *Lim Hun Joo* at [50]. Notwithstanding, the court also held at [52] that the High Court may consider a ground of objection which had not been raised before the STB if, through no fault of the objector, he could not have known at that time of the facts giving rise to the ground of objection: see also *Ngui Gek Lian Philomene and others v Chan Kiat and others (HSR International Realtors Pte Ltd, intervener*) [2013] 4 SLR 694 ("*Thomson View Condominium*") at [45].

23 I agree with the decisions in *Lim Hun Joo* and *Thomson View Condominium*. The STB Objection was filed in September 2022 while the basis of the GFA Verification Ground (*ie*, the email correspondence between URA and ERA) was only revealed on 20 April 2023. In other words, the facts which give rise to this ground of the HC Objection were not known to the Defendants when the STB Objection was filed. Hence, despite this issue being absent from the STB Objection, I will consider the GFA Verification Ground.

***Acceptance that an issue may be submitted to the High Court***

24 Unlike the GFA Verification Ground, the Defendants' objection on the basis that the PAFS had not been carried out (*ie*, the PAFS Ground) was not founded on facts which were unknown to the Defendants when they filed the STB Objection. Accordingly, the issue arises as to whether it runs afoul of the Same Grounds Rule, *per* s 84A(4A) of the LTSA.

25 A number of facts are particularly salient. First, I note that the PAFS Ground had been put into issue in Mr Foo's affidavit, which was filed approximately three months prior to the commencement of the trial. Second, the Claimants had recognised the PAFS Ground and listed it within their Scott

Schedule as a dispute to be addressed during the hearing. Third, the Claimants had asked their expert, Ms Yick, to provide her opinion on the PAFS Ground and she did so in her expert report. Fourth, the Claimants then referred to Ms Yick's views in their written submissions and stated that this issue would be elaborated upon after oral testimony.[6] Lastly, the Claimants' objection to the High Court's consideration of the PAFS Ground only surfaced during their oral submissions, after the cross-examination of all witnesses had been completed. In these circumstances, I find that the concern highlighted in *Lim Hun Joo* at [50], of complicating or adding delay to the collective sale process, would not be triggered by the High Court's consideration of the PAFS Ground. The Claimants had conducted themselves in a manner demonstrative of an acceptance of the PAFS Ground as one for the High Court's consideration, up until their raising of an objection towards the end of the hearing. The Claimants cannot now, at this late stage, take advantage of s 84A(4A) of the LTSA and deny the Defendants from objecting on this ground.

26 In view of the above, I will consider the PAFS Ground.

***Objections pursuant to statutory requirements***

27 Before an application may be made to the STB for a collective sale pursuant to s 84A(1) of the LTSA, the requirements set out in the First, Second, and Third Schedules to the LTSA (the "LTSA Schedules") must be satisfied, *per* s 84A(3) of the LTSA. As explained by the court in *Lim Hun Joo* at [92], the issue of compliance with the requirements set out in the LTSA Schedules is a *prerequisite* that goes towards whether the collective sale application is valid and may be made in the first place.

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6 Claimants' Written Submissions dated 24 April 2023 at para 56.

28 Paragraph 1(*e*)(vi) of the First Schedule to the LTSA requires that "a report by an *independent* valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement" be made available to any and all SPs of the relevant property [emphasis added]. Satisfaction of this statutory requirement necessitates the independence of the valuer who produces the report. The Independent Valuer Ground raised by the Defendants as a ground of objection is an issue that goes to whether the Claimants' application under s 84A of the LTSA is valid and may be made. Hence, I find that the absence of this ground (which relates to statutory compliance) in the STB Objection would not preclude the court from considering if such statutory compliance has been met.

29 Further, I note that although the language of s 84A(3) and (7C) of the LTSA appears to suggest that the issue of whether the application for collective sale may be made should be resolved first by the STB, the High Court would still have to take into account such considerations. Indeed, as recognised by the court in *Lim Hun Joo* at [92]:

> … [t]he threshold issue of whether an application may even be made should thus have been settled before the [STB] in the first instance. Thus, the omission to mention the High Court in s 84A(7C) appears deliberate. However, *the omission means that the court still has to grapple with the question as to whether a non-compliance with any requirement in the First, Second or Third Schedule would necessarily invalidate an application to the High Court for approval.*
>
> [emphasis added]

30 For completeness, this reasoning must necessarily extend to other statutory requirements for a valid application for collective sale, such as the 80% Requirement set out in s 84A(1)(*b*) of the LTSA.

31 I have thus proceeded below to consider the Independent Valuer Ground as one of the Grounds of the HC Objection.

***Summary of the law on re-filing objections to the High Court***

32 In summary, where person(s) who have filed an objection to a collective sale to the STB under s 84A(4) of the LTSA seek to re-file that objection to the General Division of the High Court under s 84A(4A), the grounds of objection filed to the High Court must be the same as that filed to the STB (*ie*, the Same Grounds Rule): see *Lim Hun Joo* at [50].

33 Notwithstanding, this Same Grounds Rule is subject to certain exceptions and the grounds of objection raised need not be identical to that in the objection to STB where:

(a) the ground of objection filed to the High Court is based on facts which were unknown at the time the objection was filed to the STB: see *Lim Hun Joo* at [52] and *Thomson View Condominium* at [45];

(b) the claimants have waived their right to object to different grounds of objection being raised, despite being absent from the objection filed to the STB, by accepting that the issue can be submitted before the High Court; and

(c) the ground of objection relates to a statutory prerequisite for approval of an application for collective sale under s 84A(1) of the LTSA.

**Issues to be determined**

34 I now turn to the main issues before me:

(a) whether the 80% Requirement is satisfied for a collective sale at a RP of $890m;

(b) whether the Sale Price was derived in good faith; and

(c) whether the MOA was arrived at in good faith.

**Issue 1: Whether the 80% Requirement for collective sale at $890m was satisfied**

35 As set out above, s 84A(1)(*b*) of the LTSA provides that an application for collective sale must satisfy the 80% Requirement. The legislative purpose of s 84A(1)(*b*) of the LTSA was explained by the Court of Appeal in *Shunfu Ville* at [5]–[6]:

> 5 … the Land Titles (Strata) (Amendment) Act 1999 (Act 21 of 1999) ("Act 21 of 1999") … removed the need for unanimous consent and instead it was provided that *a collective sale could be carried through as long as the subsidiary proprietors of the lots with not less than 80% or 90% of the share values, depending on the age of the property, had agreed in writing to the sale. The amendments were evidently intended to "make it easier for en-bloc sales to take place", and Parliament thought this "imperative" in land-scarce Singapore in order to realise enhanced plot ratios of developments, "make available more prime land for higher-intensity development to build more quality housing in Singapore", and to allow older developments to be "rejuvenated through the en-bloc process"*: see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at col 601 (Assoc Prof Ho Peng Kee, Minister of State for Law).
>
> 6 At the same time, Parliament was aware that the interests of minority owners had to be protected. Apart from procedural safeguards that governed the process of a collective sale, Parliament envisaged that the *Strata Titles Board ("the Board") would play a key role in ensuring that the interests of both the majority and minority owners were taken into account before approving a sale*. In the course of the second reading of the Land Titles (Strata) (Amendment) Bill (No 28 of 1998) ("Bill 28 of 1998"), Assoc Prof Ho Peng Kee, Minister of State for Law,

noted (at *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at col 604) that *the Board*:

> … *will first satisfy itself that the required consent has been obtained* and that prescribed procedures have been complied with. … Essentially its role is to determine that the proposed sale is bona fide and an arm's length transaction so that the proposed sale can proceed. It will do this by considering the minority's objections, the interests of all the owners, all the circumstances of the case and the scheme and intent of the en-bloc provisions in the Bill. The Board will look at the sale price, method of distributing the sale proceeds to ensure that the minority owners are treated no less favourably than the majority, and the relationship of the purchaser to the owners, to ensure that there is no collusion. …

[emphasis added]

36 Several points of note arise from the above.

(a) First, there is a policy imperative in land-scarce Singapore to allow older developments to be rejuvenated through the *en bloc* sale process.

(b) Second, the amendments made to the LTSA (the "Amendments") were intended to make it easier for the *en bloc* sale process to take place.

(c) Third, the Amendments were to allow the collective sale of property of a certain age to be carried through as long as the requisite 80% had agreed in writing.

(d) Fourth, the issue of whether the required majority (of 80% or 90%, depending on the age of property) has been achieved, is salient.

(e) Fifth, what the STB will do, amongst other things, is to satisfy itself that the required consent has been obtained.

37 Before delving into the parties' submissions, I pause to highlight that s 84A(1) of the LTSA requires that the SPs "*agreed in writing* to sell all the lots and the common property in the strata title plan" [emphasis added]. I make the following observations in relation to this writing requirement.

***Agreement in writing***

38 First, there is nothing in the wording of s 84A(1) LTSA that imposes a limitation that the agreement in writing to the collective sale must be contained within the confines of one singular document. This observation is reinforced by para 1(*a*) of the First Schedule to the LTSA, which states that what the SPs are required to execute is a collective sale agreement "in writing among themselves (whether or not with other subsidiary proprietors or proprietors)".

39 Second, there is also nothing in s 84A(1) of the LTSA that requires the 80% Requirement to be satisfied by an agreement in writing *viz,* a valid and binding contractual agreement. At the hearing, the Defendants accepted that there is a conceptual distinction between agreeing to an agreement and being bound by an agreement.[7] The effect of this observation is that the Defendants' submissions as to whether the 1st SJA is valid and binding, which will be canvassed in further detail below, are hence not material to the question of whether the 80% Requirement has been satisfied.

40 These observations of s 84A(1) of the LTSA accord with the parliamentary intention of the LTSA (set out above) and the plain language of the provision.

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[7] Transcript for the hearing on 28 April 2023 ("Transcript (28 April 2023)") at p 13 lines 17 to 22.

41 It is not disputed that the SPs who were signatories of the 1st and 2nd SJA had "agreed in writing" to the collective sale. Accordingly, the remaining issue is whether the 80% Requirement has been satisfied.

***The 80% Requirement***

42 The Defendants submits that the 80% Requirement has not been satisfied, contrary to the CSC's claim, and objects to the Sale on this basis. In particular, the Defendants take issue with the fact that the CSC satisfied the 80% Requirement by relying on *both* the 1st SJA, which was executed by owners representing 72.20% in total share value and 71.80% in total area, *and* the 2nd SJA, which was executed by owners representing 8.73% share value and 8.31% share area. The Defendants' position is that an addition of both set of numbers cannot be done as the 1st SJA was not valid and binding.

43 In support of this, the Defendants relied on cl 6.12.1 of the CSA, which states that an SJA requires execution by owners representing 80% of the total share value and total strata area in order to be valid and binding:

> Clause 6.12.1. Notwithstanding anything to the contrary in this Agreement, and in the event that the RESERVE PRICE or any of the SALE TERMS herein cannot be attained, the SALE COMMITTEE may in its absolute discretion direct the SOLICITORS to draw up a supplemental agreement to this Agreement (hereinafter called the "SJA") whereby each of the CONSENTING OWNERS shall be at liberty to agree [by way of entering into the SJA] with any one or more of the CONSENTING OWNERS and as well as with any one or more of the OWNERS who have not executed this Agreement, to sell ALL UNITS and common property in the DEVELOPMENT by way of COLLECTIVE SALE at a price less than the RESERVE PRICE, and/or upon terms which do not comply with the SALE TERMS, and the signing of the SJA by any of the CONSENTING OWNERS will not constitute a breach of this Agreement.
>
> Provided Always that the SJA shall only be valid and binding if it is drawn up by the SOLICITORS with the SALE

> COMMITTEE'S approval and OWNERS with not less than eighty per cent (80%) of the TOTAL SHARE VALUE and not less than eighty per cent (80%) of the TOTAL STRATA AREA in the DEVELOPMENT must have executed the SJA (hereinafter called "NEW CONSENTING OWNERS").

In addition, the Defendants also relied on cl 3 of the 1st SJA, which mirrors cl 6.12.1 and requires execution by owners representing 80% of the total share value and total strata area for the reduction of the RP to $860m to take effect:

> Clause 3. For avoidance of doubt and pursuant to clause 6.12.2 of the CSA, the reduction of the RESERVE PRICE herein to Eight Hundred and Sixty Million ($860 million) shall only take effect upon the execution of this supplemental agreement by OWNERS having at least eighty per cent (80%) of both the total share value and total strata area in the DEVELOPMENT. …

44 Since owners representing only 72.20% in total share value and 71.80% in total strata area have signed the 1st SJA, the Defendants submit that that SJA is not valid and binding. Consequently, there is no valid reduction of the RP from $938m to $860m. As the RP remained at $938m, the latter part of cl 3 of the 1st SJA does not assist the Claimants because it only operates to allow owners who signed the 1st SJA to be deemed to have agreed to an increase in RP from $860m. The relevant portion of cl 3 of the 1st SJA states:

> … In such event of attaining the said eighty per cent (80%), the CONSENTING OWNERS to the CSA who have not signed this supplemental agreement will forthwith be discharged from all their obligations under the CSA and be released from the CSA. For further avoidance of doubt, in the event that the SALES COMMITTEE subsequently resolves to make any increase to the RESERVE PRICE, the OWNERS who have already signed this supplemental agreement shall be deemed to have agreed to such increased RESERVE PRICE without having to sign any further document.

45 Disagreeing with the Defendants contractual interpretation, the Claimants submit that cl 3 of the 1st SJA expressly states that owners who signed

the 1st SJA shall be deemed to have agreed to an increase in the RP without having to sign any further document. This clause mirrors cl 6.4(a) of the CSA:

> Clause 6.4(a). … the SALE COMMITTEE may, in its absolute discretion and having duly considered any input from the PROPERTY CONSULTANTS, be entitled to increase the RESERVE PRICE (the "NEW RESERVE PRICE") as set out in this clause whether prior to, on or after the MAJORITY DATE, and in such event, the CONSENTING OWNERS who have executed this Agreement shall be deemed to have agreed to the NEW RESERVE PRICE without having to enter into any fresh agreement in supplement to this Agreement.

The Defendants have not taken issue with the operation of cl 6.4(a).

46 The Claimants submit that the effect of these clauses is that owners who executed the 1st SJA are carried into all and any subsequent SJAs with a higher RP, such as the 2nd SJA which revises the RP to $890m. This effect is, notably, codified in cl 3 of the 2nd SJA:

> Clause 3. Those OWNERS who had executed the SJA consenting to lower the Reserve Price to $860 million are deemed to have agreed to the revised Reserve Price of $890 million and are not required to sign this document.

47 Additionally, the Claimants submit that the CSA, the 1st SJA, and the 2nd SJA should be read together for the purpose of determining their legal effect: *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 ("*Sunny Metal*") at [30]. In support of this submission, the Claimants highlight that: (a) the CSA and the SJAs refer to each other therein; (b) each document takes effect by specific reference to the earlier document; and (c) the language in cl 3 of both the 1st and 2nd SJAs militate against treating them as two unconnected agreements. Instead, the three documents represent a single transaction, which ought to be construed together.

48 The Claimants submit that, by virtue of cl 3 of the 1st SJA, the signatories to that SJA have agreed that they be deemed to have agreed to a RP higher than $860m, without having to sign any further document. Hence, by virtue of what they agreed to in writing in the 1st SJA, they are deemed to have agreed to sell at the RP of $890m. The signatories of the 2nd SJA also clearly "have agreed in writing to sell" Chuan Park at the RP of $890m. Taken together, owners constituting the requisite 80% threshold "have agreed in writing to sell" Chuan Park at the RP of $890m, through the 1st and 2nd SJAs.

49 A key issue that arises from the parties' submissions, is whether the 1st and 2nd SJA are to be treated as the same document such that the percentage of total share value and total strata area represented by the owners who executed the 1st and 2nd SJA may be added together to satisfy the 80% Requirement. Specifically, the Defendants' submission is premised on the 1st and 2nd SJA being two separate agreements. I hence examine whether such an interpretation is sustainable. In *Leiman, Ricardo and another v Noble Resources Ltd and another* [2020] 2 SLR 386 ("*Leiman v Noble Resources Ltd*"), the Court of Appeal provided guidance on contractual interpretation at [59]:

> (a) The starting point is that the court looks to the text that the parties have used: *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2].
>
> (b) The court may have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129].
>
> (c) The court has regard to the relevant context because it then places itself in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by the parties in the [contract] in their proper context":

> *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 at [72].
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear: *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31].

50 I first consider the text of the SJAs. It should be borne in mind that the abbreviations of "1st SJA" and "2nd SJA" were so framed by the Defendants. They do not connote that the two are legally distinct documents. Moreover, there is nothing in the headers of the SJAs that labels them as the 1st and 2nd SJA. The Defendants also accepted at the hearing, that the two SJAs are supplemental to the CSA and they form part of the CSA.[8]

51 While there is nothing in each SJA that expressly states that they are part of the same SJA, there is similarly nothing that states that they are to be regarded as separate supplemental agreements. Further, there is nothing in the language of the SJAs that indicates that the SJAs are to be treated as separate agreements. On the other hand, there is language in the SJAs that suggests that the 1st and 2nd SJA are part of the same agreement. For example, cl 3 of the 1st SJA states that owners who have signed this supplemental agreement are deemed to have agreed to an increased RP without having to sign "any further document" (distinct from having to sign another "SJA"):

> … For further avoidance of doubt, in the event the SALE COMMITTEE subsequently resolves to make any increase to the RESERVE PRICE, the OWNERS who have already signed this supplemental agreement shall be deemed to have agreed to

[8] Transcript (28 April 2023) at p 4 lines 2 to 13.

> such increased RESERVE PRICE without having to sign any further document.

52 More importantly, the key scenario where this part of cl 3 of the 1st SJA would be needed, would be where 80% consent has not been obtained for the RP of $860m. It is important to bear in mind the clear, obvious, and undisputed context – that what the owners of Chuan Park need in order to bring an application for collective sale is 80% consent and that the CSC was, in the process leading up to the SJAs, looking to find a RP for which there was 80% consent. If as the Defendants submit, the 1st SJA only becomes valid and binding when 80% have consented to the RP of $860m, this part of cl 3 would be effectively otiose.

53 While the Defendants submit that this part of cl 3 could still be used by the CSC to arrive at a higher RP, so that there would be less or no objectors, this is not likely to be what this part of cl 3 was envisioned for. Having a higher percentage of consent does not prevent objections from being filed, since an objection could still be filed by a single owner. Hence, this aspect is not materially beneficial and unlikely to be the purpose. The Defendants also submitted that this part of cl 3 could be used to achieve 100% consent, which would then remove the need for an application under s 84A(1) of the LTSA for collective sale. Given the difficulties the parties had in achieving 80% consent, not to mention the difficulties of achieving 100% consent, and the timeline that the CSC had to meet, it is also not likely that in the context, this is what the parties had regarded this part of cl 3 as for. I hence find that cl 3 of the 1st SJA at $860m contemplates that those who subsequently agree to a higher RP, could be treated as part of the same SJA for the purposes of cl 6.12.1 of the CSA.

54 The text of cl 3 of the 2nd SJA also reinforces the view that both documents are to be treated as part of the same SJA. Clause 3 of the 2nd SJA states:

> Those OWNERS who had executed the SJA consenting to lower the Reserve Price to $860 million are deemed to have agreed to the revised Reserve Price of $890 million and are not required to sign this document.

55 Notably, cl 3 of the 2nd SJA refers to owners who executed the "SJA consenting to lower" the RP from the $938m as stated in the CSA down to $860m, as opposed to referring to owners who executed the 1st SJA or a separate SJA. It states that they are not required to sign "this document" as they are deemed to have agreed to the increased price, rather than they are not required to sign "this SJA".

56 It is trite law that documents forming part of the same transaction may be read together for the purpose of determining their legal effect: *Sunny Metal* at [30]. The Defendants submitted that the present case is distinguishable from *Sunny Metal* as the two SJAs were not contemporaneously created. Instead, they were created about six months apart while the documents in *Sunny Metal* were created about two days apart. In addition, the parties to the documents in *Sunny Metal* were the same while here the parties in the two SJAs are different. In my view, while contemporaneity and similarity of parties would be strong factors in considering whether documents form part of the same transaction, the facts that there was a time lag of about six months and that the parties to the respective SJAs were different does not rule out the possibility of the SJAs being treated as part of the same transaction. This is particularly so when there is contractual intention in the SJAs to treat them as such, as explained above. Following from this, I find that the requirement in cl 6.12.1 of the CSA (*ie*, that the SJA drawn up pursuant to that clause shall only be valid and binding if owners with not less

than 80% of the total share value and total strata area have executed the SJA) refers to the 1st and 2nd SJAs collectively, and not the SJAs individually.

57 The decision in *Shunfu Ville* is also instructive. There, owners of Shunfu Ville representing 80% of the total share value and total strata area had initially agreed to a RP of $688m. A first supplemental agreement was prepared for the SPs to agree to a reduced RP of $628m. This did not obtain the requisite 80% consent. A second supplemental agreement was then prepared for the SPs to agree to an increased RP of $638m. In relation to this revised RP, the court found that the 80% Requirement was satisfied by adding up the total percentages representing the SPs who signed the collective sale agreement by taking into account other SPs who executed either the 1st or 2nd supplemental agreement but not the original collective sale agreement: *Shunfu Ville* at [81].

58 While the same submissions canvassed by the Defendants here about the validity of the 1st SJA were not raised to the Court of Appeal in *Shunfu Ville*, it is useful to note the Court of Appeal's response at [85] to the submission made there that it was not acceptable to approve what was in effect a different collective sale agreement with different parties than the one which had been consented in the first place. The Court of Appeal referred to cll 6.12.1 and 6.12.2 of the collective sale agreement. The wording of these clauses is found in the High Court's decision in relation to the collective sale of Shunfu Ville, in *Woo Hon Wai and others v Ramachandran Jayakumar and others* [2017] SGHC 17 at [5]–[6]. Clauses 6.12.1 and 6.12.2 of the collective sale agreement in *Shunfu Ville* are materially the same as cll 6.12.1 and 6.12.2 of the CSA. The court said at [85]:

> … the original CSA itself contained a contractual provision that was binding on all those who were party to it and which permitted each of these developments to take place. That is

> provided for in cll 6.12.1 and 6.12.2, which we have summarised at [79] above. As we conveyed to Mr Tan at the hearing, the only point of those provisions in this case was to enable the subsidiary proprietors who had entered into the original CSA to withdraw from it if the price was lowered or if the terms were varied to a level or in a manner that was unacceptable to them, but on terms that new subsidiary proprietors would be permitted to join the CSA by signing a supplemental agreement, if they so wished. Where this very eventuality has been contractually provided for, as it was in this case, we can see no basis for holding that such a contractual arrangement would violate, offend or be otherwise contrary to the scheme envisaged by s 84A(1) and paras 1 and 2 of the First Schedule to the LTSA.

59 In the present case, cl 3 of the 1st SJA allows the signatories to agree to an upward revision of the RP to $890m without having to sign a further document. Clause 3 of the 2nd SJA also expressly treats those who have executed the 1st SJA as having also agreed to the RP of $890m without having to sign "this document". The point of these provisions is to allow the parties to agree on an upward revision of RP, such as to $890m, without having to sign the same document. Where this is contractually provided for, I do not see any basis for finding that their agreement in writing to the RP of $890m should be disregarded.

60 Furthermore, none of the parties who have signed the CSA or the SJAs, have maintained that these agreements were invalid. I do not see how the Defendants, who are not even privy to these contractual agreements, can raise objections that the agreements are contractually invalid. In particular, I do not find any merit in the Defendants' submission that the 1st SJA at RP of $860m is not binding and invalid.

61 Ultimately, the question here is whether the requirements of s 84A(1)(*b*) of the LTSA has been met, in that the requisite 80% "have agreed in writing" to the collective sale. I find that, as at 5 July 2022, 342 units with a total share

value of 1409 shares (80.93%) and total strata area of lots of 46,133m$^2$ (80.11%) had consented to the collective sale of Chuan Park at $890m, through agreements in writing in the form of the 1st and 2nd SJA. The 80% Requirement set out in s 84A(1)(*b*) of the LTSA has thus been met for the collective sale of Chuan Park.

**The law on the "good faith" requirement in s 84A(9)(*a*)(i) of the LTSA**

62 Section 84A(9)(*a*)(i) of the LTSA requires the High Court to be satisfied that the transaction was in good faith before approving an application for collective sale pursuant to s 84A(1) (the "'good faith' requirement"). Specifically, the Sale Price Ground and the Apportionment Ground relate to the factors set out in ss 84A(9)(*a*)(i)(A) and (B), respectively:

> (9) The General Division of the High Court or a Board must not approve an application made under subsection (1) —
>
> > (*a*) if the General Division of 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; …

63 The Court of Appeal has considered the "good faith" requirement extensively in the cases of *Shunfu Ville* and *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*"). While the Grounds relate to different factors, the general law on the "good faith" requirement applies to the consideration of both Grounds. Thus, before considering the individual Grounds

of the HC Objection, it is useful to set out relevant aspects of the law on the "good faith" requirement.

64 In *Shunfu Ville*, the Court of Appeal reaffirmed at [58] its holding in *Horizon Towers* at [134] that a collective sale committee is subject to the following five duties:

(a) the duty of loyalty or fidelity;

(b) the duty of even-handedness;

(c) the duty to avoid any potential conflict of interest;

(d) the duty to make full disclosure of relevant information; and

(e) the duty to act with conscientiousness.

65 The court in *Shunfu Ville* also emphasised at [59] that:

> … 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.*
>
> [emphasis added]

66 As for the burden of proof, the Court of Appeal in *Kok Yin Chong and others v Lim Hun Joo and others* [2019] 2 SLR 46 ("*Kok Yin Chong*"), referencing the *dicta* of the Court in *Low Kwang Tong v Karen Teo Mei Ling* [2018] SGCA 86 at [2], held at [71] that it is "for the [objectors] to point out by credible evidence that the transaction was not in good faith".

67 With these general propositions in mind, I turn to consider the remaining Grounds of the HC Objection.

**Issue 2: Whether the Sale Price was arrived at in good faith**

68 The Defendants objected to the collective sale at the Sale Price of $890m on the basis that this price was not arrived at in good faith, as the CSC:

(a) did not ensure that a PAFS was carried out;

(b) relied on a valuation report based on an incorrect GFA; and

(c) did not take steps to verify the actual GFA of Chuan Park.

69 It would be useful to keep in mind the law on the "good faith" requirement as it pertains to the sale price of a strata title property. In *Horizon Towers*, the Court of Appeal at [133] provided the following general guidance:

> In our view, the term 'good faith' under s 84A(9)(*a*)(i) must be read in the light of the SC's role as fiduciary agent (at general law and, now, under s 84A(1A)), and whose power of sale is analogous to that of a trustee of a power of sale. Thus, in our view, the duty of good faith under s 84A(9)(*a*)(i) requires the SC to discharge its statutory, contractual and equitable functions and duties faithfully and conscientiously … *In particular, an SC must act as a prudent owner to obtain the best price reasonably obtainable for the entire development.* …
>
> [emphasis in original]

70 Notably, the court must determine whether the sale price obtained was "the best price *reasonably obtainable in the prevailing circumstances*" [emphasis in original]: see *Shunfu Ville* at [59] referencing *Horizon Towers* at [201]. This is a fact-sensitive exercise. As held at [59] by the Court of Appeal in *Shunfu Ville* (referencing *Horizon Towers* at [129] and [130]):

> 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. 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 are all relevant to this inquiry. …
>
> [references omitted]

71 Additionally, the court in *Shunfu Ville* held at [61(c)] 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.
>
> [emphasis in original]

*The PAFS Ground*

72 The parties do not dispute that neither the CSC nor ERA carried out the PAFS for the redevelopment of Chuan Park. However, the parties dispute the effect of not conducting the PAFS.

73 The Defendants submit that, first, the CSC was not conscientious in obtaining the Sale Price by failing to conduct a PAFS; and second, a PAFS would have "created more interest in Chuan Park and encouraged more competitive bidding that would facilitate obtaining the appropriate price for Chuan Park".[9] These submissions hence give rise to two sub-issues in relation to the PAFS Ground:

(a) whether the CSC had breached their duty to act with conscientiousness by failing to conduct the PAFS; and

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9 Defendants' Written Submissions at para 45.

(b) whether the omission to conduct the PAFS resulted in the Sale Price not being the best price reasonably obtainable.

(1) Duty to act with conscientiousness

74 The "good faith" requirement imposes on the collective sale committee, among other things, a duty to act with conscientiousness in exercising the power of collective sale: *Shunfu Ville* at [58] and *Horizon Tower* at [134]. In the present case, the Defendants submit that this duty was breached by the CSC, as evidenced by the CSC's failure to obtain a PAFS.

75 The Defendants' initial position was that the URA requires the CSC to submit the PAFS prior to the submission of an Outline Application or a Development Application and that the CSC's failure to comply with this requirement demonstrated a lack of conscientiousness. In support of this submission, the Defendants relied on a URA Circular to Professional Institutes dated 13 November 2017 titled "Pre-Application Feasibility Study on Traffic Impact for En-Bloc Residential Redevelopments" (the "Circular").[10] However, during the oral submissions, counsel for the Defendants accepted that the Circular did not necessitate the carrying out of a PAFS by the CSC.[11] That this is so is apparent from the language of the Circular and the testimony of the Claimants' expert, Ms Yick and the Defendants' expert, Ms Seow.

76 During the course of cross-examination, it was suggested by counsel for the Defendants that the Circular was a directive from the URA to conduct the PAFS in accordance with the requirements listed therein. The relevant paragraphs of the Circular are as follows:

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10 Defendants Bundle of Authorities ("DBOA") at Tab J.

11 Transcript (28 April 2023) at p 34 line 28 to p 35 line 14.

> 4. Potential buyers, interested parties, developers or real estate agencies (acting on behalf of collective sales committees) shall engage an experienced traffic consultant to assess the transport impact and recommend a development proposal that is car-lite in nature. The following should be incorporated:
>
> > a. Assessment of the transport impact to the immediate and critical junctions (approx. 2 to 5) arising from the redevelopment, as identified by LTA;
> >
> > b. Estimation on the supportable number of DUs and identification of car-lite measures/initiatives, traffic demand management and/or feasible transport improvement plans to be carried out and implemented by the developers; and
> >
> > c. Estimated adjustments in the site boundary for transport improvement plans, where required (for example, setting aside land for road widening).
>
> …
>
> 8. With immediate effect, potential buyers, interested parties, developers or real estate agencies (acting on behalf of collective sales committees) submitting an Outline Application or Development Application for en-bloc proposals for the development types listed in Table 1 should consult LTA in advance and submit a PAFS, if required by LTA, before making the applications to URA.

77 Both Ms Yick and Ms Seow were of the view that the above elements listed at para 4 of the Circular should be incorporated into a PAFS. However, these elements were not things that a CSC would typically know of and it would be difficult for the CSC to submit a PAFS with these requirements.[12]

78 In relation to the requirement of a PAFS, Ms Yick, explained that, while the Land Transport Authority ("LTA") would require a PAFS for developments of more than 700 dwelling units, the PAFS is only required at the later stage of Development Control. The PAFS was also not required for the valuer to conduct

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12 Transcript (26 April 2023) at p 69 line 13 to p 70 line 12.

a valuation of the property for collective sale.[13] Ms Seow agreed with Ms Yick's statement that a PAFS is not required at this stage of the collective sale process, but added that it would usually be asked for, without specifying when this would be done.[14]

79 During the hearing, Ms Yick and Ms Seow were also asked to comment on a letter from the URA dated 29 September 2022 ("URA 2022 Letter") granting the Developer outline permission.[15] The relevant portions of this letter are set out below:

> 1 Thank you for your application on 01-09-2022 for the above proposal. We are pleased to inform you that the proposal is granted outline permission subject to the following conditions:
>
> …
>
> 5 Compliance with LTA's requirement on the access arrangement, car parking provision and Walking and Cycling Plan (WCP). Please obtain LTA's Road & Transport (RT)'s and Vehicular Parking (VP)'s no objection letters and submit to us in the formal application. Please also note the following preliminary comments from LTA:
>
> a. Existing access along Serangoon Avenue 3 to be shifted westward …
>
> b. …
>
> c. The development shall incorporate sufficient queuing spaces/lengths for pick-up/drop-off activity and entrance to car park within the development site.

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13 Yick E-Ling's Affidavit dated 30 March 2023 ("Yick's Affidavit") at pp 9–10.

14 Transcript for the hearing on 26 April 2023 ("Transcript (26 April 2023)") at p 45 line 2 to p 46 line 15.

15 4th Joint Affidavit of the Claimants at pp 80–82.

> The internal layout shall be spaciously designed to facilitate house moving/delivery by heavy vehicles …
>
> d. Pre-Application Feasibility Study (PAFS) *to be conducted and cleared*. Please refer to the requirements stated in the email from LTA to the Sales Agent, dated 24 Sep 2021. Please also ensure the proposed development incorporates the necessary setback.
>
> …
>
> 7 As this is an outline application, only the macro planning parameters such as land use, GPR, building height are evaluated. The detailed layout of the proposal will be subject to further evaluation at the formal application stage. You are also required to comply with all the relevant development control guidelines as well as the guidelines of other technical agencies at the formal application stage.

80 Ms Yick testified that it appears from the URA 2022 Letter that the URA can conditionally grant outline permission without the PAFS having been conducted.[16] Ms Seow agreed, testifying that the URA had by this letter granted outline permission without the PAFS, and that the URA will accept the PAFS at a point after the CSC finalises the sale.

81 In light of the above evidence, I find that the CSC's failure to obtain a PAFS was not a breach of its duty to act with conscientiousness. I elaborate on my reasons below.

82 First, there is nothing in the wording of the Circular which suggests that the Circular was intended to be a directive from the URA for the CSC to conduct a PAFS prior to the completion of a collective sale. The only deadline imposed by the Circular is at para 8, which states that the PAFS should be submitted "before making the applications to URA".

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16 Transcript (26 April 2023) at p 64 lines 22 to 28.

83 Moreover, some of the specific items that para 4 of the Circular requires to be incorporated in the PAFS, such as the "traffic demand management and/or feasible transport improvement plans to be carried out and implemented by the developers", may be difficult for the CSC to propose as the CSC would not be the ones developing or implementing these plans. Both Ms Yick and Ms Seow were of the view that the information required by para 4 of the Circular was not the sort that a collective sale committee can typically provide. While the Defendants submit that para 4 provides that parties shall engage an experienced traffic consultant to assess the transport impact, that does not change the fact that the items required by the Circular to be incorporated into the PAFS requires a developer's inputs.

84 Second, the URA 2022 Letter is consistent with the above reading of the Circular. In that letter, the URA granted the Developer outline permission, without the Developer having done a PAFS. From para 5 of the Letter, it is clear that the LTA had already provided preliminary comments and had not required the PAFS to be done before URA granted outline permission. This being the case, it could hardly be said then, that the CSC was required by the URA to conduct the PAFS prior to its conclusion of the collective sale.

85 Third, both parties' expert witnesses were also of the view that while the PAFS would be required at some stage, it was not a requirement imposed on the valuer before providing valuation of the development site for collective sale or on the CSC before it concluded the collective sale.

86 As there is no basis for claiming that the Circular was a directive directing the CSC to conduct a PAFS, and there being no requirement to conduct a PAFS at this stage of the collective sale application, the omission to conduct a PAFS cannot be said to constitute a failure by the CSC to act in the best

interests of all the SPs. Thus, I find that the omission to conduct a PAFS does not constitute a breach of the CSC's duty to act with conscientiousness.

(2) Duty to obtain the best price reasonably obtainable

87 As explained by the Court of Appeal in *Horizon Towers* at [154]:

> The duty to obtain the best price arises out of the [collective sale committee's] duty to act conscientiously as well as to act even-handedly in the collective interest of all the subsidiary proprietors. The duty to obtain the best sale price is particularly crucial for the objecting subsidiary proprietors. As alluded to at [114] above, such subsidiary proprietors may be compelled by virtue of an STB order to sell their units either at a price which they were not prepared to accept or where they were in fact not prepared to sell their units at any price for personal reasons. In such circumstances, their only consolation or compensation for losing their units is the sale price they will receive. The [collective sale committee] must therefore strive to achieve the best premium available for the subsidiary proprietors by obtaining the best price for the development as a whole.

88 The Defendants submit that the CSC's failure to conduct the PAFS resulted in the Sale Price not being the best price reasonably obtainable in the prevailing circumstances. The Defendants' view was that doing a PAFS would immediately increase the interest in and marketability of Chuan Park. Despite knowing this, the CSC did not carry out a PAFS. In support of this submission, the Defendants relied on a slide presented by ERA at the owners' meeting, on possible reasons why there were no bids in the first public tender exercise. One of the bullet points in the slide was that a PAFS on traffic impact "is required for redeveloping Chuan Park Site" and had not been carried out.[17]

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17 Foo Kai Ming, Jeffrey (Fu Kaiming)'s Affidavit dated 18 January 2023 ("Foo's Affidavit") at p 257.

89 Relying on Ms Yick's Report, the Claimants' position is that carrying out the PAFS may lead to a lower land value, contrary to what the Defendants seek. As stated at para 14.4 of Ms Yick's expert report:

> Should a PAFS be conducted and the *proposed development is found to have a significant traffic impact on the locality in question, it would lead to a reduced number of dwelling units to be allowed and the effect is likely a lower land value* would result which would be counter-intuitive to the desire of the objectors.
>
> [emphasis added]

90 I accept Ms Yick's evidence. Her explanation is supported by para 6 of the URA 2022 Letter, which states that the maximum number of dwelling units is subject to PAFS clearance by the LTA.

91 In light of this, I find that it is not clear that doing a PAFS would have immediately increased the marketability of Chuan Park, contrary to what the Defendants submit. With regard to the slide which the Defendants relied on, the lack of a PAFS was only one of several bullet points stating possible reasons why there were no bids in the first public tender exercise. However, this simply meant that the need for PAFS was one of the considerations of potential developers, along with the other factors listed in that slide such as "LTA/URA Regulations & Policies", "High Insurances Premium", "Material & Construction Cost" and "ABSD Penalty (25% payable) – must sell all the Units within 5 Years". It is not the Defendants' case that the CSC is under some duty to also resolve these other issues for a potential developer.

92 I hence find that the Defendants have not shown that the sale price of $890m was not the best price reasonably obtainable in the circumstances because the CSC did not ensure that a PAFS was carried out.

*The Incorrect GFA Ground*

93 The Defendants also initially objected to the Sale on the ground that the price of $890m was not arrived at in good faith as the CSC relied on a valuation report from Ms Yick, whose valuation was based on a GFA of 78,152.76m$^2$ based on a plot ratio of 2.1 and not the GFA of 89,824m$^2$ based on the development baseline plot ratio of 2.41.[18] However, the defendants did not pursue this at the oral submissions at the end of the hearing, after the two valuation experts gave their evidence. Instead, the Defendants narrowed down their submission in relation to the incorrect GFA to this: the Sale Price had not been arrived at in good faith because the CSC recklessly agreed to one Clause 6E.1.2(E) in the SPA. For completeness, I have addressed both submissions below.

(1) Valuation based on GFA of 78,152.76m$^2$

94 Ms Yick testified that her valuation was based on the information available at the time of the valuation – that the development is based on the Master Plan with a plot ratio of 2.1 and had a GFA of 78,152.76m$^2$. Ms Yick did not make any assumptions as to whether a developer could subsequently obtain approval from URA to increase the plot ratio to the higher development baseline plot ratio of 2.41.

95 The Defendants relied on the opinion of Ms Seow that the market value of Chuan Park was $930m. She testified in court that she arrived at this figure by taking the average of the valuation using the residual method (which Ms Yick used) and the direct comparison method. It is not necessary for the purposes of this analysis to go into the differences between the two methods.

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[18] Letter from the Claimants' Counsel, Expert's Scott Schedule, items 4-6.

What is material is that Ms Seow accepted that the entire premise of her valuation rests on the assumption that the verified GFA of Chuan Park was 89,824m$^2$ (with a plot ratio of 2.41).[19] This GFA was taken from the development baseline for Chuan Park as stated in a letter from the URA dated 30 August 2017 ("URA Letter 2017"). In other words, the Defendants submit that the Sale Price should be based on a valuation which was based on the development charge baseline and the higher accompanying gross plot ratio ("GPR").

96 However, it is clear from the URA Letter 2017[20] and URA-ERA Emails 2021[21] that it was incorrect for Ms Seow to assume and apply a GFA of 89,824m$^2$ based on a 2.41 GPR to come to her valuation.

97 The URA Letter 2017 states at paras 2 and 4:

> 2 The development charge baseline is the value of the following floor area multiplied by the Development Charge Rate for the corresponding Use Group as follows:
>
> | Lot No. | Floor Area (m2) | Use Group* |
> |---|---|---|
> | MK18-16257W | 89824 | B2 |
>
> *Please refer to Appendix 1.
>
> Any proposal exceeding the value derived above is liable for development charge.
>
> …
>
> 4 Please note that the development charge baseline as conveyed is for *purpose of computing development charge and does not indicate the allowable development potential on the site.*

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19 Transcript (26 April 2023) at p 125 lines 1 to 4.

20 4th Joint Affidavit of the Claimants at pp 62–64.

21 4th Joint Affidavit of the Claimants at pp 78–79.

> What can be developed on the site, i.e. the development potential, is guided by the current Master Plan.
>
> [emphasis added]

98 Paragraph 4 of the URA Letter 2017 states clearly that the development charge baseline (*ie*, the 89,824m$^2$ that is reflected in para 2) is conveyed for the "purpose of computing development charge." Further, the letter goes on to state in the same paragraph that the figure does not "indicate the allowable development potential on the site. What can be developed on the site, is guided by the current Master Plan". Both experts agreed with this reading of paras 2 and 4 of the URA Letter 2017. Also, it is undisputed, and agreed by both experts, that the current Master Plan provides a plot ratio of 2.1 for Chuan Park.

99 Paragraph 4 of the URA Letter 2017 is materially the same as the paragraph contained within a letter from the URA that was considered by the High Court in *Lim Hun Joo*. Given this material similarity, and that the objectors in *Lim Hun Joo* raised the same argument as the Defendants, the decision in *Lim Hun Joo* is instructive.

100 In *Lim Hun Joo*, the court rejected the argument that the valuation should be based on the development charge baseline figure and found that this figure did not provide information on the permissible GPR. This finding was supported by the language of the URA's letter: *Lim Hun Joo* at [308] and [314]. I find the court's observations at [316] and [318] to be directly applicable here:

> 316 … It is one thing to assume that a successful bidder will request for a higher GPR, it is another to assume that it is prepared to commit to a price based on a possibility that it would obtain approval for a higher GPR.
>
> 318 … *A valuation should be based on existing facts.* A property may be under-utilised at present and, based on existing facts, its potential is known. This is different from *valuing a property based only on a possibility of achieving a*

> *higher GPR* … such an approach would be *speculative*. It would be inappropriate for the purpose of a valuation intended to assist the CSC in a collective sale.
>
> [emphasis added]

I agree with these observations and take the view that the valuation on which the Sale Price is based on should not be based on a speculative estimate of a property's potential.

101 What is apparent from the URA Letter 2017 is made even clearer from the URA-ERA Emails 2021. ERA sent an email enquiry to URA dated 29 November 2021 seeking, among other things, confirmation that the URA would accept the updated GFA figure of 89,824m$^2$. The email states:

> As conveyed in the earlier baseline enquiry reply dated 30/08/2017, the updated Gross Floor Area of the existing building on site is verified to be 89,824 m2 of Residential (B2) GFA
>
> Under the Master Plan 2019, the subject site is zoned Residential with a GPR of 2.1. As the development has exceeded the MP GPR control,
>
> (1) we would like to confirm if URA is honouring the recompute GFA when the site is Redevelopment for Residential use.
>
> (2) This site will also be eligible for an additional 7% bonus GFA e.g. the balcony incentive scheme, I.e. additional GFA of 6,287.68 m2, leading to a total GFA of 96,111.68 m2. And that No development charge/DP will be leviable for this amount of GFA.

102 In its email response to ERA on 1 December 2021, URA clarified that:

> … the GFA of the existing development was not verified. The reply dated 30 Aug 2017 was for the development baseline for the site and has no bearing on the permissible development intensity. Upon redevelopment, the proposed development will

> be guided by the parameters in the prevailing Master Plan at GPR 2.1 for Residential Use.

103 Ms Seow testified that when she did her valuation, the URA-ERA Email 2021 was not available to her. Additionally, when asked to comment on the correspondence, she testified that if she reads the emails, strictly speaking, the assumption that she based her valuation on (*ie*, that the GFA is 89,824m$^2$) is wrong.[22]

104 The Defendants also relied on a printout from the URA website to support their submission ("Development Charge Printout").[23] However, both experts agreed that this printout was solely about the Development Charge and does not mention what the permissible built-up area for a development would be. In particular, Ms Seow pointed out that the heading is "Development Charge".[24] Both experts also agreed that the phrase "approved use and intensity of the site" that is mentioned on that website pertains to the calculation of the Development Charge. I agree with the testimony of both expert witnesses. It is apparent from the Development Charge Printout that it is not relevant to the issue at hand.

105 The Defendants also initially submitted that the CSC failed to disclose to all owners the existence of URA Letter 2017. Although the Defendants did not pursue this submission in their oral submissions at the end of the hearing, I will address this submission for completeness.

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22 Transcript (26 April 2023) at p 128 lines 4 to 16.

23 Foo's Affidavit at pp 261–263.

24 Transcript (26 April 2023) at p 135 line 18 to p 136 line 22.

106 While the CSC did not disclose the existence of the URA Letter 2017, itself, to the owners, the CSC did convey the relevant content of that letter in a slide that was presented at a zoom meeting with all the owners in December 2021.[25] The slide clearly indicated that the approved existing GFA is "89,824 sqm (Subject to URA Base-Line Confirmation)" and that the same is "for the purpose of Computing the Development Charge (DP). It is not an indication of allowable Development potential on the site. The development potential is guided by MP 2019." This slide was adduced by Mr Foo himself in his affidavit. During cross-examination, Mr Foo said that the slide did not sufficiently represent the substance of URA Letter 2017 because the slide was disclosed via a Zoom meeting and as such, he "didn't focus on numbers". He was unable to state what substantive information was missing from the slide.[26] As the slide clearly contained the relevant content of the URA Letter 2017, I find no merit to the Defendants' allegation that the CSC failed to disclose the URA Letter 2017 to the owners.

107 In light of the above, I find that the Defendants have not shown that the Claimants did not arrive at the sale price of $890m in good faith by relying on the valuation prepared by Ms Yick, which is based on a GFA of 78,152.76m$^2$ and a plot ratio of 2.1, and not a GFA of 89,824m$^2$ based on a plot ratio of 2.41.

(2) Reckless agreement to Clause 6E.1.2(E) of the Sale and Purchase Agreement

108 I next deal with the submission that the Defendants eventually narrowed down to, for their oral submissions at the end of the hearing. This was the

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25 Foo's Affidavit at para 56 and p 187.

26 Transcript for the hearing on 27 April 2023 ("Transcript (27 April 2023)") at p 105 lines 20 to 26.

submission that the CSC demonstrated a lack of good faith in arriving at the Sale Price, as it had been reckless in agreeing to Clause 6E.1.2(E) as one of the conditions of sale to the Developer,[27] when the URA-ERA Emails 2021 showed that there was no basis for the guarantee made here.

109 According to the Defendants, this Clause guarantees that there would be a minimum floor area of 89,824m$^2$ for development baseline as reflected in the URA Letter 2017. However, the URA had, through their email correspondence in 2021, informed ERA that the URA was prepared to only commit to saying that no development charge would be payable for a plot ratio "up to" 2.1 plus GFA bonus. As the CSC had no basis to make this guarantee in the face of URA's reply, it was reckless to do so. This recklessness demonstrates a lack of good faith in arriving at the Sale Price.

110 In response, the Claimants submitted that the URA had repeatedly stated that the governing factor is the Master Plan plot ratio of 2.1 and the CSC was conscientious and acted in good faith in accepting that. What was put into the terms and conditions with the Developer was entirely what URA communicated. The URA Letter 2017 is exhibited in the terms and conditions themselves, as Clause 6E.1.2(E) refers to "a copy of which is set out in Schedule 1A".

111 The relevant parts of Clause 6E.1.2 state:

> 6E.1 The sale and purchase herein is subject to the Purchaser obtaining:
>
> > 6E.1.2. outline planning permission ("OPP") from the competent authority appointed under the provisions of

[27] 1st Joint Affidavit of the Claimants at pp 796–797.

> the Planning Act 1998 ("Competent Authority") for developing the Land into residential development(s):
>
> (A) of not less than 919 dwelling units;
>
> …
>
> (C) with gross plot ratio of not less than 2.1;
>
> (D) with gross floor area (not inclusive of bonus gross floor area) of not less than 78,152.76 square metres;
>
> (E) with a minimum floor area of 89,824 square metres for development baseline as reflected in the reply dated 30 August 2017 from the Urban Redevelopment Authority, a copy of which is set out in Schedule 1A;
>
> …
>
> [emphasis in original]

112 It can be seen from the above that Clause 6E.1.2 does not contain any guarantee from the CSC to the Developer. It simply sets out that the sale and purchase is subject to the Developer obtaining outline planning permission from the URA, as the "Competent Authority", for a residential development which contains the elements listed above.

113 Similarly, the CSC was not making any guarantee in Clause 6E.1.2(E) to the Developer about a minimum floor area of 89,824m$^2$ for development baseline. Rather, the clause is simply stating that one of the conditions for the sale is that the URA approves the development baseline of 89,824m$^2$, which is the figure the URA indicated in the URA Letter 2017. As Clause 6E.1.2(E) states that a copy of the URA Letter 2017 was set out in Schedule 1A of the SPA, the Developers would have had sight of this letter. Thus, they would have had knowledge that the figure therein of 89,824m$^2$ was, as stated at para 4 of the URA Letter 2017, "conveyed … for purpose of computing development charge and does not indicate the allowable development potential on the site."

114 I find that, contrary to the Defendants' submission, there are no guarantees made by the CSC in Clause 6E.1.2(E). There is hence no merit to the Defendants' submission that the CSC did not arrive at the Sale Price in good faith by being reckless in agreeing to Clause 6E.1.2(E) to the Developer.

***The GFA Verification Ground***

115 The Defendants also submitted that the sale price of $890m was not arrived at in good faith as the CSC did not verify the GFA of Chuan Park. The Defendants made two points in relation to this. First, the Defendants submitted that the CSC allowed ERA, the marketing consultant, to exclude from its scope of services the verification of the GFA of the development and the development baseline. These are important factors when arriving at the eventual sale price. As such, no conscientious owner would allow the marketing consultant to exclude from its services such verification applications, which cost just thousands of dollars.

116 The Defendants also submitted that even after ERA wrote to the URA to enquire on the GFA and the development baseline, the reply from URA stated that the GFA of Chuan Park was unverified. Despite knowing this, the CSC did not take steps to verify the GFA. Paragraph 6.4(ii) of the Planning Act Master Plan Written Statement states that where a development is approved for "an intensity higher than the prescribed maximum permissible intensity, such approved intensity shall … be deemed to be the prescribed maximum intensity of the land."[28] The Defendants posit that it is possible that Chuan Park had an actual GFA with a GPR higher than 2.1 and thus, it would have been prudent for the CSC to check if this was so.

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[28] Letter to the Court from the Defendants' Counsel dated 3 May 2023, Exhibit D1 at p 9.

117 In response, the Claimants submit that even though the verification of the development baseline was excluded from the scope of ERA services, the CSC did ask ERA to verify the development baseline. ERA did do so, as evident in the URA-ERA Emails 2021.

118 Moreover, when the URA informed ERA in the URA-ERA Emails 2021 that the GFA was not verified, the URA also stated that this had no bearing on the redevelopment intensity. The URA made an affirmative statement in that email that redevelopment was guided by the Master Plan plot ratio of 2.1. In addition, though the Defendants could have gotten actual evidence, the Defendants have produced no evidence that the verified GFA exceeds 2.1. Given that the strata title area of Chuan Park when it was first sold had a GPR of 1.55,[29] the plot ratio is likely to be less than 2.1.

119 I find no merit to the Defendants' submission that the CSC was not conscientious or prudent in allowing ERA to exclude the verification of the development baseline from its scope of services. It is undisputed that the ERA did verify the development baseline with the URA. The URA in its reply in the URA-ERA Emails 2021, explained that the development baseline was as set out in the URA Letter 2017 and that it had no bearing on the permissible development intensity.

120 I also find no merit in the Defendants' submission that the CSC was not conscientious in allowing ERA to exclude the verification of the GFA from ERA's scope of services, or in not verifying the actual GFA. The URA in its reply in the URA-ERA Emails 2021, expressly stated that "the proposed development will be guided by the parameters in the prevailing Master Plan at

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[29] Letter to the Court from the Claimants' Counsel dated 3 May 2023, Exhibit C3 at p 7.

GPR 2.1 for Residential Use". While the correspondence that the Defendants relied on, was adduced through the Claimants' 4th Joint Affidavit that was filed on 20 April 2023, not long before the start of the hearings, the Defendants nevertheless did not take any steps at all, to show that the verification of the as-built GFA may have resulted in a higher plot ratio than 2.1. All that was relied on was an unsupported assertion by Ms Seow. Further, the Defendants did not provide any calculations that might hint at the plot ratio being higher than 2.1.

121 Moreover, Chuan Park has not been redeveloped since it was first built in 1989, on a plot ratio of 1.55. This was set out in a piece of paper that is pasted on one of the pages of the sales brochure of Chuan Park that the Claimants adduced at Exhibit C3. While Mrs Spkyerman could not confirm who pasted this paper, she testified that "Far East" was marketing Chuan Park at that time and they could have done this. This was not challenged by the Defendants, nor was the accuracy of the information contained on that paper, in particular the plot ratio of 1.55.[30]

122 It bears repeating that the burden of proof is on the Defendants, to point out by credible evidence that some or all of the stated facts are inaccurate or false or that there are some other facts which will demonstrate that the transaction is not in good faith within the meaning of the LTSA: *Kok Yin Chong* at [71]. The Defendants have not produced any evidence or calculation that suggests why the actual GFA of Chuan Park may be higher than the plot ratio of 2.1.

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30 Transcript (27 April 2023) p 6 line 15 to p 7 line 20.

123 Indeed, when Mr Foo was cross-examined, he said that he was a person with experience in development,[31] and that the total as built GFA of Chuan Park would be 57,584m$^2$ plus the common built up area.[32] He further agreed that this area of about 57,000m$^2$ represented the strata area and that, to account for the common built up area, 20% could be added to the strata area when looking at the plans set out in the sale brochure for Chuan Park.[33] This would result in about 69,100m$^2$, which is less than the 78,152.76m$^2$ that Ms Yick took as the GFA based on a plot ratio of 2.1.

124 Moreover, the URA had expressly informed the CSC twice, first through the URA Letter 2017 and then later through the URA-ERA Emails 2021, that the proposed redevelopment of Chuan Park would be guided by the current Master Plan plot ratio of 2.1.

125 In these circumstances, I do not find that the CSC failed to be conscientious by not going further to verify the actual GFA of Chuan Park.

126 In summary, taking into consideration the specific issues raised by the Defendants as well as a holistic assessment of the entire circumstances of the transaction, I find that the Defendants have failed to provide any credible evidence to show that the CSC did not act in good faith in arriving at the Sale Price of $890m.

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31 Transcript (27 April 2023) p 98 lines 2 to 9.

32 Transcript (27 April 2023) p 99 line 30 to p 100 line 6.

33 Transcript (27 April 2023) p 102 lines 1 to 9.

**Issue 3: Whether the method of apportionment was arrived at in good faith**

127 The Defendants' third main Ground of the HC Objection, *ie*, the Apportionment Ground, relates to s 84A(9)(*a*)(i)(B) of the LTSA. This provision states that the High Court must not approve an application for collective sale if it is satisfied that the transaction is not in good faith after taking into account, among other things, "the method of distributing the proceeds of sale".

128 The MOA is based on 90% valuation, 5% strata area, and 5% share value. The Defendants' position is that too much weightage has been placed on valuation in the MOA, without proper regard to share value. The term "share value" is explained in s 30(2) of the LTSA:

> (2) The share value of a lot determines —
>
> (*a*) the voting rights of the subsidiary proprietors;
>
> (*b*) the quantum of the undivided share of each subsidiary proprietor in the common property; and
>
> (*c*) the amount of contributions levied by a management corporation on the subsidiary proprietors of all the lots in a subdivided building.

129 The Defendants submit that the common area of Chuan Park makes up a significant portion of the site area. By placing too much weight on valuation, the CSC failed to adequately take into account the owners' share value in the common property in the MOA.

130 One of the Defendants, Mr Foo, testified that an MOA based on 65% strata area and 35% share value would better reflect the characteristic of Chuan Park, including the size of its common area. This MOA was based on the

recommendation of the previous sales agent, Cushman & Wakefield, in 2017. Applying the MOA of 65% strata area and 35% share value would result in a premium variance of 22.66%. The Defendants highlight that this is still well below the 53% premium variance which the court had accepted in *Yeo Sok Hoon and others v Tan Thiam Chye and another* [2020] 5 SLR 1042 ("*Realty Centre*").

131 The Defendants also submit that the MOA relied on by the CSC is illogical and unfair. The Defendants provided two examples of larger-sized residential units with higher share value of the common area that were to receive lower sale proceeds compared to smaller residential units:[34]

| **Unit** | **Size of Unit** | **Share of Sale Proceeds** |
|---|---|---|
| Blk 240, #01-01 | 182m$^2$ (1959 sq ft) | $2,455,664 |
| Blk 240, #01-13 | 184m$^2$ (1981 sq ft) | $2,482,031 |
| - | 172m$^2$ (1854 sq ft) | $2,506,783 |

132 The Defendants further submit that as Ms Yick was engaged by the CSC to prepare the valuation report for the unit types,[35] she can no longer be considered to be independent for commenting on the MOA, which is almost (90%) weighted in favour of her own earlier valuation. This contravenes the requirement under paragraph 1(*e*)(vi) of the First Schedule of the LTSA, that before making an application under s 84A(1) of the LTSA, the SPs must ensure that there is a report by an independent valuer on the proposed method of distributing the proceeds of the sale. As the MOA was based on Ms Yick's evidence, it was not arrived at in good faith.

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34 Defendants' Written Submissions at para 85.

35 Yick's Affidavit at p 27.

133 The Claimants disagree that Ms Yick is not independent and submit that the Defendants have not raised any issues that her valuation of the unit types is not fair and/or unreasonable.

134 Relying on the evidence of Ms Yick, the Claimants submit that the MOA based on 90% valuation, 5% strata area, and 5% share value was the fairest. Ms Yick explained that she examined the variances of collective sale premiums based on a wide spectrum of combinations amongst share value, strata area and valuation ranging from, 100% share value; 100% strata area; 50% share value and 50% strata area; and various other percentage combinations of share value and strata area, according to a combination method that involves various permutations of share value, strata area, and valuation.[36]

135 Ms Yick shared that for a RP of $820m, the MOA of 90% valuation, 5% strata area, and 5% share value yields the smallest difference (2.63%) between the unit type with the highest premium (44.41%) and the unit type with the lowest premium (41.78%). For the Sale Price of $890m, the MOA returns similar results. This MOA achieved the smallest difference (2.86%) between the unit type with the highest premium (56.74%) and the unit type with the lowest premium (53.88%), compared to apportionments of a different combination. For the premium test analysis which she used, the method that shows the lowest variance in the collective sale proceeds premiums amongst all typical residential/commercial units is deemed to be the fairest and the most equitable manner of distributing the sale proceeds amongst all owners.

136 In other words, as the difference was small, any gain enjoyed or loss suffered by individual households compared to others was marginal. Hence,

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[36] Yick's Affidavit at pp 10–12 and paras 15–16.

Ms Yick's view is that the MOA based on 90% valuation, 5% share value, and 5% strata area is the fairest.

137 The Claimants point out that in *Realty Centre*, the court compared two methods of apportionment. The first MOA gave a premium variance of 130% based on the original RP and 106% based on the revised RP, while the second MOA resulted in a premium variance of 53% based on the original reserve price and 48% based on the revised reserve price ("MOA2"). The court in *Realty Centre* found at [50] that, comparing the two, even if the second MOA "was not the perfect apportionment method, it was *overall* more even-handed and equitable to *all* the SPs, and supported the plaintiffs' case that the adoption of MOA2 was not tainted by bad faith".

138 Here, the MOA that the CSC relied on resulted in a premium variance of 2.86% while the method that Mr Foo advocated for (*ie*, a MOA based on 65% strata area and 35% share value) resulted in a premium variance of 22.66%.[37] In comparison, the MOA that the CSC relied on was more even-handed and equitable to all SPs, overall. The Claimants also point out that while the Defendants claim that the common area of Chuan Park is expansive, they have not provided any credible evidence to show the size of the common area.

***Decision***

139 I find that the Defendants have not shown that the transaction was not in good faith on the basis of the CSC arriving at the MOA based on 90% valuation, 5% strata area, and 5% share value.

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37 Yick's Affidavit at p 54.

140 First, I accept Ms Yick's evidence that the MOA used resulted in the smallest premium variance.

141 Second, Ms Seow agreed with Ms Yick that the smaller the premium variance, the better. This view accords with the findings of the court in *Deorukhkar Sameer Vinay and others v Quek Chin Kheam* [2018] SGHC 171 at [53]–[54] that the MOA relied on there was the fairest as it resulted in the smallest premium variance. Furthermore, Ms Seow could not see anything unfair about the method used by Ms Yick, although she caveated that she did not have enough information at this point.[38]

142 Third, while the Defendants sought to rely on the decision of *Realty Centre*, the court's acceptance of the MOA2 (*ie*, the MOA which resulted in a premium variance of 53%) was on the basis that it was overall more even-handed and equitable to all SPs, compared to the MOA that resulted in a higher premium variance. Further, this lower premium variance supported the plaintiffs' case in *Realty Centre* that the MOA2 used was not tainted by bad faith. In so far as an analogy is drawn by the Defendants with *Realty Centre*, the MOA that the CSC relied on resulted in a premium variance of 2.86%, while the MOA that Mr Foo advocated for resulted in a premium variance of 22.66%. Comparing the two, the MOA relied on by the CSC is more equitable to all SPs and supports the Claimants' case that the MOA was not arrived at in bad faith.

143 Fourth, while the Defendants submitted through Mr Foo that the MOA should be 65% strata area and 35% share value, their valuation expert, Ms Seow, did not provide a view on what the MOA should have been, nor did she provide any support for Mr Foo's preferred MOA. Indeed, she agreed during the hearing

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[38] Transcript (26 April 2023) at p 20 line 30 to p 21 line 3.

that using only the share value as the MOA method would be unfair, as there are only two share values, "3" and "4", and the share value is not proportionate to the size of the unit.[39] For example, units with 109m$^2$ and 190m$^2$ both have share value of "4".[40] She also agreed that using only the strata floor area was not so fair, as there were units with larger strata floor area but less liveable non-enclosed space.[41] The thrust of Ms Seow's evidence suggests avoiding over-reliance on share value and strata area, for the MOA.

144 Fifth, while the Defendants cited two examples of unfairness where owners of larger units would receive a smaller amount of the Sale proceeds than those with a smaller unit (see [131]), these examples were cogently addressed by Ms Yick. She explained that for the examples given by the Defendants, the units of 182m$^2$ and 184m$^2$ are walk-up apartments, while the units with 172m$^2$ would be apartment types "C" and "D".[42] The former apartment type has a terrace and courtyard, which are non-enclosed spaces. When past transactions for Chuan Park were examined, apartment units with relatively more enclosed liveable space typically transacted at a higher price compared to units that are walk-up apartments, which had more non-enclosed spaces and less liveable space.[43] I find that Ms Yick's explanation logically accounts for the difference in the receivable Sale proceeds in the examples raised by the Defendants.

145 Sixth, while the Defendants claim that there is expansive common property in Chuan Park which should have been taken into account through the

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39 Transcript (26 April 2023) at p 11 lines 5 to 18.

40 Yick's Affidavit at p 50, items 2 and 9 of the Table.

41 Transcript (26 April 2023) at p 16 lines 22 to 28.

42 Yick's Affidavit at pp 22, 24–25.

43 Transcript (26 April 2023) at p 35 line 20 to p 38 line 14.

owners' share value, they have not provided any evidence to establish their claim as a matter of fact. Moreover, Ms Seow accepted that if valuation is done using comparables taken from the same development, the valuation of the unit would have taken into account the share value ascribed to that unit.[44] Ms Yick's valuation was indeed done using comparables taken from the same development.

146 In relation to the Defendants' submission on the Independent Valuer Ground, I find that the Defendants have failed to show that Ms Yick is not an independent valuer for the purposes of para 1(*e*)(vi) of the First Schedule to the LTSA. While the Defendants have had the opportunity to provide expert evidence through Ms Seow to show that Ms Yick's valuation of the unit types is wrong, or that the MOA relied on by the CSC is wrong, they have not done so. Neither have they, through Ms Seow or Mr Foo, been able to point out which part of Ms Yick's valuation of the unit types or her assessment of the MOA is wrong. The Defendants have also not suggested that Ms Yick is not independent because of her connections with the CSC, ERA, or the Developer.

147 In summary, I find that the Defendants have not shown that the CSC did not act in good faith in arriving at the MOA. Accordingly, s 84A(9)(*a*) of the LTSA does not operate to prevent the court from approving an application for collective sale made under s 84A(1) of the LTSA.

## Conclusion

148 For the reasons above, I will grant orders in terms of prayers 1 to 5 and 8 in OA 869. As costs follows the event, the Claimants will be awarded the costs

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44 Transcript (26 April 2023) at p 33 line 29 to p 34 line 6.

of the proceedings. Directions have been given to parties on the filing of written submissions on the quantum of costs and disbursements.

Kwek Mean Luck
Judge of the High Court

Narayanan Sreenivasan SC, Ang Mei-Ling Valerie Freda and Kelly Wah (K&L Gates Straits Law LLC) for the claimants;
Lee Peng Khoon Edwin, Amanda Koh Jia Yi and Smrithi Sadasivam (Eldan Law LLP) for the defendants.

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