Ramachandran Jayakumar and another *v* Woo Hon Wai and others and another matter [2017] SGCA 36

Case Number	: Civil Appeal No 11 of 2017 and Summons No 39 of 2017
Decision Date	: 09 May 2017
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Chao Hick Tin JA; Tay Yong Kwang JA
Counsel Name(s)	: Adrian Tan, Kenneth Chua and Kenneth Kong (Morgan Lewis Stamford LLC) for the appellants in Civil Appeal No 11 of 2017 and the applicants in Summons No 39 of 2017; N Sreenivasan, SC and Vithyashree (Straits Law Practice LLC) for the 1st, 2nd and 3rd respondents.
Parties	: RAMACHANDRAN JAYAKUMAR — SIMON MAHENDRAN S/O PAKKIRISAMY — WOO HON WAI — LEE CHIA PHENG ANTHONY — TAN TIONG SOON STEPHEN — ELIZABETH JOSEPH — CHAN KUM LIN — CHOW YEUI FONG

Land – Strata titles – Collective sales

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2017] SGHC 17.]

9 May 2017 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

1 This is an appeal against the decision of the High Court judge ("the Judge") approving the application for the collective sale of a development known as Shunfu Ville ("the Property"). The Judge's decision is reported as *Woo Hon Wai and others v Ramachandran Jayakumar and others* [2017] SGHC 17 ("the GD"). The first, second and third respondents were the plaintiff-applicants in the court below. They are the authorised representatives of the Property's subsidiary proprietors and are members of the collective sale committee ("the CSC") formed pursuant to s 84A(1A) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("LTSA") to manage the collective sale of the Property. The appellants and the remaining respondents were the defendants in the court below. They are the subsidiary proprietors who objected to the collective sale application. The fourth respondent has since settled her dispute with the CSC, while the fifth and sixth respondents had ceased to participate in the proceedings before the High Court by the time of the hearing below (see the GD at [11]). It was thus unclear to us why they were joined as parties to the appeal but the appellants have since confirmed that these respondents have no involvement in the present proceedings. Therefore, it is only the appellants who remain opposed to the proposed sale of the Property and they, together with the first, second and third respondents, comprise the relevant parties to this appeal. The first, second and third respondents will be referred to collectively as "the respondents" in this judgment.

2 The appellants contend that the decision of the Judge should be set aside and that the collective sale of the Property should not have been approved. In this regard, they advance two main contentions:

(a) First, that the collective sale was not conducted in good faith taking into account the sale price that was obtained. This ground of objection rests on s 84A(9)*(a)*(i)(A) of the LTSA; and

(b) Second, that the respondents acted *ultra vires* in the collective sale. This latter argument rests on the appellants' contention that the application to the court was brought on behalf of a differently constituted group of subsidiary proprietors making up the requisite majority prescribed under the LTSA than the group which signed the original collective sale agreement. According to the appellants, this is contrary to the mandatory requirements of the LTSA.

We elaborate on these objections in the course of this judgment.

The law governing collective sales

3 Because it will be helpful to outline the statutory framework that governs the collective sale process before we turn to the facts, we begin with this. The applicable legal framework is set out in the LTSA and in cases interpreting and applying the relevant provisions.

The legislative purpose of the LTSA and the policy on collective sales

4 As we observed in *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 2 SLR(R) 597 at [5], the collective sale is "a statutory construct to give effect to the Government's policy to facilitate urban renewal by enabling old apartment blocks to be redeveloped by the private sector". The provisions for collective sales under the LTSA give effect to this by recognising that while subsidiary proprietors are generally entitled to make decisions on whether and when to sell their property, collective sales are permitted even if these have the effect of compelling some subsidiary proprietors to dispose of their property against their will. However, because of their potentially draconian effect, the LTSA also provides that collective sales may only be permitted if a sufficient number of subsidiary proprietors agree to the sale *and* certain procedural safeguards are met to protect the position of objecting subsidiary proprietors.

5 Initially, unanimous consent amongst the subsidiary proprietors was required before a collective sale could be effected. However, the Land Titles (Strata) (Amendment) Act 1999 (Act 21 of 1999) ("Act 21 of 1999") which came into effect on 11 October 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 (Bill 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. ...

7 After considering the Select Committee's views that the Board's approach to collective sales should be made clearer in the legislation, Bill 28 of 1998 was amended to provide under s 84A(9) of the LTSA the matters the Board could look into to satisfy itself as to whether the transaction was in good faith. Finally, s 84A(7) was also introduced to identify specific considerations which the Board should have regard in the event any subsidiary proprietors filed objections to the collective sale.

8 In 2007, further amendments were introduced in order to provide additional safeguards and greater transparency for subsidiary proprietors involved in collective sales, but at the same time, it was noted in Parliament that these amendments were not to make it unduly onerous to achieve collective sales (*Singapore Parliamentary Debates, Official Report* (20 September 2007) vol 83 at cols 1994-1995 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law)). The consent requirements in s 84A(1) of the LTSA were altered so that in addition to achieving consent from subsidiary proprietors holding a requisite majority of share values, consent from subsidiary proprietors representing a prescribed majority of the total area of lots had to be obtained as well. The Second Schedule and Third Schedule to the LTSA were also introduced to provide for rules to regulate the formation and proceedings of a collective sale committee.

9 In 2010, further amendments to the LTSA were introduced by the Land Titles (Strata) (Amendment) Act 2010 (Act 13 of 2010). Under these amendments, the High Court was to take over some of the Board's functions in hearing and resolving objections to collective sale applications. The specific considerations to be taken into account where subsidiary proprietors filed objections to the collective sale and the matters to be examined in determining whether the transaction was in good faith under ss 84A(7) and 84A(9) were nevertheless preserved, evidently to uphold the same policy objectives that were set out when the provisions were first introduced into the LTSA and to maintain the protections afforded to minority or dissenting subsidiary proprietors. Sections 84A(7) and 84A(9) of the LTSA as they now stand provide as follows:

(7) Where one or more objections have been filed under subsection (4A) in respect of an application under subsection (1) to the High Court, the High Court shall, subject to subsection (9), approve the application and order that all the lots and common property in the strata title plan be sold unless, having regard to the objections, the High Court is satisfied that —

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

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

...

(9) The High Court or a Board shall not approve an application made under subsection (1) —

(*a*) if the High Court or Board, as the case may be, is satisfied that —

(i) the transaction is not in good faith after taking into account only the following

factors:

(A) the sale price for the lots and the common property in the strata title plan;

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

(C) the relationship of the purchaser to any of the subsidiary proprietors;

...

10 What emerges from this is the clear policy intention of the LTSA's collective sale scheme to meet a public interest in creating more homes for Singaporeans in prime freehold areas while ensuring that the rights and interests of all affected parties, especially those of minority subsidiary proprietors who oppose a sale, are taken into account and adequately protected.

The relevant provisions of the LTSA

11 Against the backdrop of that policy perspective, we turn to the key provisions of the LTSA for the purposes of the present appeal.

12 Section 84A(1)(*b*) of the LTSA, which provides the essential pre-condition for a collective sale application to be made in this case, states:

> **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).
>
> [emphasis added]

13 Paragraphs 1 and 2 of the First Schedule to the LTSA govern the timelines for the execution of the collective sale agreement, and state:

> 1. Before making an application to a Board, the subsidiary proprietors referred to in section 84A(1) … shall —
>
> (a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —
>
> (i) in the case of an application under section 84A…, all the lots and common property

in a strata title plan;

…

2.—(1) For the purposes of this Schedule —

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

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

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

14 It will be noted that two 12-month periods are provided for in paras 1 and 2 of the First Schedule to the LTSA. In this judgment, we will refer to the 12 months from the date the first subsidiary proprietor signs the collective sale agreement (in para 2) as "the First Time Period" and to the 12 months before the application to the Board is made (in para 1) as "the Second Time Period". In *Chang Mei Wah Selena and others v Wiener Robert Lorenz and others and other matters* [2008] 4 SLR(R) 385, the High Court held (at [28]) that these operate independently and do not refer to a single period even though they may overlap. Based on how these timelines are to operate, therefore, there is in effect a maximum period of 24 months less one day under the LTSA for the entire collective sale process to be brought from conception to an application being made to the Board for approval. This view was not challenged by the parties in this appeal.

15 Finally, para 11 of the Third Schedule to the LTSA provides a requirement for the sale to be conducted by way of a public tender although it also recognises that in the event of an unsuccessful public tender, the sale may be concluded by private treaty within ten weeks from the close of the public tender. Paragraph 11 provides as follows:

Collective sale by public tender or auction

11.—(1) The collective sale of all lots and common property in a strata title plan shall be launched for sale only by way of public tender or public auction.

(2) A valuation report by an independent valuer on the value of the development as at the date of the close of the public tender or public auction shall be obtained by the collective sale committee on the date of the close of the public tender or public auction.

(3) Notwithstanding sub-paragraph (1), *the collective sale committee may*, ***within 10 weeks from the close of the public tender or public auction*** *, enter into a private contract with a purchaser for the sale of all the lots and common property in a strata title plan*.

[emphasis added in italics and bold italics]

Facts

16 Against that backdrop, we turn to the factual background to the present dispute.

17 The Property is a 32-year-old development which comprises 358 units housed in three 16-storey apartment blocks and three low-rise blocks of maisonettes. Originally an HUDC estate, it was privatised in 2013 whereupon the responsibility for maintenance and repairs shifted from the Housing and Development Board and the relevant Town Council established under the Town Councils Act (Cap 329A, 2000 Rev Ed) to the Property's management corporation. Since 2014, the Property has experienced a deficit in its operating budget due to various maintenance issues. Maintenance issues remain a live concern today as the buildings continue to deteriorate with age.

The collective sale process begins with a proposed reserve price of $668m

18 On 23 November 2013, the CSC was formed to explore the possibility of a collective sale of the Property. The CSC engaged Jones Lang LaSalle ("JLL") as its property consultants. JLL suggested a price range of between $650m and $680m for the Property's reserve price.

19 On 12 July 2014, an extraordinary general meeting of the subsidiary proprietors was held. A collective sale agreement which stated a reserve price of $668m ("the CSA") was presented. The CSA included a provision for the sale to be concluded at a higher price and for the reserve price to be raised without the need for the subsidiary proprietors who had already signed the CSA to enter into a fresh supplementary agreement. Lawhub LLC, the legal advisors engaged to assist with this matter, explained the terms and conditions of the CSA and JLL briefed the attendees on such issues as the reserve price, the estimated timeline and the likely costs of the proposed collective sale. Thereafter, a majority of the attending subsidiary proprietors voted to approve the terms of the CSA. The first subsidiary proprietor signed the CSA on the same day, which started the clock running against the CSC to complete the transaction within the statutory time limits prescribed under the LTSA (see above at [13]-[14]). Consequently, the CSC had to obtain the consent of subsidiary proprietors who together held 80% of the share values as well as of the total area of all the lots within 12 months and conclude the execution of the CSA by and among the consenting subsidiary proprietors of the Property by 11 July 2015: see LTSA s 84A(1)*(b)* read with paras 1 and 2 of the First Schedule.

The reserve price is increased from $668m to $688m

20 By 2 October 2014, subsidiary proprietors representing 60.6% of the total share value and total strata area of the Property had consented to the collective sale on the terms stated in the CSA but support from the subsidiary proprietors of another 70 units or so was still required in order to reach the requisite 80% threshold. By a letter of the same date, JLL informed all subsidiary proprietors that it intended to maintain the reserve price at $668m because it was "conscious to maintain a reserve price that [was] attractive enough for the owners yet not excessive to put off potential developers".

21 By 18 May 2015, the requisite threshold of consents had still not been reached. The CSC and JLL held a meeting to discuss increasing the reserve price to various figures, namely to $685m, $688m, $700m or $721m. The CSC eventually settled on the figure of $688m and passed a resolution to this effect. On 20 May 2015, information about the increase in reserve price was duly published among the subsidiary proprietors in an effort to garner the support needed to meet the statutory threshold.

The first public tender is launched with a reserve price of $688m

22 By 11 July 2015, which was the last day for the CSA with the requisite majority to be executed, the subsidiary proprietors who had signed the CSA represented 81.0056% of the share value and 80.9932% of the total strata area in the Property. It appears from the records that the requisite threshold was crossed on that very day after the subsidiary proprietors of at least four of the

Property's units, representing 1.1173% of the share value and 1.1139% of the total strata area, signed the CSA. In other words, the CSC had achieved the threshold for the collective sale to proceed, but only just within the first statutory time limit under the LTSA.

23 On 3 September 2015, the CSC launched a public tender with a reserve price of $688m ("the First $688m Tender") pursuant to para 11(1) of the Third Schedule to the LTSA. As counsel for the respondents, Mr N Sreenivasan, SC, pointed out, what this signalled to the market was that the subsidiary proprietors had given the CSC a mandate to conclude the collective sale at that price, but this did not foreclose bidders either from offering less or from expressing interest in negotiating a sale at a lower price. Indeed, in keeping with this, it transpired that at the close of the First $688m Tender on 27 October 2015, no formal bids were received but two developers did submit expressions of interest. One of these was the Qingjian group of companies ("Qingjian"), which indicated its interest in negotiating a deal at $628m. The other developer (hereinafter referred to as "Interested Party X") did not state a price, and indicated that it would be interested to negotiate only if the CSC was able to successfully appeal to the authorities for a two-year extension of time to complete the redevelopment and the subsequent sale of the units so as to earn a remission from Additional Buyer's Stamp Duty (ABSD) ("the ABSD Remission"). According to the respondents, this was because under the property market cooling measures that had been implemented by the Government in December 2011, developers were required to build and sell all units within five years. Failing that, ABSD would be imposed on the entire value of the land purchase as long as even a single unit remains unsold at the end of the stipulated time period. This was a significant concern for those contemplating the purchase and redevelopment of a large property, which this undoubtedly was. A two-year extension would ameliorate this somewhat as it would mean that the developer would then have seven years, instead of five, to build and sell all the units. As it transpired, by the end of the First $688m Tender, the CSC had already appealed unsuccessfully to the Government for an extension of time and a second appeal was then in progress. On 28 October 2015, this too was rejected.

The reserve price is reduced from $688m to $628m

24 On 24 November 2015, the CSC held a meeting with the subsidiary proprietors during which they reported the results of the First $688m Tender and the appeals in connection with the ABSD Remission. The CSC informed the subsidiary proprietors that they did not think it likely that a deal at or in excess of the amount of $688m could be secured by 5 January 2016. This was the final date by which they could conclude a sale by private treaty with a developer following an unsuccessful public tender, this being the end of the ten-week period from the close of the First $688m Tender: see para 11(3) of the Third Schedule to the LTSA at [15] above. The CSC therefore proposed lowering the reserve price to $638m. If this was acceptable to the subsidiary proprietors, then those who agreed would be required to sign a supplementary joint agreement ("SJA"), this taking effect only if the consent of subsidiary proprietors representing at least 80% of the total share value and total strata area of the Property was obtained. As we explain later, this was all provided for in the CSA. It seems to be the case that there was very strong support, at least from those attending the meeting, for the reserve price to be lowered instead to $628m, this being the price at which there was a clear expression of interest from one bidder. Finally, JLL also briefed the subsidiary proprietors on the possibility of a second tender exercise being held.

25 The context of this idea of a second tender exercise should be noted, because it featured significantly in the appellants' complaint against the present sale. From the perspective of JLL and the CSC the position was that having launched the collective sale process on 12 July 2014 (see [19] above]), the application to the Board to approve the sale had to be made within a timeline of approximately two years at the most. Moreover, *within that time*, it was necessary to achieve a number of milestones, which it would be useful to set out briefly:

(a) Pursuant to para 1 read with para 2(1) of the First Schedule to the LTSA, within 12 months of the date the first subsidiary proprietor signed the CSA, it was necessary to obtain the accession of subsidiary proprietors representing at least 80% of the total share value and total strata area of the Property to the CSA. As noted above at [22], this was achieved just within the 12-month period in this case;

(b) Pursuant to para 1 of the First Schedule to the LTSA, an application under s 84A(1) for the collective sale of the Property had to be brought to the Board within a period of 12 months from the time the CSA had been signed by the requisite majority of subsidiary proprietors. Hence the application, in this case, had to be made within 12 months of 11 July 2015, this being the date on which the requisite majority was obtained;

(c) Pursuant to para 11 of the Third Schedule to the LTSA, a collective sale must be launched for sale by way of public tender but under para 11(3), a sale may be concluded by private treaty within ten weeks from the close of the public tender. The First $688m Tender had closed on 27 October 2015, with no tenders received. The time for a sale by private treaty to be negotiated thereafter expired on 5 January 2016.

26 In these premises the CSC faced a dilemma. One option was to abandon the sale and to consider reviving the process subsequently. But this would compound certain difficulties including injecting a persistent state of uncertainty for all subsidiary proprietors for a period of up to two more years while attempts were made to secure the requisite majorities and meet the relevant milestones. This would also have seemed an unappealing prospect, given that by this time in late 2015, they had not only secured the CSA at a reserve price of $688m and against the backdrop of a weakening property market, as to which there was no serious dispute, they also had an expression of interest from a developer at a price of $628m. To abandon the existing collective sale and to start all over again would additionally have compounded the uncertainty of whether it would be possible to secure a fresh bid at this price at a significantly later time. As against this, another option was to secure the agreement of the subsidiary proprietors to lower the reserve price giving the CSC the mandate to close the deal at or near the indicated price of $628m. If this was going to be attempted within the context of *this* collective sale, it remained necessary to try to close such a deal and bring an application to the Board before the statutory timeline expired. At the material time, this was thought to be 10 July 2016, this being the end of the 12 months from which the requisite majority support to the CSA was obtained on 11 July 2015 (see above at [25(b)]). To accomplish this, it would be necessary to get enough subsidiary proprietors to agree to a revised mandate and in conjunction with this, a second public tender would have to be called. It was in this context that JLL indicated that the timing of the second public tender would depend on the progress of the accessions to the SJA. It was anticipated that the second public tender would most likely have to be launched by January or early February 2016 and close around March or April 2016 leaving sufficient time to finalise the sale and then bring an application for collective sale to the Board by 10 July 2016. Given all this, JLL estimated that the latest a deal would have to be concluded would be by May 2016.

27 On 25 November 2015, this being the day following the meeting with the subsidiary proprietors, the CSC passed a resolution to seek a fresh mandate at a revised reserve price of $628m. A supplemental agreement ("the 1st SA") was prepared which reduced the reserve price of $688m in the CSA to $628m. Clause 3 of the 1st SA also provided that in the event the CSC resolved to make any increase to the reserve price, the subsidiary proprietors who had already signed the 1st SA shall be deemed to have agreed to the *increased* reserve price without having to sign any further documents. In effect this was to enable the CSC to negotiate the price upwards thereafter.

28 By a letter dated 27 November 2015, JLL informed all the subsidiary proprietors of the issues which had been conveyed during the 24 November 2015 meeting and of the CSC's resolution to seek a fresh mandate at the revised reserve price of $628m.

The reserve price is increased from $628m to $638m

29 By 4 January 2016, the subsidiary proprietors who signed the 1st SA represented only about 58% of both the total share value and total strata area of the Property. The CSC then passed a resolution to increase the reserve price to $638m. According to the minutes of the meeting, this was prompted by "owners' feedback and the desire to attain more support to [the agreement]". A further supplemental agreement ("the 2nd SA") was then prepared, revising the reserve price to $638m.

The second public tender is launched with the reserve price still at $688m

30 As noted at [26] above, JLL had foreshadowed that if the collective sale was going to be completed within the statutory timeline, a second public tender would have to be launched by January or early February 2016. As the end of January 2016 approached, neither the 1st nor the 2nd SA had secured the requisite thresholds. In these circumstances, the CSC launched a second public tender with the existing mandated reserve price (namely, $688m) on 28 January 2016 ("the Second $688m Tender"). As this formed one of the central planks of the appellants' case, it would be helpful to set out briefly some of the main complaints that were raised against this:

(a) It was said that this incorrectly signalled to the market that the subsidiary proprietors were adamant and resolute in seeking to achieve the reserve price of $688m. This had the effect of chilling any interest that might have been there on the part of other developers who might have been interested but only if they thought there was a realistic prospect of closing the deal at a price that was lower than $688m;

(b) Since the CSC and JLL had made it clear that they did not think the price of $688m was attainable, their act of launching the Second $688m Tender was not something done in the belief that they actually had a prospect of achieving this price; rather it was done with a view to fulfilling the statutory requirement of calling a public tender as a matter of form only, while the substantive intent was to expect another unsuccessful tender in order to then conduct a sale by private treaty within the ten-week period following the close of the tender.

31 The Second $688m Tender closed on 10 March 2016. Again, no formal bids were received but two developers submitted expressions of interest. One of these was Qingjian which once again indicated interest at $628m. The other developer (hereinafter referred to as "Interested Party Y") had not submitted any expression of interest in respect of the Property prior to the Second $688m Tender and it did not indicate a price at which it might be interested to acquire the Property. Further to the requirement under para 11(2) of the Third Schedule to the LTSA, the CSC also obtained an independent valuation of the Property on the same day and this assessed the current market value of the Property to be $600m.

The CSC enters into a private contract with Qingjian

32 Sometime between 10 and 14 March 2016, the CSC, through JLL, informed Qingjian and Interested Party Y that it was prepared to try to secure a fresh mandate from the subsidiary proprietors based on a revised reserve price of $638m. By 14 March 2016, both parties had responded. Qingjian indicated that it was prepared to offer $638m subject to the condition that the

CSC committed to negotiating exclusively with it, while Interested Party Y stated that it was not prepared to offer $638m.

33 On 22 March 2016, Qingjian issued a Letter of Intent (LOI) for the purchase of the Property at $638m. The LOI was premised on the CSC not negotiating the sale of the Property with any other party. Over the next few weeks, Qingjian and the CSC continued to discuss the terms of the LOI.

34 On 14 April 2016, the CSC convened an extraordinary general meeting of the subsidiary proprietors. By this time, the subsidiary proprietors who had signed either the 1st SA or the 2nd SA constituted about 72.6% of the total share value and strata area of the Property. The CSC was therefore close to achieving the 80% mandate to proceed with a sale at $638m. At the meeting, the CSC reported the results of the Second $688m Tender, including the expressions of interest by Qingjian and Interested Party Y. The ongoing discussions with Qingjian were clearly set out in a presentation to the attending subsidiary proprietors, who were also informed of Qingjian's demand for exclusivity in negotiations and its proposed purchase price. While the subsidiary proprietors who attended the meeting represented only 49% of the total share value in the Property, the vast majority of them voted in favour of pursuing the negotiations exclusively with Qingjian with a view to closing the deal at or near $638m. The CSC proceeded to inform Qingjian on 19 April 2016 that it was prepared to negotiate exclusively with it.

35 On 6 May 2016, Qingjian issued an LOI with the finalised terms. Under these terms, the CSC was to negotiate exclusively with Qingjian from the date of its acceptance of the LOI until 19 May 2016 (being the end of the ten-week period from the close of the Second $688m Tender). Since the CSC had not yet achieved the prescribed threshold of consents from the subsidiary proprietors for the sale to be transacted at $638m, Clause 5 of the LOI also provided that the agreement and all the obligations thereunder would be "fully terminated" if the threshold was not obtained within certain prescribed time limits. The CSC signed the LOI on the same day.

36 In order to enter into a contract of sale by private treaty with Qingjian by 19 May 2016, the CSC had to achieve the 80% consent threshold by 12 May 2016. This was to factor in the five-day cooling-off period (excluding Saturdays, Sundays and public holidays) prescribed under para 6 of the First Schedule to the LTSA, which allows a subsidiary proprietor to rescind his agreement within five days from the date he signs the agreement.

37 The CSC achieved the 80% threshold of support by that date but only just. On 12 May 2016, subsidiary proprietors representing 80.7263% of the total share value and 80.7819% of the total strata area of the Property had signed either the 1st SA or the 2nd SA. On 19 May 2016, the CSC entered into a sale and purchase agreement with Qingjian ("the SPA") to sell the Property for $638m.

The CSC applies for a collective sale order

38 On 8 July 2016, the CSC filed an application to the Board for a collective sale order. This cut close to the deadline by which the application had to be made, 10 July 2016 being 12 months from the time the CSA had been signed by the requisite majority of subsidiary proprietors (see above at [25(b)] and [26]). On 19 July 2016, five subsidiary proprietors lodged objections with the Board in relation to the proposed sale. After mediation attempts failed, the Board issued a stop order on 20 September 2016 in respect of the CSC's application. The CSC then proceeded to file an application to the High Court on 6 October 2016, seeking orders, among others, that all the subsidiary proprietors be bound by the terms of the CSA (including the 1st SA and the 2nd SA) and the SPA.

The proceedings below

The objections

39 By the time of the hearing before the Judge, only the two appellants remained substantively opposed to the application and their principal objections included the following:

(a) The CSC, according to the appellants, did not negotiate the sale in good faith. Among other things, the appellants alleged that the CSC failed to follow the best price-discovery process mandated by s 84A read with the para 11 of the Third Schedule to the LTSA, because it did not launch a public tender at the price of $638m before negotiating a private treaty sale at the same price. This was exacerbated by the fact that the CSC then lost the opportunity to generate competition among the bidders in order to secure a better price when it agreed to negotiate with Qingjian on an exclusive basis and commenced negotiations with it even before obtaining the requisite statutory approval.

(b) The appellants also raised a jurisdictional point. The appellants contended that the respondents were not entitled to make the application because they did not in fact meet the statutory threshold of consents under s 84A(1) of the LTSA to support a collective sale at a sale price of $638m. Although the variations to the CSA under the 1st SA and the 2nd SA had acquired the requisite majority consents prescribed by the LTSA, the variations were allegedly invalid because the relevant consents were not obtained within 12 months of the time the first signature to the CSA was obtained (which the appellants argued was the relevant statutory deadline as mandated by s 84A read with paras 1 and 2 of the First Schedule to the LTSA).

40 A number of other miscellaneous arguments were also raised but it is not necessary in this judgment to refer to them in any detail. By the time of the appeal, the appellants had decided not to pursue most of these points and have since homed in on the good faith issue and the jurisdictional point, each of which has been developed and reframed to some extent. We will set these out in greater detail below.

The decision below and the events leading up to the present appeal

41 The Judge dismissed the appellants' claims and approved the respondents' application for sale of the Property. Dissatisfied with the Judge's decision, the appellants filed a notice of appeal on 25 January 2017.

42 On 27 January 2017, the respondents applied to have the appeal heard on an expedited basis because of an alleged requirement under the terms of their SPA with Qingjian to obtain court approval for the collective sale by 18 May 2017. According to the respondents, Qingjian was not prepared to accede to any extension of time for the approval of the collective sale. The application was allowed and the appeal was accordingly heard on an expedited basis.

The present appeal

The appellants' case

43 In the present appeal, the appellants advance two main contentions.

Lack of good faith

44 The first argument put forward by the appellants is that the transaction is not in good faith in

relation to the sale price under s 84A(9)*(a)*(i)(A) of the LTSA. In essence this is broadly similar to the first of the principal grounds raised before the Judge which we have summarised at [39(a)] above. Specifically, it is argued that the CSC failed in its duty to "use all possible diligence to secure the best reasonable price" because of (i) the way it conducted the tenders; and (ii) its failure to engage all parties who had shown interest in purchasing the Property (through making enquiries, requesting tender documents and taking any other such steps).

45 In respect of the conduct of tenders, the appellants contend that the Second $688m tender was improper because:

(a) The CSC did not carry out a public tender of the Property at the reserve price of $638m before entering into the SPA with Qingjian ("the No Tender Issue"); and

(b) The CSC created a false market by conducting the Second $688m Tender even though it was in the process of gathering signatures in support of a reserve price of $638m. This had the effect of misleading bidders into thinking that it was holding fast to the $688m reserve price ("the Misleading Tender Issue").

46 We have previously touched on some of their main complaints at [30] above in the light of the context set out at [25]-[26]. In connection with the arguments already summarised in the preceding paragraph, the appellants also claim that the Second $688m Tender was improper because the launch was not carried out with the belief that there was actually a prospect of achieving a price of $688m; it was carried out essentially to enable the respondents to conduct a private treaty sale following an unsuccessful tender.

47 In respect of the alleged failure to engage with interested parties, the appellants contend that:

(a) The CSC failed to engage with all interested parties once the requisite majority support had been reached for $638m, even though it had reasonable grounds to believe that a better price was possible in the property market at the time ("the No Follow Up Issue"); and

(b) The CSC acted improperly in agreeing to the LOI and committing to dealing exclusively with Qingjian and to the price of $638m even before the requisite majority support had been obtained for a reserve price at that amount ("the LOI Issue").

48 Further, to the extent the CSC placed any reliance on the votes obtained at the extraordinary general meeting that was held on 14 April 2016 (see [34] above), it was contended that little, if any, weight should be placed on this because the subsidiary proprietors who attended that meeting allegedly constituted a self-selected group in favour of the sale with little interest in the concerns of the dissenting subsidiary proprietors.

49 Finally, insofar as the CSC relied on the time pressures it was facing to justify the particular course of action it pursued in attempting to secure a deal, these were pressures of their own making. According to the appellants, there was nothing to prevent the CSC from, for example, waiting for the requisite majority to sign the 1st or 2nd SAs before then launching a second public tender.

50 In the course of the hearing before us, counsel for the appellants, Mr Adrian Tan, also explained that although he was not alleging personal bad faith or moral turpitude on the part of the respondents, he was contending that as a matter of law, given the fiduciary duties owed by members of the CSC towards all subsidiary proprietors, especially the dissenting subsidiary proprietors, their failures as outlined above amounted to a lack of good faith to warrant disapproving the sale.

No requisite consent

51 As for the second argument raised in the present appeal, the appellants take a somewhat different jurisdictional point than the one they raised below in contending that the respondents acted *ultra vires* in prosecuting the collective sale. This was premised on an interpretation of the LTSA, under which the appellants contend that the subsidiary proprietors holding 80% of the relevant thresholds who make the application for collective sale under s 84A(1) must come from the very same group of subsidiary proprietors who had signed the CSA within the First Time Period. In this case, the subsidiary proprietors who consented to the sale at $638m from this group represented only 77.0876% of the total share value and 77.1132% of the total strata area, and the 80% threshold was made up by other subsidiary proprietors who signed either the 1st or the 2nd SA but not the original CSA. On this basis, the appellants submit that the CSC had not obtained the requisite level of consent under the LTSA to support the collective sale application, which was therefore *ultra vires*.

The respondents' case

52 The respondents deny that the transaction is tainted by any want of good faith. According to the respondents, since the site of the Property is large, any developer would have to build and sell a very large number of units (about 1,500) within a relatively short period of time or ABSD would be imposed and because of that, the pool of potential buyers was limited. The actions of the CSC must therefore be assessed against the backdrop of these realities. On the appellants' specific contentions, the respondents raise the following arguments:

(a) In response to the No Tender Issue, there is no requirement under the LTSA that a private treaty sale must be preceded by a public tender at the same price.

(b) In response to the Misleading Tender Issue, the respondents deny that the Second $688m Tender would deter potential investors. Potential bidders would have known that they could signify interest to purchase the Property at a lower figure if they were not willing to meet the reserve price of $688m, and indeed this was what Qingjian had done.

(c) In response to the No Follow Up Issue, the respondents maintain that it is clear from the documentary records that the CSC had been in contact with the interested parties and did in fact follow up on all expressions of interest. The subsidiary proprietors, including the appellants, were kept fully apprised of developments in the negotiations. The respondents also argue that in any case, there is no basis for finding that it was possible to achieve a better price in the circumstances.

(d) In response to the LOI Issue, the respondents rely on the fact that the matter of whether the CSC should engage in exclusive negotiations with Qingjian was put before the subsidiary proprietors for their decision during an extraordinary general meeting. It was following a vote in favour of entering into exclusive negotiations that was carried by an overwhelming majority of attending subsidiary proprietors that the CSC proceeded on this basis. Furthermore, the condition of exclusivity was imposed by the *only* interested buyer. The opportunity to sell the Property would have been lost if the respondents had not agreed to that condition. As to the argument that the subsidiary proprietors who voted in favour of entering into exclusive negotiations was a self-selected group, the respondents say there is no basis for so concluding since it was open to the dissenting subsidiary proprietors to attend the extraordinary general meeting and make their case if they wished to.

53 As for the appellants' argument that the requisite majority consent to apply for a collective sale

order was not achieved, the respondents submit that it is not necessary for the subsidiary proprietors making the application for the sale to come from the same group of subsidiary proprietors who had signed the CSA. As long as the requisite thresholds were met at each stage, the CSC could proceed legitimately.

Issues before this Court

54 These are the issues for us to rule on:

(a) Whether the transaction was in good faith taking into account the sale price of the Property; and

(b) Whether the respondents acted *ultra vires* in making the application for collective sale under s 84A(1).

Our decision

Whether the transaction was in good faith taking into account the sale price of the Property

"Good faith" in s 84A(9)*(a)*(i) of the LTSA

55 Section 84A(9)*(a)*(i) of the LTSA provides as follows:

(9) The High Court or a Board shall not approve an application made under subsection (1) —

(a) if the High Court or Board, as the case may be, is satisfied that —

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

(A) the sale price for the lots and the common property in the strata title plan;

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

(C) the relationship of the purchaser to any of the subsidiary proprietors; …

56 The meaning of "good faith" under this provision has been considered at length in our previous decisions. The key propositions relevant to this appeal are briefly stated below.

57 In *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Horizon Towers*"), we held at [133] that:

> In our view, the term "good faith" under s 84A(9)*(a)*(i) must be read in the light of the [collective sale committee'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 [collective sale committee] to discharge its statutory, contractual and equitable functions and duties faithfully and conscientiously, and to hold an even hand between the consenting and the objecting owners in selling their properties collectively. In particular, [a collective sale committee] must ac*t as a prudent owner to obtain the best price reasonably obtainable for the entire development*. ...
>
> [emphasis in original]

58 We affirmed in *Horizon Towers* that a collective sale committee is subject to the following 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.

59 We further noted that the LTSA did not specify precisely what it is about the sale price that should be taken into account in determining whether a given transaction is in good faith (see *Horizon Towers* at [129]). We thus held that "the entire sale process, including the marketing, the negotiations and the finalisation of that sale price (all of which steps ought to be evaluated in the context of prevailing market conditions), culminating in the eventual sale of the property" ought to be examined in determining whether the sale price is fair (at [130]). 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 (at [129]). Ultimately, however, the test of good faith in relation to the sale price of the Property is concerned with whether it was the best price *reasonably obtainable in the prevailing circumstances* (at [201]), and in this regard the factors enunciated in *Horizon Towers* must be appraised in the round. It bears emphasis 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. We will return to this point shortly in the context of the present arguments raised.

60 While we generally affirm our judgment in *Horizon Towers*, we think it would be useful to restate a few points which explains the context of that decision and in turn sheds light on how our judgment in that case should be approached. Before we do that however, we set out the key facts in that case which made it somewhat unusual:

(a) The collective sale committee there decided to sell the property to a developer at the reserve price despite (i) a suggestion from one of the committee members to seek the consenting subsidiary proprietors' approval to do so, given that property prices had suddenly risen quite sharply, as a result of which there was likely to be a substantial erosion of the premium promised to them when the reserve price had first been set; and (ii) the presence of other potential offers from a number of other developers, in addition to a letter of offer to purchase the property for a higher price. Notably, there was uncontroverted evidence which showed that the sale committee knew it would not obtain the mandate to proceed with the sale at the original reserve price had it gone back to the subsidiary proprietors;

(b) Two members of the sale committee in that case, one of whom was the chairman, had purchased additional units with the assistance of substantial financing in the period leading to their appointment, but this was not disclosed prior to the committee's decision to go ahead with the sale of the property; and

(c) No independent valuation of the property had been obtained.

61 Against that background, we set out our views on how the judgment in *Horizon Towers* is to be correctly understood and applied:

(a) First, in that case, there was evidence to suggest that a possible if not actual conflict of interest affected the collective sale committee or at least certain members of the committee. It is undoubtedly the case that members of a collective sale committee act as fiduciary agents and take on duties such as those set out at [58] above. Therefore, when the court is satisfied that one or more of the members of the committee are tainted by an actual or potential conflict of interest, it will inevitably be the case that the transaction as a whole will be even more closely scrutinised. In *Horizon Towers*, there was such a concern over a possible conflict of interest by virtue of the fact that certain members had made additional purchases of units in the lead-up to their appointment to the sale committee and had not made any disclosure of this fact prior to the decision to sell the property. The fact that those members elected not to testify to explain their non-disclosure suggested to the court that there was no reasonable explanation for the hasty decision to sell the property and that the conflict of interest had influenced their decision. In these circumstances, it is wholly unsurprising that we analysed the entire transaction with especial care. Absent any reason for thinking that members of a collective sale committee are actuated by any improper motives or any conflict of interest, and absent clear evidence that the transaction is tainted by unfairness towards some subsidiary proprietors, in particular the dissenting subsidiary proprietors, or by some deficit in the transaction, we think as a matter of common sense, that the transaction will less likely be refused approval. This follows because, as was noted in *Horizon Towers* itself at [131], "good faith" under s 84A(9)(*a*)(i)(A) of the LTSA entails considerations of good faith as a matter of common law and equity; this usually entails a finding of some want of probity on the part of the relevant parties, although this can be inferred from aspects of the transaction itself.

(b) This segues into our second observation. When we examined various aspects of the collective sale process in *Horizon Towers*, this must be seen in the context of our endeavouring to consider whether in *all the circumstances* there was sufficient reason to infer that the collective sale in that case was tainted by a lack of good faith. This could be traced, perhaps implicitly if not explicitly to the concerns over the conflict of interest affecting members of the sale committee and the absence of any steps having been taken to purge the conflict; and the court was concerned with an assessment of whether having regard to all the facts in the round the transaction ought to be stopped. As we pointed out to Mr Tan in the course of his submissions to us when he made reference to extracts from the judgment in that case, it would be wrong to consider that each of the specific elements which we found might be of concern there, to be in and of itself indicative of wrongdoing, if that element was found to exist in some other case without weighing all the facts of that case in the round. In the final analysis, it was necessary in *Horizon Towers*, and will generally be necessary in other cases, to consider the facts holistically instead of suggesting that any single one of the grounds relied on in *Horizon Towers* would suffice to cross the lack of good faith threshold in and of itself.

(c) Thirdly, Mr Tan made extensive reference to the fact that in *Horizon Towers* we referred to the duty to secure the best possible price as a critical aspect of a sale committee's conduct of the transaction and even identified specific steps that could or should have been taken. We make three points in relation to this. First, we prefer to frame the question in terms of whether the price obtained is *appropriate* in the circumstances. We choose to frame it this way because determining what the best price is can entail a theoretical inquiry. In the present case, there was an independent valuation obtained by the CSC in March 2016 which valued the Property at

$600m. Furthermore, the only bid that the CSC received in this case was initially $628m and this was later negotiated to $638m. To say that a better price was obtainable, as the appellants contend, seems theoretical and significantly, nothing has been put forward to establish this contention in this case. The real task for the court is to analyse all the circumstances, including the price, and then consider whether, in that light, it is appropriate to permit the sale to proceed. This leads to our second point in this connection, which is that the appropriate price always entails a fact-sensitive inquiry. This is not new and was recognised in *Horizon Towers* where our references to obtaining the best price were invariably qualified by words like "in the circumstances". Finally, a party seeking to make the argument that the price obtained is not an appropriate one for the purpose of letting the sale proceed should particularise the steps that should have been but were not taken *and* explain how the taking of those steps would have realised a better price.

62 In that light we turn to consider the facts that are before us.

Whether the CSC breached its duties under the law, resulting in the transaction not being in good faith

63 The appellants argue that the CSC had failed to discharge its duties in two major respects: (i) in the conduct of tenders and (ii) in the failure to engage with all parties who had shown interest in purchasing the Property.

The conduct of tenders

64 We consider the No Tender Issue and the Misleading Tender Issue together in this section, as well the complaint raised in connection with these that the motivation of the Second $688m Tender was to enable a private treaty to be entered into rather than a belief that there was any real prospect of achieving a sale price of $688m through the tender.

65 The appellants complain that the Property was sold to Qingjian at $638m without first offering it for sale by public tender at a reserve price of $638m. They also argue that the Second $688m Tender was not conducted in good faith because efforts to lower the reserve price of the Property were already in progress at this time. Instead, the CSC ought to have conducted a public tender at a reserve price of $638m once it obtained the required level of support, because that would have attracted more interested parties and helped the CSC discover the best price for the Property. They further submit that there was no reason for the CSC to have conducted the Second $688m Tender, which only had the effect of misleading interested parties and deterring potential buyers. The CSC's actions, according to them, therefore amounted to a lack of good faith in the transaction.

66 In our judgment, there is no merit in the appellants' contentions. Before proceeding any further, we acknowledge that the appellants' arguments rest on the core premise that the reserve price was something which was revealed to developers in the course of the tender. This was also a subject of dispute between parties, which led to the appellants' application to introduce further evidence in Summons No 39 of 2017 ("SUM 39"). We will address that application in our conclusion; at this point we continue with our judgment on the premise that the reserve price *was* made known to the market in the context of the tender, because in the course of our analysis, it will become evident that what the appellants seek to adduce is ultimately not material to the issues before us.

67 In the first place, although the appellants are correct to say that an offering by public tender is a pre-requisite to a sale by private treaty under para 11of the Third Schedule to the LTSA, there is simply nothing in the legislative material to suggest that the LTSA requires a private treaty sale to be

preceded by a public tender *at the same price*. In fact, the Parliamentary debates indicate that the private sale mechanism exists precisely to accommodate a situation where the sale committee may enter into a private contract at a *different* price when a public tender has not been successful. During the second reading of the Land Titles (Strata) (Amendment) Bill (Bill 32 of 2007), Prof S Jayakumar, Deputy Prime Minister and Minister for Law, in referring to the newly introduced requirement to launch a collective sale by way of public tender, said as follows (*Singapore Parliamentary Debates, Official Report* (20 September 2007) vol 83 at cols 1999-2000):

> Mode of sale: by public tender or public auction
>
> The amendments also seek to enhance the transparency of the mode of sale which, at present, is not regulated. … [A]t every launch of an en bloc sale, it must be by public tender or auction. *Following a tender or auction, especially one which fails to achieve the price acceptable to the sale committee, the sale committee can engage in follow-up negotiations for sale by private treaty with any bidder to get the best deal for the owners.* But any sale by private treaty must be concluded within 10 weeks from the close of the tender or auction. …
>
> [emphasis added]

68 In the circumstances, it seems clear to us that, subsequent to a failed public tender, there is simply no requirement for another public tender to be called at a lower price before a sale by private treaty can be concluded at that lower price. This was also the view of the Judge: see GD at [58]. As also acknowledged by the Judge (at [60]), to take a contrary view and require a collective sale committee to constantly test the private treaty price against what may be obtained in a public tender would be inefficient. Indeed, we think it might make it virtually impossible in all but the smallest developments to effect this, since before launching a new tender it will be necessary to secure the mandate of the subsidiary proprietors for the lowered price. Otherwise, the collective sale committee could find itself liable to a bidder that met the lowered reserve price during the public tender only to find the sale could not proceed because the committee lacked the necessary mandate from the subsidiary proprietors to complete the transaction.

69 Further, and in any case, while the facts which the appellants highlight in connection with the conduct of the Second $688m Tender indicate that the CSC was in somewhat of a rush, it seems clear to us that this was driven by the attempt on their part to meet the statutory timelines imposed for the collective sale; and in our judgment, this falls well short of establishing any lack of good faith on the CSC's part. It is undoubtedly the case that the CSC had on each occasion cut close to the timelines imposed by the statutory regime. But this is probably inevitable in the context of a large development such as this clearly was. There is certainly nothing to suggest that this was evidence of the CSC proceeding with undue haste.

70 As for the conduct of the Second $688m Tender, we are prepared to infer that in the circumstances, this was motivated in large part by the desire to enable the CSC to have another opportunity to enter into a private treaty with a prospective buyer during the ten-week period which followed the close of a public tender. But this, in itself, does not indicate an absence of good faith or impropriety on the CSC's part. Of course this too depends on the circumstances but as noted above at [26], the CSC was faced with a number of options. One undoubtedly was to abandon the sale altogether and perhaps leave another sale committee to try again to garner the necessary support to get a second collective sale attempt launched. But this had a number of significant drawbacks of which we highlight what appear to us to be the most compelling ones:

(a) First, the Property was an aging development with high and rising maintenance costs with

a likely offer that was already in excess of the valuation and with reasonable signs suggesting that the property market was soft and likely to remain so for some foreseeable time. It is often said that hindsight is a poor perspective from which to judge the wisdom of decisions taken in the face of uncertain circumstances, but in this case, hindsight, if anything, confirms the legitimacy of the fears that the CSC in this case had to contend with; and

(b) Second, a collective sale effort inevitably brings with it a period of uncertainty. This can be unsettling for all subsidiary proprietors, whether those in support of the collective sale or not. Given the possibility of a collective sale, major repairs and maintenance tend to be delayed as far as possible so as to avoid further sunk costs being incurred and then lost if the collective sale goes ahead. In addition, there may be difficulties for those who want to lease the property both because the market is likely to be depressed if the development is not optimally maintained and also because of the uncertainty engendered by the knowledge that the property could be sold for redevelopment within an uncertain time. So too, are those seeking to liquidate their assets inevitably held back from realising their plans because of the prospect for a higher recovery through a collective sale. All these uncertainties are compounded when one collective sale effort is abandoned in the expectation that it may be followed by another, especially if support from the subsidiary proprietors appears to be strong enough to bring about further attempts at a collective sale soon after one has failed.

71 Seemingly, another option was to call a second public tender after getting enough subsidiary proprietors to agree to the lower reserve price of either $628m or $638m. But it seems clear to us, as Mr Sreenivasan submitted, that the CSC had no way of knowing if or when it would get that mandate. As it turned out the requisite threshold was only achieved on 12 May 2016. Mr Sreenivasan submits that it would have been impossible for the CSC in this case after having obtained that mandate to have launched a second tender, closing by say the end of June 2016 and then expected to get matters resolved including having discussions with any interested buyers so as to bring the required application to the Board by 10 July 2016, this being the relevant deadline. Even leaving aside the significant fact that the CSC would have no way of knowing if or when it would obtain the requisite majority consent for the lower reserve price, Mr Sreenivasan says that in the circumstances, for all intents and purposes, to wait until those consents had been secured and to hold a second public tender based on the lowered reserve price was just not a viable option at all. We agree with him for the same reasons he has advanced.

72 As against this, as noted at [49] above, Mr Tan submitted that any time pressure on the CSC was self-imposed. In a way this might be true; but only in the limited sense that instead of doing as they did, they could have abandoned this collective sale effort altogether. They chose not to do so having regard, among other things, to the considerations we have outlined at [70]. In our judgment, even if the CSC had proceeded with the Second $688m Tender primarily to obtain a second opportunity to negotiate a private sale with Qingjian, this would not in itself be improper or constitute an absence of good faith *given the particular circumstances of this case*.

73 Aside from this, we also note that the appellants have not led any evidence to show that the price at which the CSC proposes to conclude the collective sale is inappropriate in the sense that it is not the best price reasonably obtainable in the prevailing circumstances. The appellants have relied primarily on the following: (a) JLL's price indication to the subsidiary proprietors at a range of $650m-$680m in its letter dated 5 May 2014; (b) the fact that another development known as Sky Vue had been sold at a better price in November 2012; and (c) a statement in JLL's letter dated 13 November 2015 stating that there were other parties who indicated interest during the first public tender but were not prepared to table an offer because the CSC did not have a mandate to negotiate below the reserve price of $688m at the time. In our judgment, this is simply not enough to show that a better

price was reasonably obtainable in the prevailing market conditions at the time and we address each of these factors in turn. First, JLL's price indication was obtained nearly 21 months before the Second $688m Tender was launched and in that time, the property market had generally moved in a negative direction; moreover, the CSC also had a firm valuation placing the value of the property at $600m at the close of the Second $688m Tender. Second, the fact that some other development might have obtained a better price offers little indication of what *this* development could reasonably command. The final contention is related to the appellants' speculation that had the CSC waited to conduct a public tender at $638m, it would have attracted more interested parties. However, there is again no evidence to show that any of this would have led to a better price than the $638m obtained by the CSC in the prevailing circumstances; and as we have observed, having regard to the continuing softness in the property market especially with the benefit of hindsight, it cannot be said that this price reflected an undervalue. Indeed, consistent with this view, we note that no valuation evidence was adduced by the appellants to support such a contention. In any case, we also agree with Mr Sreenivasan that if there were in fact other developers with meaningful interest in the Property but who were not prepared to pay the price of $688m, we would have expected them to signify their interest and try to negotiate for a lower price in the same way that Qingjian did. The absence of any evidence of such tangible interest suggests that there was none. As for the other indications of interest, we deal with it in the next section.

The failure to engage with all parties who had shown interest in purchasing the Property

74 Relying in particular on our observations in *Horizon Towers* where we found certain omissions on the part of the collective sale committee to be of concern in that case (at [178] and [181]), the appellants' complaint here is that the CSC should have (a) proactively followed up on expressions of interest; and (b) used the interest of one party (in this case Qingjian) as leverage to negotiate a higher price with some other party. In this regard, the appellants point to the fact that the First $688m Tender attracted 26 enquiries, with four groups inspecting the Property and 11 parties requesting tender documents, in addition to the two expressions of interests by Qingjian and Interested Party X; while the Second $688m Tender attracted nine enquiries, one inspection and five requests for tender documents. According to the appellants, the CSC should at least have reached out to these parties by publicising the new reserve price of $638m. Their silence and inaction indicated that the CSC did not act as a prudent owner would, to get the best price for the Property. The appellants also allege that the CSC acted in undue haste when it agreed to the LOI and its condition of exclusivity and thus ruled out any possibility of negotiating for a higher price.

75 Notwithstanding our observation above at [61] that such contentions must be evaluated with due regard to the facts of each case and not relied upon as determinative of whether the good faith requirement is breached *per se*, we are prepared to assess the present case, for the sake of argument, by reference to the appellants' contention that failing to proactively follow up on expressions of interest and to then use offers as leverage to negotiate for a better price could in and of itself constitute a breach of the CSC's duties. Even on this basis, we do not agree that any such breach has been established on the facts:

(a) First, the respondents in fact *did* follow up on expressions of interest from Interested Party X and Interested Party Y, but these parties did not pursue their interest either because (in one case) the CSC could not meet the condition that the appeal in respect of the ABSD Remission be successful or because (in the other case) they were not prepared to meet the price of $638m.

(b) Second, the principle which requires the CSC to follow up on expressions of interest was articulated in a context where there had been firm expressions of interest (see *Horizon Towers* at [39] and [179]) rather than mere enquiries which the appellants are presently arguing should

have been pursued in this case. In our judgment, the principle in *Horizon Towers* was not intended to extend so far as to encompass a duty to follow up on each and every lead, no matter how equivocal the interest. We repeat what we have said at [61] that this will invariably be a fact-sensitive inquiry.

(c) Third, it cannot be said that the CSC in this case failed to use offers as leverage to negotiate for a better price where, given the market conditions that they faced at the time, it was evident that there was no opportunity to do so in the first place. In *Horizon Towers*, the sale committee was held to have breached its duties in circumstances where there was a surge in the property market and in particular, the sale committee had received a letter of offer from another party to purchase the property at a higher price. Therefore, that case simply does not lend assistance to the appellants on these facts.

76 When we bring the present case within the approach outlined at [61], the conclusion that we have reached is plainly reinforced. We do not think it is correct to say that a commitment to exclusivity in negotiations is necessarily indicative of a breach of a sale committee's duty to achieve the best price reasonably obtainable because this depends on the facts. In the present case, failing to commit to exclusivity in negotiations at the time not only does not assure that a better offer would come along, but could also have resulted in the loss of Qingjian's offer. We also consider it material that the CSC did convene an extraordinary general meeting of the subsidiary proprietors to seek their views before they agreed to this condition. In this regard, we do not accept Mr Tan's submission that the subsidiary proprietors who attended that extraordinary general meeting was a self-selected group of those in favour of the sale. Any subsidiary proprietor, including those opposed to the sale, could attend and the fact that so few objectors did attend does not detract from the reasonable reliance the CSC could place on the support they had for agreeing to Qingjian's condition of exclusivity in negotiations.

77 In the circumstances, we are satisfied that the facts do not show an absence of good faith in the transaction and that the appellants' arguments on this point should be dismissed.

Whether the respondents acted ultra vires in making the collective sale application

78 We turn to the appellants' second main argument. We observe that there are in fact two separate strings to this bow. The first of these did not receive much attention in the oral arguments before us but it went as follows: according to the appellants, under the terms of the CSA, the entire CSA would be null and void if the 80% majority consents were not obtained within the First Time Period. In effect, this was to mirror the timeline set out in paras 1 and 2 of the First Schedule to the LTSA. On the facts, not all of the subsidiary proprietors making up the original 80% who consented to the CSA at the $688m reserve price within the First Time Period ("the Original Consenting Owners") eventually consented to the $638m reserve price and became part of the requisite majority who supported the application to the Board at the reserve price of $638m ("the New Consenting Owners"). As the appellants point out, the Original Consenting Owners who formed part of the New Consenting Owners represented only 77.0876% of the total share value and 77.1132% of the total strata area of the Property. In other words, had the Original Consenting Owners known that $638m was the price on which the collective sale would eventually proceed, the consent levels within the First Time Period would have fallen short of the 80% thresholds and the entire CSA would have been null and void.

79 With respect, it was perhaps unsurprising that the argument was not pressed before us because it is wholly unmeritorious. In this case, the fact is that the requisite 80% majority consents *had* been obtained within the First Time Period. What subsequently transpired is that the CSA was varied *in accordance with its own provisions* in order to obtain a fresh mandate for a new reserve

price. For this purpose, Cll 6.12.1 and 6.12.2 of the CSA provide that:

(a) Notwithstanding anything to the contrary in the CSA and in the event that the reserve price cannot be attained, the CSC may prepare a supplemental agreement and obtain the consent of the subsidiary proprietors to a lower reserve price (which was in fact what was done in this case);

(b) The signing of the supplemental agreement would not constitute a breach of the terms of the CSA; and

(c) While the subsidiary proprietors who had not consented to the supplemental agreement but were party to the original CSA would be discharged from their obligations, others who had not consented to the original terms would be permitted to join by entering into the supplemental agreement.

In the circumstances, we fail to see how the CSA could be said to have been rendered null and void due to any non-compliance nor how the CSC could have been divested of the authority to proceed with the sale under the terms of the CSA by virtue of the course of action that they took. Their conduct was wholly in line with what was provided under the CSA itself.

80 The second string in the appellants' bow is the one that was pressed before us at the hearing. The appellants contend that, on a plain reading of the LTSA provisions, it must be shown that the application to the Board for approval is being brought by subsidiary proprietors representing the requisite 80% majorities who in fact have also executed the CSA within the permitted time (namely, the First Time Period). In this regard, the appellants point to paras 1 and 2 of the First Schedule to the LTSA, which we reproduce for convenience as follows:

1 . *Before making an application to a Board, the subsidiary proprietors* referred to in section 84A(1) … shall —

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

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

…

2.—(1) For the purposes of this Schedule —

(a) *the permitted time* in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in section 84A(1) … *means a period —*

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

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

agreement …

[emphasis added]

81 According to the appellants, the fact that these paragraphs refer back to the subsidiary proprietors mentioned in s 84A(1) of the LTSA must mean that the subsidiary proprietors who applied to the Board for approval, or at least the subsidiary proprietors who make up the requisite 80% majorities therein, must be the very same subsidiary proprietors who signed the collective sale agreement within the First Time Period . The consequence of such a reading is that the consent of the subsidiary proprietors who signed the CSA within the First Time Period, or at least a number of them enough to make up the requisite 80% majorities, must continue until the time of the application to the Board. In the present case, as noted at [51] above, by the time the application to the Board was made, those subsidiary proprietors who had signed the CSA and were also party to the application accounted for only 77.0876% of the total share value and 77.1132% of the total strata area of the Property. The 80% thresholds were met only by taking into account other subsidiary proprietors who joined in the application to the Board by signing either the 1st or 2nd SA but not the original CSA, and in the appellants' view this did not give the CSC the mandate to prosecute the collective sale application before the Board.

82 While the appellants' argument might appear to have force based on the literal words used, it seemed to us necessary to consider *why* this should be taken to be Parliament's presumed intent. We questioned Mr Tan on this and he offered two answers:

(a) First, it was desirable that there be a fixed time limit for the requisite consents to be obtained. If an interpretation to the contrary were adopted, subsidiary proprietors could be harassed indefinitely for their consent to a collective sale.

(b) Second, he submitted that the application to the Board was one which was meant to approve the collective sale agreement that had earlier been entered into. Hence, he submitted, it was not acceptable to approve what in effect was a different collective sale agreement with different parties than the one which had been consented to in the first place. He also pointed out that it would be unfair to those subsidiary proprietors who entered into such an agreement on the basis of a certain reserve price to later find that this was being lowered and that an agreement with that lowered price was being put forward for approval by the Board when, presumably, they would never have agreed to a sale at that price in the first place.

83 With respect to Mr Tan, we find the first ground he advanced to be without basis. As Mr Tan conceded during the hearing, there are no indications of parliamentary intent in the relevant debates and legislative materials which support the particular interpretation he was advancing. While there is a legitimate policy concern to minimise the risk of harassment to subsidiary proprietors in collective sale attempts, there is nothing to suggest that the statutory mechanisms which exist to address the issue extend as far as to limit the time for obtaining the requisite consents in this manner. A second flaw in Mr Tan's argument is that it is, to some extent, self-defeating. If a collective sale committee were barred from obtaining the subsidiary proprietors' consents after the First Time Period and the sale attempt failed as a result, the practical alternative, should there remain sufficient support for the sale, would be to cause the entire process to be restarted shortly thereafter according to the requirements under para 2(1A)*(b)* of the Second Schedule to the LTSA. This would, in the result, impose greater inconvenience to the subsidiary proprietors as a whole. Mr Tan's argument loses much of its force once this is appreciated. Finally, having regard to the primary concern under the LTSA, which is to balance the interests of all owners by ensuring that there is a sufficient majority in favour of the collective sale and that certain procedural safeguards are met to protect the position of

objecting subsidiary proprietors, we find nothing in the approach, which Mr Tan strongly opposed, that would undermine this legislative purpose. Hence, we reject his first argument.

84 His second argument, however, is in our judgment correct in principle although we are satisfied that it makes no difference to the conclusion that we reach on the facts of this case. In our judgment, the position may be stated as follows:

(a) It is clear that the application to the Board for the collective sale of a development under s 84A(1) of the LTSA is an application to be brought by the requisite majority of subsidiary proprietors "who have agreed in writing" to a collective sale agreement.

(b) That paras 1 and 2 of the First Schedule relate back to the "subsidiary proprietors referred to in section 84A(1)" suggests also that there is identity between the group of subsidiary proprietors which executes the collective sale agreement and the group that brings the application to the Board.

(c) It is also logical that, at least in general, the application to the Board cannot be made by a different group of subsidiary proprietors seeking to obtain approval of a different collective sale agreement than the one which was entered into in the first place.

(d) Furthermore, any other construction would give rise to difficulties of the sort identified by Mr Tan where one or more subsidiary proprietors, whose consent was essential to meet the required 80% thresholds under the LTSA agreed to enter into a collective sale at a certain price only to find that a year later, a differently constituted group of subsidiary proprietors then applied for approval of a collective sale at a different price and for that matter on terms which were different in other respects as well.

85 All this would have led to the disapproval of the collective sale in this case but for the fact that 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. Furthermore, if a subsidiary proprietor who had signed the original CSA could not maintain an objection of this sort by reason of the express agreement in terms of Cll 6.12.1 and 6.12.2, still less do we see how the appellants, neither of whom signed the original CSA, could possibly raise this objection.

86 We also do not see that this in any way diminishes the protections afforded to the dissenting subsidiary proprietors under the LTSA. The transaction would still be subject to other safeguards including the prescribed time limit for the overall collective sale process to be completed, the requisite majority consent for a collective sale application being obtained, and the requirement of good faith all of which we have already referred to. Since the contractually stipulated approval threshold under Cl 6.12.1 for the supplemental agreement matches the statutory threshold for the execution of a collective sale agreement under s 84A(1) of the LTSA, we do not see any reason to find that the pre-conditions for an application to the Board to proceed were absent. We are therefore satisfied that the respondents were not acting *ultra vires* in making the collective sale application under the LTSA, and

it cannot be said that the Judge had erred in making the order for sale.

Conclusion

87 For these reasons, we dismiss the appeal. We also decline to make any order on the appellants' application to introduce further evidence in SUM 39 because, having come to our conclusion on the grounds set out above, we did not think any of the additional evidence was in fact material to the issues before us. The parties are to make submissions on costs by letter (limited to five pages) within 14 days of the date of this judgment setting out what they consider should be the appropriate orders for costs in all the circumstances.