# Koh Gek Hwa v Yang Hwai Ming and Another
# [2003] SGHC 216

**Case Number** : OM 17/2003

**Decision Date** : 23 September 2003

**Tribunal/Court** : High Court

**Coram** : Woo Bih Li J

**Counsel Name(s)** : Siva Murugaiyan and Parveen Kaur Nagpal (Sant Singh Partnership) for the appellant; Low Chai Chong and Suchitra Ragupathy (Rodyk & Davidson) for the respondents

**Parties** : Koh Gek Hwa — Yang Hwai Ming; Long Sok Goon Nancy

*Land – Strata titles – Collective sales – Whether sale made in good faith – Relationship of purchaser to proprietor – Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) s 84D(7)(a)*

*Land – Strata titles – Strata titles board – Appeal to High Court on Board's decision – Whether Board in error of law – Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ss 84D, 108(1)*

1 In this application, Ms Koh Gek Hwa is appealing against the decision of the Strata Titles Board ("the Board") on an application made by Yang Hwai Ming and Long Sok Goon Nancy on behalf of the rest of the owners of units in a development known as Dragon Court. I will refer to all the other owners, except Ms Koh, as "the Majority".

2 The application sought an order from the Board that the units in Dragon Court be sold collectively to Limau Heights Development Pte Ltd ("Limau") and other consequential orders. Ms Koh objected to the application. After receiving evidence and submissions, the Board made the orders sought by the Majority. Its Grounds of Decision is dated 20 June 2003.

3 After hearing submissions, I dismissed Ms Koh's appeal. I now set out my reasons.

**Background**

4 Dragon Court is an old development of more than ten years. There is no Management Corporation. Its facilities are maintained by those owners who care to maintain it. It is a small residential development at Holland Road of about 3,318.4 square metres. The plot of land is almost triangular in shape and has a frontage of about 115 metres to Holland Road. The development comprises a block of three storey walk-up apartments with six units and a block of four story walk-up apartments with eight units. Accordingly, there are 14 units in Dragon Court. In 1995, Philando Pte Ltd ("Philando") purchased nine units at a price of $1.12 million per unit. The other five units remained owned by different owners.

5 The first attempt to sell Dragon Court collectively by tender was made by property consultants DTZ Debenham Tie Leung (SEA) Pte Ltd ("DTZ"). This was on or about 5 September 2000. DTZ had sent mailers to about 150 developers and placed a total of six advertisements in the press. The tender closed on 3 October 2000 but no bid was received.

6 On 14 May 2002, DTZ wrote to all owners calling for a meeting on 23 May 2002 to discuss a fresh round of collective sale. After the meeting, DTZ sent another letter dated 17 June 2002 to all the owners to inform them of the outcome of the meeting. The letter stated that the owners present at the meeting were agreeable to a fresh round of collective sale and the reserve price was $12.81 million reflecting $915,000 per unit.

7 What had happened was that the meeting had actually agreed to proceed with a lower reserve price of $12.74 million recommended by DTZ. However, after the meeting, Philando suggested

that the reserve price be increased to $12.81 million. Hence DTZ's letter of 17 June 2002 stated the higher reserve price.

8 By September 2002, the owners having more than 80% of the shares in Dragon Court had signed a Collective Sale Agreement under which the sale proceeds would be apportioned equally for each unit having regard to the same size and share value of each unit. On 8 October 2002, Rodyk & Davidson wrote to Ms Koh and one Ms Oh Kim Bee Katherine to inform them of this development and to invite them to join in the collective sale. On 10 October 2002, DTZ launched the sale by tender and marketed it for four weeks. Again six advertisements were placed in the press and mailers were sent this time to about 180 developers. Nine parties collected the tender documents. Five parties visited the site.

9 The tender closed on 6 November 2002 at 4pm. Only one bid was received. This was submitted by Limau for $12.9 million ie slightly higher than the reserve price of $12.81 million.

10 On 5 December 2002, Rodyk & Davidson accepted this bid and requested Limau to furnish a statutory declaration on its relationship with Philando.

11 By a letter dated 18 December 2002, DTZ wrote to Ms Koh and Ms Katherine Oh informing them of the intended sale to Limau at $12.9 million and that the pre-requisite number of owners had signed the Collective Sale Agreement. The letter also stated that those who had signed would apply to the Board for an order to sell Dragon Court under the Land Titles (Strata) Act (Cap 158) ("the Act"). Subsequently, on 28 January 2003, Ms Katherine Oh also signed the Collective Sale Agreement thereby leaving Ms Koh as the only owner who had not done so.

12 Also on 28 January 2003, an Extra-Ordinary General Meeting of Dragon Court was convened to discuss the collective sale.

13 On 13 February 2003, the Majority made the application to the Board which I have mentioned.

14 On 5 March 2003, Ms Koh filed an objection on the following grounds:

(a) She would suffer a financial loss

(b) The transaction was not made in good faith in view of the following:

(i) The sale price

(ii) The method of distributing the proceeds of sale

(iii) The relationship between Limau and Philando.

15 As I have mentioned, the Board made the orders sought by the Majority after receiving evidence and submissions. This was after mediation by the Board had failed. Among the witnesses were two valuers. One was Tan Keng Chiam from Jones Lang LaSalle Property Consultants Pte Ltd for the Majority. The other was Lim Soo Chin from Vigers International Property Consultants (Singapore) Pte Ltd for Ms Koh.

**The law**

16 The relevant statutory provisions were s 84D(1), (2)(b), (3), (5)(a), (6) and (7)(a) of the Act which state:

> 84D (1) This section shall apply where there are subsisting leases of flats in a development registered under the Registration of Deeds Act (Cap.269) or the Land Titles Act (Cap.157) and

the proprietors of the flats own the land comprised in the development.

(2) An application to a Board for an order for the sale of all the flats and the land in a development to which this section applies may be made by -

(a) ….

(b) the proprietors of the flats who own not less than 80% share of the land where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later,

who have agreed in writing to sell all the flats and the land in the development to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the proprietors of the flats (whether in cash or kind or both), subject to an order being made under subsection (4) or (5).

(3) A proprietor of any flat in the development who has not agreed in writing to the sale referred to in subsection (2) and any mortgage, chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified on the land-register for that flat may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Fourth Schedule or such further period as the Board may allow.

(4) ….

(5) Where one or more objections have been filed under subsection (3), the Board shall, subject to subsection (7), after mediation, if any, approve the application made under subsection (2) and order that the flats and the land in the development be sold unless, having regard to the objections, the Board is satisfied that -

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

(b) ….

(6) For the purposes of subsection (5)(a), a proprietor -

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

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

(7) The Board shall not approve an application made under subsection (2) if the Board is satisfied that -

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

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

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

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

(b) ….

17 Under s 108(1) of the Act:

> No appeal shall lie to the High Court against an order made by a Board except on a point of law.

18 Mr Siva Murugaiyan, Counsel for Ms Koh, relied on *MC Strata Title No 958 v Tay Soo Seng* [1993] 1 SLR 870, where Selvam JC said, at p 875:

> The following statement in 1(1) *Halsbury's Laws of England* (4th Ed, Reissue) para 70 gives a useful guidance on what constitute errors of law:
>
> > Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons; and misdirecting oneself as to the burden of proof.

19 Mr Low Chai Chong, Counsel for the Majority, did not dispute this summary. However, he relied on *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 where Lord Radcliffe said at p 35 and 36:

> My Lords, I must apologise for taking so much time to repeat what I believe to be settled law. But it seemed to be desirable to say this much, having regard to what appears in the judgments in the courts below as to a possible divergence of principle between the English and Scottish courts. I think that the true position of the court in all these cases can be shortly stated. If a party to a hearing before commissioners expresses dissatisfaction with their determination as being erroneous in point of law, it is for them to state a case and in the body of it to set out the facts that they have found as well as their determination. …. If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. ….

20 Mr Murugaiyan did not quarrel with that passage of the judgment of Lord Radcliffe.

21 In addition, O 55 r 6(7) of the Rules of Court provides:

> The Court shall not be bound to allow the appeal on the ground of misdirection, or of the improper exclusion or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

**The hearing before me**

22 Before me, Mr Murugaiyan did not pursue the ground of financial loss. Neither did he continue the assertion that the method of distributing the proceeds of sale equally was inequitable. Accordingly, the objection was confined to the allegation that the sale was not made in good faith and on two of the three considerations under s 7(a) ie:

(a) The sale price, and

(b) The relationship between Limau and Philando.

23 Mr Murugaiyan submitted that the Board had erred in law because:

(a) the Board had failed to take into account relevant considerations

(b) the Board had rejected or failed to take into account relevant and admissible evidence

(c) the Board had asked itself the wrong legal question

(d) the Board had exercised its discretion in accordance with incorrect legal principle

(e) the Board had given reasons which disclosed faulty reasoning.

24 However, he also clarified that these points focussed on four issues:

(a) The allegation that the Board had completely failed to take into account the sale of an adjacent lot. I will refer to this as "the Adjacent Lot issue".

(b) The allegation that the Board had failed to give due weight to the relevant development charge rate for the Holland Road area in considering whether the sale price of $12.9 million was fair. I will refer to this as "the Development Charge Rate issue".

(c) The allegation that the Board had failed to give due consideration or applied wrong legal principles when considering the relationship between Philando and Limau. I will refer to this as "the Relationship issue".

(d) The allegation that the Statutory Declaration (of Limau) was materially defective and the Board failed to take into account the defect or failed to apply the correct legal principle in dealing with the defective Statutory Declaration. I will refer to this as "the SD issue".

25 Mr Murugaiyan also submitted that substantial wrong and/or miscarriage had been occasioned to Ms Koh as a result of the errors of the Board.

*The Adjacent Lot Issue*

26 The Adjacent Lot issue arose because there was a plot of land adjacent to Dragon Court, but smaller in area, which was also for sale. It was 675.3 square metres, ie about five times smaller than Dragon Court, and was in a sharper triangular shape than Dragon Court. It transpired that Limau had bought this adjacent lot for $1 million on condition that its intended purchase of Dragon Court was successful. DTZ were also the marketing agents of the adjacent lot.

27 Mr Murugaiyan ran his argument on the Adjacent Lot issue in two ways. First, if potential purchasers were informed of the availability of the adjacent lot, this might have attracted more and higher bids. Secondly, if the availability of the adjacent lot was taken into account, the value of Dragon Court would be higher ie the owners of Dragon Court would have got a better price.

28 While it was true that the Grounds of the Decision of the Board did not specifically deal with either of these two arguments, this was because, as regards the first argument, Mr Murugaiyan had not advanced it at all before the Board.

29 Secondly, Mr Murugaiyan had not established that DTZ had omitted to inform potential purchasers of the availability of the adjacent lot. The availability of the adjacent lot arose after the cross-examination of the first witness for the Majority, who was Swee Shou Fern from DTZ. Mr Murugaiyan could and should have asked for leave to cross-examine her on this revelation so as to establish whether DTZ did or did not provide such information to potential purchasers. Instead, he

sought to cross-examine the second witness Khoo Chin Inn, who was a director of Philando, on this point but Mr Khoo's evidence as to whether DTZ did provide such information to potential purchasers was uncertain. At that point, Mr Murugaiyan still did not ask for Ms Swee to be re-called to give evidence as to whether DTZ did provide such information.

30 Even if DTZ had omitted to do so, it was not clear whether potential purchasers were unaware of this adjacent lot and, if aware, would have become more interested in Dragon Court.

31 It seemed to me that any potential purchaser who was seriously interested in Dragon Court would have done his own investigation about any adjacent lot. More importantly, I was of the view that it was very unlikely that the availability of the adjacent lot would cause a potential purchaser to make a bid for Dragon Court when hitherto he was not intending to bid. The adjacent lot did not add anything significant to Dragon Court. The combination of the two plots of land would still fail to qualify any development thereon with condominium status which would then have made the new units developed available to foreigners to purchase. In Mr Murugaiyan's written submission, he also suggested that as the combined land area of the two plots was "a mere 6.3 $m^2$ shy of the land area" required to be considered suitable for condominium development, an appeal for condominium status could be made to the relevant authority. However, this point was not asserted or developed by any of the witnesses and did not appear to have been taken in submissions before the Board.

32 Furthermore, as I have mentioned, the adjacent lot was even more sharply triangular in shape than Dragon Court. It would be different if the situation was the reverse ie a potential purchaser of the adjacent lot would be more likely to make a bid for it if told that Dragon Court was also for sale. As I have mentioned, Limau did enter into a contract to buy the adjacent lot but only on condition that it was successful in acquiring Dragon Court.

33 As for the argument that the availability of the adjacent lot would have raised the value of Dragon Court, I found from the Notes of Evidence of the hearing before the Board that they had spent considerable time to satisfy themselves that this was not the case. Indeed, they spent even more time on it than Mr Murugaiyan did. Therefore the fact that this argument was not specifically mentioned in the Board's Grounds of Decision did not mean that the Board had failed to consider it at all. It seemed to me that the Board had satisfied itself that this was not a valid argument and hence did not merit any further attention.

34 I would add that there was no evidence that the availability of the adjacent lot would raise the value of Dragon Court. On the contrary, when Mr Tan, the valuer for the Majority, was asked whether he would change his valuation of Dragon Court if he was valuing it as part of the sale of two plots of land, he said he would not (NE 124). He was not challenged by Mr Murugaiyan on this. Significantly, when Mr Lim, the valuer for Ms Koh, gave oral evidence, he was not asked by Mr Murugaiyan for his opinion on this point.

35 In the circumstances, Mr Murugaiyan's emphasis on the Adjacent Lot issue before me appeared to be more of an afterthought.

*The Development Charge Rate Issue*

36 Mr Tan had valued Dragon Court at $12.9 million. Mr Lim had valued it at $16,030,000.

37 In order to support his valuation, Mr Lim referred to the use of Development Charge rates and in particular the relevant Development Charge rate for the Holland Road area. The Development Charge rate applicable to an area represented half the average value of land in that area.

38 On the other hand, Mr Tan used the residual method of valuation as a cross-check for his valuation.

39 Mr Murugaiyan's complaint was that the Board had made a cursory reference only to the Development Charge rates in para 68 of its Grounds. Paragraph 68 stated:

> 68. RW1 also supported his valuation based on the Development Charge Rates produced by the Chief Valuer. As submitted by RW1, the DC Rates were average values of land in a particular sector and were used merely as a guide to his valuation. However, the Board is of the view that for specific properties, regard must be had to the individual piece of land in question and its peculiarities, as well as its specific location within each sector.

40 I was of the view that the Board was correct in rejecting the Development Charge rates as being of any assistance for the reason stated by the Board. I would add that Mr Lim himself accepted in cross-examination that there was no valuation method, as such, which relied on the Development Charge rates to value a particular property (NE 215).

41 As for Mr Murugaiyan's criticism of the residual method of valuation, this point was irrelevant because the Board did not rely on this method of valuation in reaching its conclusion.

42 What the Board did was to adopt the sole or main method of valuation used by the two valuers ie the direct comparison method, although it was accepted by both valuers that there was no comparable sale within the vicinity of Dragon Court. What each of the valuers did was to take into account sales in other vicinities and make adjustments. Even then, Mr Lim had omitted to take into account a sale of property at 329 Thomson Road which was the closest in proximity to Dragon Court among the various comparables. When this sale was brought to his attention, he gave his views as to how much adjustments he would make and the reasons. However, the point is that there was sufficient material before the Board, which it is not necessary for me to elaborate here, for them to decide ultimately whose valuation they preferred. I could not say that the Board had erred in preferring Mr Tan's valuation. Even if I was minded to prefer Mr Lim's, which I was not, it was not for me to substitute my views for that of the Board unless there was an error of law.

43 There were two other points which Mr Murugaiyan raised in relation to the valuation by Mr Tan. First, he submitted that this valuation was done after the amount of Limau's bid was known and it was too much of a coincidence that the valuation amount was exactly the same figure as Limau's bid. His other submission was that no independent valuation had been obtained prior to the tender exercise.

44 On the first point, Mr Tan had said in cross-examination (NE 125) that he was not told what the sale price or reserve price was. It was not suggested to him that he had lied.

45 On the second point, I accepted Mr Low's argument that there was no requirement under the Act for an independent valuation to be obtained before a tender exercise is carried out or any sale is attempted, although this might be preferable especially if it would not cost much to obtain such a valuation. Under the Fourth Schedule to the Act, clause 1(c) provides that a notice of a proposed application under s 84D(2) must be accompanied by, inter alia, a valuation report which is "not more than 3 months old" (see clause 1(c)(iv)). Presumably the three months is calculated from the date of the notice.

46 It must also be remembered that the initial reserve price of $12.74 million had been proposed by DTZ, before it was increased to $12.81 million. According to Ms Swee, she did seek the advice of the valuation department in DTZ before suggesting that price (NE 34). Although it could perhaps be argued that DTZ's valuation was not independent, there was no evidence that DTZ had deliberately suppressed its valuation in order to achieve the collective sale. In any event, Philando was obviously concerned that the reserve price was not too low. Hence, it suggested that the reserve price be increased to $12.81 million which was done.

47 This brings me to the Relationship issue.

*The Relationship Issue*

48 Mr Murugaiyan stressed that Philando was "related" to Limau. By that he meant that they were controlled by the same family.

49 It was not disputed that Philando was wholly owned by Habitat Properties Pte Ltd ("Habitat"). Michelle Liem held 99.9% of the issued shares of Habitat and was at all material times a director of Habitat and Philando.

50 Michelle Liem's parents held about 53% of the shares in a listed company Tuan Sing Holdings Limited ("Tuan Sing") through their company Nuri Holdings (S) Pte Ltd ("Nuri") and some other nominees. Limau was wholly owned by Sing-Hu International Pte Ltd which was in turn wholly owned by Tuan Sing. Michelle Liem was also a director of Tuan Sing.

51 Stressing on this relationship and some other evidence regarding Mr Khoo's office address as well as the fact that Philando's representatives on the Sales Committee of the owners of Dragon Court had only stepped down, on the advice of Rodyk & Davidson, after tenders had closed, Mr Murugaiyan submitted that Limau might well have known the reserve price, as its bid was only higher by $90,000.

52 On the other hand, Mr Murugaiyan was not alleging collusion between Limau and Philando. Furthermore, he accepted that the Act did not prohibit collective sales to a "related" party.

53 The Board's Grounds said:

> 76. In determining whether a transaction is made in good faith and at arm's length, one important factor which the Board has to consider is the relationship of the purchaser to any of the proprietors. The following enquiries were made:
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> i) whether the majority proprietors (having a relationship with the buyer) have used their dominant position to the disadvantage of the other proprietors;
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> ii) whether any pressure or undue influence has been exerted on the other proprietors;
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> iii) whether there is any deliberate suppression of material facts; and
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> iv) whether there is collusion by the majority proprietors and buyers so as to oppress the minority proprietors.
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> 77. On enquiry (i), from the evidence adduced, it is clear that Philando only agreed to sell at a price above the reserve price of $12.81 million and not at any price. They played no part in the decision to award the tender. They also did not interfere nor exert pressure on DTZ when AW1 went out to garner interest of other developers after the tender was closed. The Board is satisfied that there is no evidence to show that they used their dominant position to the disadvantage of the other proprietors.
>
> 78. On enquiry (ii), none of the minority proprietors has come forward to say that undue influence has been exerted on them. RW2 in cross-examination also admitted that her allegation against the majority proprietors is groundless and unfounded.
>
> 79. On enquiry (iii), there is no evidence of Philando suppressing material facts to the disadvantage of the other minority proprietors in order to secure their support for the collective sale.

80. Lastly, on enquiry (iv), in the course of hearing, Counsel for the Respondent has notified the Board that he is not alleging collusion in the present case.

81. As to the allegation that the proposed collective sale would involve the transfer of funds between members of Liem family for the benefit of Tuan Sing Holdings Ltd, the Board fails to understand why a wholly owned private limited company should sell their 9 units at a loss just for the benefit of the publicly listed company. Mr. And Mdm Liem own about 50% of the shares. The Board finds the argument of the Respondent's Counsel untenable.

82. Counsel for the Respondent further submitted that having regard to the close relationship between Philando and Limau, no adequate measures were taken to ensure that the reserve price was not communicated to Limau.

83. The Board finds no evidence that the reserve price had been disclosed to Limau. Even assuming it was disclosed, there was no guarantee that Limau would have secured the property as the sale was by tender. Further when AW1 was marketing the property, she had disclosed the indicative price of $13.3 million to some of the interested parties.

54 From the evidence of Ms Swee of DTZ, after the tender had closed and it was realised that Limau was the only bidder, DTZ had followed up with all parties who had made inquiries, especially those who had collected tender documents. However, they were no longer interested in Dragon Court. I also reiterate that the initial reserve price was increased upon Philando's urging.

55 In the circumstances, I was of the view that Mr Murugaiyan's criticism (in para 33 of his written submission) that the Board had failed to even consider the possible leak of the reserve price to Limau was without basis. Indeed, in oral submissions, he was prepared to say that the Board was aware of such a risk. Accordingly, I was of the view that the Board had not erred on the Relationship issue, let alone in law.

56 Mr Murugaiyan also raised another point ie that the fact that Philando's representatives had stepped down from the Sales Committee after tenders had closed itself acknowledged the potential conflict of interest and that the Board had entirely failed to give consideration to this (paras 35 and 36 of his written submission). I was of the view that the stepping down did not significantly mitigate or enhance the potential conflict of interest which conflict the Board had considered. Hence it did not add anything significant to his submission.

*The Statutory Declaration ("SD") Issue*

57 The SD on behalf of Limau, as required under the Fourth Schedule of the Act, stated, inter alia:

6. The Company is related to Philando Pte Ltd by virtue of the following:-

(a) Philando Pte Ltd is a wholly owned subsidiary of Habitat Properties Pte Ltd where Michelle Liem Mei Fung ("Michelle Liem") is a substantial shareholder and director of both companies,

(b) The Company is a wholly owned subsidiary of Tuan Sing Holdings Ltd where Mr Liem Teck Siong and Madam Go Giok Lian are the ultimate substantial shareholders and also, the parents of Michelle Liem, and

(c) Michelle Liem is a director of Tuan Sing Holdings Limited as well as Philando Pte Ltd.

58 However, such disclosure did not satisfy Mr Murugaiyan. He submitted that the SD was materially defective because it did not disclose that

(a) David Lee, the husband of Michelle Liem, was a director of Limau, and

(b) Mr Khoo Chin Inn, a close friend of the Liem family and a director of Philando, was also a director of Nuri the ultimate holding company of Limau.

59 Mr Murugaiyan submitted that because the application might have been heard ex parte if there was no objection, there was a duty to make full and frank disclosure of all material relationships in the SD. According to him, anything less than full and frank disclosure would render the Board a rubber stamp (see para 41 of his written submission).

60 In oral submissions, Mr Murugaiyan was prepared to adopt a two-pronged approach on the SD issue:

(a) any material omission on the SD would mean that it must be rejected by the Board, and

(b) the omissions in question were material and demonstrated that the transaction in question was not in good faith.

61 On the first point, Mr Murugaiyan argued that, as a matter of general principle, an SD must be rejected and the decision of the Board set aside even if the omission was brought to the attention of the Board before it renders its decision. I did not agree with this argument or Mr Murugaiyan's analogy with ex parte applications.

62 Ex parte applications are those in which the opposing party is not even notified of the application in the first place and hence has no opportunity to present its arguments. It is different if the opposing party is notified of the application but chooses not to present its case. Of course, this is not to say that an SD should be made lightly. It should contain all material facts. If it does not but the Board is apprised of the material facts before making its decision, then, generally speaking, the Board should not reject the SD and throw out the entire proceedings with a view to compelling the applicant to file a fresh application with a revised SD. Whether a deficient SD would suggest a lack of good faith is another matter which I now come to.

63 I was of the view that the omissions in the SD were not material and consequently did not demonstrate any lack of good faith. With respect, the fact that David Lee was a director of Limau would have had no significance but for his marriage to Michelle Liem. However, Limau's and Philando's connection with the Liem family had already been disclosed. Likewise in respect of Mr Khoo. His directorship of Philando and Nuri would have had no significance but for his friendship with the Liem family. It seemed to me that Mr Murugaiyan was trying to find fault with the SD.

64 In any event, Mr Murugaiyan had already drawn the attention of the Board to Mr Khoo being a director of Philando (and Habitat) as well as Nuri and Mr David Lee being Michelle Liem's husband in his closing submission (see para 13 thereof).

**Summary**

65 In the circumstances, I was of the view that there was no error by the Board, let alone an error in law. It seemed to me that the real reason why Ms Koh had objected to the application was because she did not want to move out because she had intended to stay at Dragon Court for the rest of her life. While one could sympathise with such a sentiment, it was clear to me from the speeches made in Parliament and the provisions of the Act that Parliament had decided that such a sentiment should not over-ride the wishes of the Majority.

66 Accordingly, I dismissed Ms Koh's appeal with costs.

*Appeal dismissed.*