Koh Keow Neo and Others v Chee Johnny and Others
[2004] SGHC 94

Case Number : Suit 715/2002

Decision Date : 06 May 2004

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Edwin Tay and Peter Ezekiel (Edwin Tay and Co) for first to eighth, and 11th to 79th plaintiffs; Alvin Yeo SC, Chou Sean Yu and Vanessa Lim (Wong Partnership) for first to fifth defendants; Harry Elias SC, Michael Palmer, Howard Chen and Lynette Chew (Harry Elias Partnership) for sixth and eighth to tenth defendants

Parties : Koh Keow Neo — Chee Johnny

Contract – Intention to create legal relations – Whether informal updates sent to flat owners reflected intention to enter into legal relationship

Contract – Misrepresentation act – Negligent misrepresentation – Whether actionable misrepresentation made out – Section 2 Misrepresentation Act (Cap 390, 1994 Rev Ed)

Equity – Fiduciary relationships – Duties – Ambit of duty owed to principal by gratuitous agent

Tort – Negligence – Duty of care – Whether relationship of sufficient proximity established between gratuitous agent and principal

6 May 2004	*Judgment reserved.*

Lai Siu Chiu J:

1 This suit revolves around a privatisation exercise, which went wrong, of Bedok Reservoir HUDC Estate ("the Estate"). The estate was privatised on 1 February 2000 and is now known as Waterfront View Condominium

The background

2 The Estate comprises of 583 flats in 13 blocks built by the Housing and Development Board ("HDB"), as a phase LLI HUDC estate in the 1980s. The abbreviation "HUDC" stands for Housing & Urban Development Corporation Pte Ltd. HUDC estates were built in the 1970s to cater to the housing needs of a "sandwich" class of Singaporeans, whose income overqualified them for ownership of HDB flats but was insufficient to enable them to purchase private housing. This was before the advent of executive condominium flats in 1995, also introduced by the HDB (but built by the private sector) to meet the public's desire to own private property at more affordable prices. At the material time, all 79 plaintiffs were flat owners in the Estate, together with the first to fifth defendants. Carolyn Tan, R Ambika, Koh Sian Ann and Au Thye Chuen (the sixth to ninth defendants) were at the material time partners of the law firm known as Tan-Au Associates ("TAA") which, on 10 February 2001, merged with another law firm Thomas Au & Lim to form Tan & Au Partnership (the tenth defendant).

3 In the mid-1990s, the government initiated a policy of privatising HUDC estates, with a view to converting all HUDC estates to private estates by 1998 (according to press reports). The intention (according to the written testimony of a HDB representative) was to allow HUDC residents to collectively upgrade their estates to a standard comparable to private residential estates, and

thereby to enjoy the status and advantages of private property owners. Privatisation of HUDC estates could be effected, under (the amended) ss 126 and 126A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act"), only if 75% or more of flat owners in an estate consented. However, the Act does not spell out precisely how the privatisation exercise should be carried out nor is there subsidiary legislation to assist. Neither did the HDB stipulate any mandatory procedures to be followed for the process. Upon privatisation, HUDC leases issued by the HDB are converted into strata titles under the Act, flat owners become subsidiary proprietors and are tenants-in-common of common property such as car parks, playgrounds, open areas and whatever other amenities that may have been built on the estate by the HDB. Management and running of the privatised estate is taken over from the HDB or Town Council as the case may be, by the management corporation formed under s 33 of the Act. The first HUDC estates to be privatised under the government policy were Gillman Heights and Pine Grove in 1995.

The facts

4 On or about 8 September 1996 at a block party held in the Estate, Matthias Yao, the then Senior Parliamentary Secretary of Defence and National Development, announced the privatisation of the Estate; this was followed by a gazette notification on 27 September 1996. The Ministry of National Development ("MND") is in charge of the HDB.

5 Responding to the call by an adviser to the Kaki Bukit Grassroots Organisation for volunteers to join a pro-tem committee to co-ordinate the privatisation exercise, Johnny Chee (the first defendant) came forward. Later, Tang Se Kiong Adrian (the second defendant) and Liew Hiong Wah (the third defendant) also volunteered to be members. Subhash Chandra Mehta (the fifth defendant) joined the pro-tem committee in early 1997 but resigned in 1999 as its vice-chairman, when he moved out of the Estate. Ling Chwee Seng (the fourth defendant) joined the pro-tem committee in January 2000, after he moved into the Estate in 1999. Susan Ng (the tenth plaintiff) was also a member of the pro-tem at one time. So too were Francis Tan Seow Che (the 11th plaintiff), Syed Yahia Aljunied (the 20th plaintiff), Chong Kwen Sam (the 29th plaintiff), Khong Yueng Fung (the 31st plaintiff) and Adrienne Louise Pereira (the 40th plaintiff) at various other times. The first defendant served as the second vice-chairman of the pro-tem committee until he assumed the post of chairman, when the first chairperson, Cheong Wai Yin, resigned around March 1997.

6 The pro-tem committee, which was considered an informal grassroots organisation, initially came under the auspices of the Eunos Constituency secretariat but in 1997, it was transferred to the charge of the secretariat of the Kampong Kembangan constituency. Members of the pro-tem committee had to be approved and were advised by the constituency's Member of Parliament ("MP") which in this case was and still is George Yeo, currently the Minister of Trade and Industry. The role of a pro-tem committee in a privatisation exercise of an HUDC estate was contained in an information package ("the Information Package") issued by the HDB. Essentially, the pro-tem committee was, *inter alia*, to:

(a) act as the flat owners' representative in the privatisation process in consulting the HDB and other government bodies;

(b) inform the HDB, the relevant Town Councils and other authorities of the flat owners' views;

(c) keep flat owners informed of the status quo of privatisation;

(d) appoint solicitors to act in the privatisation process.

7 Apart from being pro-tem committee members, flat owners could also assist in the privatisation exercise by becoming block representatives *ie* each block in the Estate had a representative who served as the liaison between the pro-tem committee and flat owners of the block that appointed him. The articles and objects of the pro-tem committee of the Estate were approved at its third meeting held on 1 October 1996. The pro-tem committee received no funding from the HDB or any government or grassroots organisation and its members were not paid. Members of the pro-tem committee held meetings amongst themselves, and also with flat owners, relating to the privatisation exercise. After such meetings, newsletters (by way of "updates") were distributed to all flat owners to apprise them on developments as well as seek their views on the privatisation exercise as well as on the general welfare of the Estate.

8 Between late 1996 and early 2002, the pro-tem committee issued 16 updates to the Estate's flat owners. Before the updates were distributed to flat owners, drafts were first submitted for approval to Kampong Kembangan Constituency Secretariat. The updates would also go the HDB and the MP. In the first update dated 20 October 1996, the pro-tem committee explained the meaning of privatisation, set out its pros and cons and estimated that the cost would be about $25,000 per flat. Notice was also given that a mandate exercise would be carried out to obtain the views of flat owners on privatisation.

9 On 11 November 1996, the pro-tem committee distributed an informal survey form to the Estate's flat owners to obtain their feedback on the privatisation exercise. By 23 July 1997 (when the third update was issued) the pro-tem committee had obtained the results of the informal survey. Of the 40% flat owners who responded, 79% were in favour of privatisation.

10 In September 1997, members of the pro-tem committee took active steps to garner support for privatisation of the Estate by making door-to-door visits to every household, usually on weekends and Friday evenings. Notice of the pro-tem committee's proposed visits was given in the fourth update dated 10 September 1997. By the date of the fifth update (10 December 1997), the door-to-door visits had taken place and the pro-tem committee's mission was accomplished – there was overwhelming support for privatisation. In the fifth update, it was announced that the mandate exercise would be held on Sunday 22 February 1998 and lawyers would be appointed to take care of the legal aspects. The mandate procedure had been explained in the fourth update which stated under item 7:

> The committee has set the voting target date to be in Feb 1998 or at the latest Mar 1998. All lessees of a unit in the estate must sign a legal document indicating their approval or disapproval. Those who are unable to sign the legal document personally must obtain the power of attorney to authorise someone to act for them. A mandate of more than 75% of all households approving privatisation is required for the estate to be privatised.

11 In preparation for the mandate exercise, the second defendant and the pro-tem committee's secretary (Jeanie Hoon) were tasked with finding a law firm. After obtaining quotations from three law firms, the pro-tem committee decided to and did appoint TAA by a letter dated 5 January 1998. The pro-tem committee's choice was based not only on the competitive quotation received from the law firm but on the track record of TAA; they had acted previously in the privatisation of the HUDC estate at Jurong East. According to the written testimony of the sixth defendant, TAA had also acted in the privatisation exercise of Hougang South as well as of Farrer Court, both HUDC estates. The pro-tem committee informed flat owners in the Estate of TAA's appointment in the sixth update dated 6 February 1998. The relevant extract (item 2) of that update states:

Mandate for Privatisation: Voting is on Sunday 22nd February 1998

> The Pro-Tem committee seeks the mandate for privatisation from all lessees on the 22nd Feb 1998. We have appointed the lawyers from Tan-Au and Associates to witness and validate the voting. There will be two voting sites – arranged for your convenience – void decks of blocks 727 (for lessees of blocks 726-732) and 738 (for lessees of blocks 733-738). Voting starts at 8 am and ends around 5 pm. For successful privatisation, 75% of residents must vote in favour of privatisation. Voting will be done by signing a consent form in front of a lawyer. … If you are physically out of town for a long period covering that date, may I encourage you to obtain the power of attorney and assign a trusted relative or friend to vote in favour of privatisation.

12 On 15 February 1998, the pro-tem committee issued a voting update ("the voting update") furnishing details of how the mandate exercise would be carried out and giving flat owners as an alternative, the contact details and address of TAA should they need to go to the law firm's office to vote. To further publicise the mandate exercise, the pro-tem committee pasted notices around the Estate which, *inter alia*, stated the date, time and place of the scheduled voting. (The second defendant Tang See Kiong (DW3) was to later testify that the wording in the notices was copied from that used in the Jurong East privatisation exercise). Banners were also displayed around the Estate announcing the schedule. The HDB was also informed by letter.

13 The mandate exercise proceeded as scheduled on Sunday 22 February 1998 ("the Voting day") with two stations for voting, which inquiry/help desks the first and fifth defendants helped to man. Voters who wished to vote in favour of privatisation were directed to a station manned by staff of TAA to sign their consents, whilst those who objected to privatisation were directed to another station to fill in a dissent form, stating their names and giving reasons for their objections. However, some flat owners who did not favour privatisation did not fill out the dissent forms; these were referred by the pro-tem committee as the "no show" cases. As for those who favoured privatisation, there were instances where only one of two joint lessees of flats signed the consent forms. These were referred to as "partial consent" cases. The third defendant and some other members of the pro-tem committee made door-to-door visits in the afternoon to remind flat owners to cast their votes. Unfortunately, many flat owners were not at home. In the event, the requisite 75% mandate was not achieved when voting closed at 5.00pm, according to a tally done subsequently by TAA.

14 The pro-tem committee decided against holding a second mass mandate exercise when it received TAA's quotation for participation in the event, which it considered to be too high, even after a discount. As an alternative, the pro-tem committee accepted TAA's proposal that flat owners be encouraged to visit the law firm's office to sign the consent forms. TAA therefore wrote on 25 and 26 March 1998 to 67 "no show" and ten "partial consent" flat owners requesting them to call at the law firm's office to sign the consent forms.

15 On 6 April 1998, TAA wrote to the pro-tem committee with a list of flat owners who had given "full" consents. The number totalled 435 which was 74.6% of all flat owners. Between 6 and 10 April 1998 however, TAA received three full consent forms which brought the tally to 438 votes, just crossing the statutory limit of 75% by 0.12%. On 16 April 1998 (unbeknownst to TAA), the pro-tem committee issued a circular to flat owners making an "unofficial" announcement that the Estate had been privatised. The circular urged flat owners who had not yet given their consent, to do so at TAA's office. On the following day, it followed up with a letter to the Estate's MP and adviser Minister George Yeo, to inform him of the voting outcome, indicating that the pro-tem committee intended to proceed further to obtain a mandate of 80%. On their part, TAA wrote to the HDB on 4 May 1998 forwarding the originals of the 438 consents the law firm had received.

16 With the prior approval of the MND, an official announcement of the privatisation mandate

was made by Minister George Yeo at a block party held at the Estate on 27 August 1998; a press release was also issued that day. In their letter dated 24 August 1998 (approving the official announcement of the mandate exercise) addressed to the 1st defendant as chairman of the pro-tem committee, the HDB warned:

> We wish to highlight that given the mandate result being only marginally above the statutory minimum level of 75%, the effect of the publicity would be touch and go. It may spur more residents in the estate to support privatisation or result in the reverse. Your pro-tem committee may thus wish to improve on the result further.

17 With the 75% mandate, however, there were immediate benefits to the flat owners, as spelt out in a letter dated 10 June 1998 from the HDB addressed to the second defendant as vice-chairman of the pro-tem committee. These included:

(a) the eligibility to refinance or re-mortgage their flats before legal privatisation;

(b) the eligibility to purchase HDB resale flats for owner-occupation whilst retaining their HUDC flat for rental;

(c) the eligibility to sublet their entire HUDC flat without the HDB's prior approval.

The letter concluded with a reminder to the pro-tem committee not to allow the support level for privatisation to fall below 75%. I should point out that even before the above letter from the HDB was received, the first defendant in his capacity as chairman of the pro-tem committee had issued the seventh update of 8 June 1998 (items 2 and 3) to inform flat owners in the Estate of the immediate benefits of privatisation. Item 1 of the seventh update stated:

Mandate for Privatisation is a Success

> I would like to thank all lessees for participating in the vote for privatisation. Although some were undecided and some were not in favour, overall we received the mandate to privatise as more than 75% were in favour. Our lawyers have submitted the validated consent forms and HDB is already processing them. We should receive an official letter confirming our privatisation before the end of June 1998. Once again thank you to each and everyone of you, and especially to the Pro-Tem Committee members and the Block Representatives for their effort in all the work that has led to this successful privatisation.

18 As the population of the Estate was not static, due to flat owners moving in and out, or passing away, being adjudicated bankrupt or getting divorced, the pro-tem committee had to canvass support for the privatisation continuously, to replace previous consents given by flat owners which were no longer valid. The pro-tem committee relied on the HDB for information of changes in ownership of flats in the Estate. It also relied on the HDB for periodic updates on the status quo of the percentage of support, including the fact that in November 2001, support had fallen to about 73% to 74%. Whenever the HDB informed the pro-tem committee of ownership changes, the pro-tem committee would in turn instruct TAA (or the tenth defendant if after 10 February 2001) to prepare consent forms with which committee members would approach new flat owners for their signatures. New flat owners after 22 February 1998 included the 25th, 26th, 43rd, 44th, 45th, 47th, 49th, 50th, 51st, 54th, 56th and 78th plaintiffs. The ongoing process of obtaining new consent forms to replace invalid ones continued until 3 December 2001, when TAA lodged the application under s 126A of the Act with the Singapore Land Authority ("SLA") for issuance of Subsidiary Strata Certificates of Title ("SSCT"). I should add that TAA lodged the application only after the HDB, by their letter dated

13 October 2001, gave the green light. As at 3 December 2001, there were 444 consent forms equivalent to 76.15% of all flat owners.

19 In the course of procuring fresh consents from new flat owners, the pro-tem committee received feedback that "no show" and "partial consent" cases had found it troublesome to visit the law firm's office to sign the consent forms. Consequently, in May 1998, someone mooted the idea of having members of the pro-tem committee witness the consent forms so that the same could be signed in the Estate itself. The HDB, when approached, agreed with the proposal, subject to TAA's consent. When consulted, TAA raised no objections but required pro-tem committee members who witnessed the signing of consent forms to swear a statutory declaration to confirm that fact. The precautionary step was understandable, given that TAA, as the Estate's solicitors, were required to issue the standard certificate under s 59 of the Act. Eventually, the first to fifth defendants were appointed to witness the signatures of flat owners to consent forms and each of them swore a statutory declaration for every consent form he or she witnessed. They witnessed 68 consent forms altogether.

20 The delay (between April 1998 and 3 December 2001) in submitting the application for SSCT was due to a number of unforeseen and other factors including:

(a) the survey and realignment of the boundary of the Estate;

(b) disputes with neighbouring HDB flat owners on the positioning of the boundary, which came too close to one of their blocks; and

(c) slow progress in construction works necessary for privatisation including the boundary wall, fire-rated doors, resurfacing of car parks and hard standing bays.

The problem was compounded by the original contractors for the boundary wall having to be replaced because they ran into financial difficulties. The original and subsequent contractors were appointed by the Aljunied Town Council (formerly the Eunos-Pasir Ris Town Council), which had taken over management and maintenance of the estate from the HDB, in February 1990.

21 On 10 December 2001, the SLA wrote by registered mail to all flat owners in the Estate to inform them that an application for SSCT had been lodged on 3 December 2001 by not less than 75% of the registered proprietors of the flats. The letter enclosed copies of notices which the SLA had published in the English and Chinese dailies, *The Straits Times* and *Lianhe Zao Bao* respectively, on 6 December 2001. The notices were to the effect that the SLA would be issuing the SSCT to the flat owners after six weeks from that date, unless valid objections were lodged in writing with the SLA before the expiration of six weeks.

22 No objections were received by the SLA within the six-week deadline stated in the newspaper notices or at all. Consequently, the SLA proceeded to and did issue the SSCT to all the flat owners in the Estate which was officially privatised on 1 February 2002. On 2 February 2002, the SLA issued the certificate of formation of the Estate's management corporation *ie* Management Corporation Strata Title Plan No 2625 ("the MCST"). In March 2002, the HDB through the MCST called for payment from the flat owners of $19,535.43 (the conversion fee) per flat, being the fees payable (inclusive of survey and legal fees) for privatisation. A further sum ($2,000–$3,000) payable to the HDB for construction costs has not yet been called for. The MCST held its first Annual General Meeting ("AGM") on 4 May 2002, chaired by an officer from the HDB, Seng Joo How. It was attended by some 267 subsidiary proprietors including one Teo Boon Huat Patrick ("Teo"), who raised and questioned the validity of the privatisation process. Two days after the AGM, Teo sent a lengthy e-mail to Dr Vivian

Balakrishnan, the Minister of State for National Development, voicing his concerns on the privatisation process.

The dispute

23 On 21 March 2002, a group of flat owners from the Estate signed a petition to the HDB ("the Petition") which was enclosed in a personal letter written by a flat owner Dr Kevin Tan ("Dr Tan") to their MP, Minister George Yeo. The Petition questioned the validity of the privatisation exercise and complained of various defects in the Estate (including sinking aprons, exposed gas pipes, ageing lifts), which responsibility for, and cost of repair, the petitioners put squarely on the HDB.

24 I should point out at this juncture that Dr Tan chose not to be a plaintiff although his wife Tan Meng Lang (PW2) is the 57th plaintiff. When she was cross-examined on whether Dr Tan shared her views on privatisation (which she had opposed), the 57th plaintiff said she could not answer for him. Questioned by the court why Dr Tan as a co-lessee of her unit (Block 729 #12-5066) chose not to be a co-plaintiff, the 57th plaintiff said he had no time. That explanation has to be viewed with some scepticism, in the light of the fact that Dr Tan was the author of the Petition. He had attended meetings organised by Teo (particularly those held on 18 April, 19 April and 11 May 2002,), prepared the agenda and drafted the minutes of the April 2002 meetings and, in his capacity as chairman of the MCST, called for an extraordinary general meeting ("EGM") on 26 April 2003 to consider suing the HDB. Further, he presented a privatisation report at the EGM. Yet, Dr Tan did not have the time to attend court notwithstanding his many personal grievances over the privatisation process and the major role he played in drumming up support for Teo's cause.

25 Although the 57th plaintiff disagreed with counsel for the defendants when the suggestion was put to her, there is little doubt in my mind that her husband is not a plaintiff because he wished to avoid being cross-examined. The offer from the plaintiffs' counsel for Dr Tan to be cross-examined, after his wife had stepped down from the witness box, came too late and was rightly rejected by both the court and counsel for the defendants. The couple has not paid the $19,195.96 conversion fee; neither has Teo.

26 Between April and May 2002, no less than nine meetings of disgruntled flat owners took place organised by Teo, the seventh plaintiff. Teo's involvement extended to "facilitating" (in his own words) the printing of a circular dated 13 April 2002, distributed to those who had signed the Petition. He invited the Petitioners to attend meetings which he had arranged on 18 and 19 April 2002 at which, at his own cost, his solicitor (now the plaintiffs' solicitor) was present. Doubts were sown at these meetings on the propriety of the privatisation exercise. The discontent amongst the flat owners was reported in the press and led to the filing of this suit on 18 June 2002. It also prompted the Minister of National Development to make a statement in Parliament on 24 April 2003.

The pleadings

27 The original suit was commenced as a representative action by five plaintiffs against the first to fifth defendants and tenth defendant, purporting to represent 154 other plaintiffs. In December 2002, the writ of summons was amended to its present form and 80 flat owners withdrew from the suit. In the current and lengthy (105 paragraphs, 68 pages) statement of claim, the 79 plaintiffs alleged the following breaches were committed by the first to fifth defendants:

(a) breach of agreement,

(b) breach of fiduciary duties and agency,

(c) negligence and breach of duty of care,

(d) misrepresentation,

(e) negligent misstatement.

28 The plaintiffs alleged that by the unofficial announcement in the circular dated 16 April 1998 and the seventh update dated 8 June 1998, the pro-tem committee, including the five defendants, made them believe that a mandate of 75% had been obtained on the Voting day, and that subsequent votes in favour of privatisation would be over and above the 75% procured on Voting day. The plaintiffs averred that in May 2002 they discovered the representation was false, misleading and untrue, as on Voting day, the percentage obtained was less than 75%. They alleged that although this fact was known to the defendants, all of them deliberately withheld the information from the plaintiffs between the Voting day and 3 December 2001, when the application under s 126A of the Act was lodged with the SLA.

29 The plaintiffs further alleged that in the interval (22 February 1998 to 3 December 2001), as flats in the Estate changed ownership, the first to fifth defendants continued to and did garner an additional 75 votes for privatisation, and the majority of consent forms executed during the period between July 1998 and December 2001 were not attested by the sixth defendant or any lawyer from TAA or the tenth defendant. The flat owners were alleged to have been induced to sign the consent forms by false and untrue representations made by the first to fifth defendants - since a mandate of 75% had been secured, these flat owners (who included the 25th, 49th, 51st, 52nd, 54th and 77th plaintiffs) had a legal obligation to sign the consent forms in order to obtain their SSCT under the Act.

30 The plaintiffs alleged that the consents lodged with the application for SSCT were null, void and of no effect since the total votes attained on the Voting day were less than 75%. Hence, there was no mandate for privatisation. Further, no further votes could be garnered after the ballot was closed without the express knowledge and consent of the flat owners to either extend the voting period or have a fresh voting exercise. Any further votes so garnered were consequently invalid.

31 In their (re-amended) defence, the first to fifth defendants, *inter alia*:

(a) denied they were and had assumed responsibilities as agents of, or stood in a fiduciary relationship with, the plaintiffs or owed the plaintiffs any duty of care as alleged; they asserted their membership of the pro-tem committee was more akin to being members of grassroots organisations;

(b) denied they or any of them, had made any representation to any of the plaintiffs or to the flat owners at any material time, that the mandate for privatisation was to be solely determined by the total number of consents signed on the Voting day;

(c) denied that the circular of 16 April 1998 and seventh update of 8 June 1998 made the representations alleged by the plaintiffs; they asserted that the contents of the circular and update were true as a matter of substance and form;

(d) admitted that they (together with the sixth defendant) were aware that the total number of consents signed on 22 February 1998 was less than 75% but denied they had deliberately failed to inform flat owners of this fact; they further denied that they owed any duty or obligation enforceable in law to inform the plaintiffs or flat owners of the number of written consents signed that day;

(e) admitted that members of the pro-tem committee continued to seek the signing of consents from flat owners between 22 February 1998 and 3 December 2001 and averred that in April 1998 the total number of written consents obtained from flat owners exceeded 75%; they contended that the total number of consents obtained on 22 February 1998 did not by itself determine if the privatisation would or would not proceed and averred that the pro-tem committee was at liberty to continue garnering more written consents;

(f) admitted that 69 consent forms signed by flat owners were not witnessed by the sixth defendant or a solicitor from TAA or the tenth defendant; they denied their witnessing of those forms was not proper or lawful, as it was done with the knowledge and consent of the HDB, upon advice received from the SLA;

(g) denied any representation was made by any of them to any of the plaintiffs or to any flat owner at any material time, that 75% mandate for privatisation had been obtained on the Voting day and that the flat owners had a legal obligation to sign the consent forms in order to obtain their SSCT; the five defendants specifically denied they had made any of the alleged oral representations to the 25th, 49th, 51st, 52nd and 77th plaintiffs;

(h) contended that flat owners were at all material times aware, from the circular dated 16 April 1998 that those who had not signed consent forms on 22 February 1998 could continue to do so; the circular had stated:

One More Chance

> For those who have not yet voted, we want to encourage you to sign the consent form at Tan Au Associates, 10 Anson Road … so that we may record and send a strong signal to the market that we have received a strong support for privatisation.
>
> And for those who did not agree, but would now like to go with the majority, you may do so by signing the consent form at the lawyer's office.

(i) asserted there was a valid mandate for privatisation when the application for SSCT was lodged on 3 December 2001, which application was lodged not on their, but on the, instructions of the HDB.

32 There is no necessity to refer to the pleadings filed by the sixth to tenth defendants for the reason that in the midst of trial, namely on 17 November 2003, the plaintiffs withdrew their claim against the sixth, eighth, ninth and tenth defendants. Earlier in March 2003, the plaintiffs had discontinued their action against the seventh defendant. For convenience, the first to fifth defendants will henceforth be referred to as the defendants, as they are the only defendants left in this action.

33 On the third day of trial (13 November 2003), the defendants through their solicitors made an open offer to all the plaintiffs in the following terms:

> The Defendants are prepared to allow any individual Plaintiff to discontinue his or her action against the defendants with each party bearing their own costs (subject to the respective plaintiff unconditionally withdrawing all allegations made in the action and undertaking not to take any other action against any of the Defendants in respect of any matter that had formed the subject matter of this action) and provided that any Plaintiff who wishes to accept this offer must communicate his or her acceptance to the Defendants' solicitors no later than 6pm Friday

14 November 2003.

34 Notwithstanding the above deadline, the defendants allowed a number of plaintiffs to accept the offer after 14 November 2003. These were the ninth, tenth, 29th, 31st, 32nd, 38th, 58th and 66th plaintiffs. The ninth and tenth plaintiffs were not represented at the trial.

The evidence

35 Fifty of the 79 plaintiffs testified for their case. The principal witness for the plaintiffs was Teo, the seventh plaintiff, whose affidavit evidence was also the most lengthy. In their written testimonies, all the other plaintiffs adopted his evidence (save for the 57th plaintiff when she took the stand). The first, second, third and fifth defendants testified for the defence whilst the written testimony of the fourth defendant was accepted, without the need for cross-examination. The head of Special Projects Units from the HDB, Gan Bee Ghee (DW5), was the last witness for the defendants.

The plaintiffs' case

36 I turn now to the evidence adduced from the plaintiffs' witnesses, starting with that of Teo (PW1), who is a business consultant. Teo relied on the HDB guidelines for privatisation ("the Guidelines") for the plaintiffs' case that the defendants' conduct of the privatisation exercise contravened the Guidelines in the following manner:

(a) Voting took place on one day when the recommendation was to schedule the same over several days.

(b) As the voting took place on 22 February 1998, the fate of the Estate was to be settled on that day and not any other days since the Guidelines state, "Lessees of at least 75% of the flats must agree before approaching HDB for conversion."

37 Teo alleged that the ninth defendant whom he approached on the Voting day did not inform him there was a dissent form which flat owners could sign, only that to vote against privatisation, Teo would have to call at TAA's office. He understood from the representations made to him (and to the other plaintiffs) by the pro-tem committee or the defendants, that the form he signed on the Voting day was meant solely for the purpose of the mandate exercise. He understood the results would be announced, as stated in the voting update. Instead, there was a period of silence before he received the pro-tem committee's circular dated 16 April 1998 making the unofficial announcement that the Estate had been privatised. He was misled into thinking that the 75% vote had been achieved on the Voting day. His mistaken view was compounded by a letter dated 25 July 1998 from TAA signed by the sixth defendant which stated:

> We wish to inform you that the voting day was held on 22nd February 1998 and more than 75% of the voters are agreeable to the privatisation.

and by the seventh update dated 8 June 1998 which stated:

> [W]e received the mandate to privatise as more than 75% were in favour.

38 Teo complained that in the interval between 22 February 1998 and 4 May 2002 (when the first AGM of the MCST was held), there was no indication or document to flat owners from the pro-tem committee, the defendants, TAA, the HDB or the tenth defendant, that the mandate exercise on

the Voting day had failed to garner 75% support for privatisation. Flat owners were also not told that the mandate exercise would be extended and continued until such time as the requisite 75% for privatisation was secured. It was only in August 2002 that flat owners learnt that the 75% mandate was not obtained on the Voting day. Teo contended the sixth defendant's letter dated 25 April 2002 was an afterthought as she attempted to justify the Voting day as a conveyancing exercise. As the requisite 75% vote was not obtained on the Voting day, Teo asserted it was necessary to schedule another voting date *to re-garner votes, not to continue to garner votes*. Otherwise, the Estate could not be privatised. He cited the mandate exercise in Bishan-Shunfu HUDC ("Shunfu") estate as an example of what he and other plaintiffs expected. I shall return to the Shunfu example later.

39 One of the plaintiffs' assertions was that there was an agreement which the defendants had breached. Cross-examined, Teo explained that the agreement was one *inter se* reached between the defendants and all the flat owners on the Voting day, signified *either* by their turning up to vote that day or *not* turning up to vote. Anyone who did not want to be part of the agreement had to inform the pro-tem committee. Otherwise, he would be considered a party to the agreement. Teo further asserted that flat owners who purchased their units and moved into the Estate *after* 22 February 1998 were bound by their vendors' consents given on the Voting day and thereby became parties to the agreement. However, when cross-examined on the nature and terms of the agreement, Teo was unable to particularise and/or gave inconsistent answers. Initially, he said the terms were variously found in the fifth and sixth updates and the voting update as well as in the first, fourth, and seventh to 16th updates at another stage. The Guidelines were also thrown in for good measure. Eventually, he said that the agreement was by conduct and was evidenced in writing in the statement of claim itself.

40 Shown the relevant documents, Teo made the following concessions on his or the other plaintiffs' allegations:

(a) the Guidelines in the Information Package did not spell out that the mandate for privatisation must be done only on one day;

(b) the consents of the flat owners need not necessarily be witnessed only by solicitors;

(c) contrary to what attendees of the meetings held on 18 and 19 April 2002 were told, the HUDC Housing Estates Act (Cap 131, 1985 Rev Ed) does not apply to the Estate because it is a phase LU estate.

41 On misrepresentation, the 57th to 79th plaintiffs (who did not consent to privatisation) alleged that they were led to believe they were bound by the 75% mandate supposedly obtained on the Voting day. Hence, they did not assert their right to object to privatisation. The first to 42nd plaintiffs alleged that they lost their right to give consents afresh or to withdraw their previous consents before the application under s 126 of the Act was lodged. They were unaware that no mandate was obtained on the Voting day. Yet another accusation levelled against the defendants was that they induced and procured six flat owners (the 25th, 49th, 51st, 52nd and 54th plaintiffs) to sign the consent forms by misrepresenting to those persons that the 75% mandate had been obtained and privatisation was inevitable. The plaintiffs largely relied on Teo's testimony to support their allegations.

42 Cross-examined, Teo agreed that none of the updates he relied on had stated that only votes obtained on the Voting day or other specific days would be counted. On the contrary, some flat owners (such as Bena Belani) had requested to sign their consent forms before the Voting day and some (like Poon Bee Guan and Tan York Huay Sophia), after the voting day.

43 When he was cross-examined, Yu Mang Hsia ("Yu"), the 69th plaintiff and the treasurer (since September 2002) of the MCST, revealed that none of the resolutions tabled at the EGM by Dr Tan on 26 April 2003, including the following, were passed:

> 3.1 The need to immediately, and if necessary, commence legal action against the [HDB] to obtain an account of the Privatisation Costs claimed …
>
> 3.3 The need to immediately, and if necessary, commence legal action against the parties responsible for the acceptance of the estate from Aljunied Town Council (ATC) and/or HDB, including the HDB Interim Council (consisting of Seng Joo How, Ong-Gan Bee Gee and Lee Soon Ai) and the Protem Committee (PTC).
>
> 3.5 The need to immediately, and if necessary, commence legal action against the parties responsible for the awarding and/or administering of the contract for, the construction of and/or for the acceptance of the Boundary Fence including ATC, Premas International Ltd [managing agents before the MCST], the Interim Council ..., the PTC and/or the contractors.
>
> 3.7 To approve the call of contributions for the legal costs required of $160 per share-value or $640 per household for all or such of the above steps, and whether by a single lump sum payment and/or by several payments. …
>
> 3.8 Further, and in the alternative to resolution 3.7 above, to approve the call for contributions to cover the cost of carrying out the above rectification works up to a maximum of $21,250 per share-value or $85,000 per household, and whether by a single lump sum payment and/or by several payments. …

44 Yu (PW5) explained that the conversion fee of $19,535.43 was not paid by some households because flat owners had passed a resolution at the 2002 AGM of the MCST, to hold payment in abeyance until an explanation was forthcoming from the HDB, on how the bill was raised. The council received no response from the HDB. The HDB as well as the developers (not identified) refused to meet with members of the MCST to discuss outstanding issues. That prompted the calling of the April 2003 EGM; the MCST wanted to be proactive in solving problems.

45 Yu (who had voted against privatisation on the Voting day) also complained that the Aljunied Town Council spent $1m on the boundary wall when $600,000 would have sufficed. Even then, the boundary wall had shown defects soon after its construction in 2001–2002. When asked what action the Aljunied Town Council had taken on the defects, the MCST was told the council was claiming liquidated damages against the first contractor, which was futile since the contractor had gone bankrupt early in the construction stage. Yu added that the Aljunied Town Council only handed over $800,000 to the MCST as the balance of sinking funds for the Estate and did not provide a breakdown to date, despite requests from the MCST.

46 Yu did not justify or render a breakdown for the exorbitant figures of $21,250 and $85,000 set out in resolution 3.8 tabled at the EGM. I can only assume it was a tactic (as the defendants submitted) meant to scare the flat owners into accepting the much cheaper option of paying $640 per household to engage lawyers to sue whoever was at fault. Fortunately, good sense prevailed and none of the resolutions tabled were passed.

The defendants' case

47 All the defendants testified that there was no such agreement as propounded by the

plaintiffs. There was never any intention on the part of the pro-tem committee (including the defendants) to create legal relations between themselves and the other flat owners by way of the various updates or otherwise. The defendants' assertion in this respect was not challenged by the plaintiffs' counsel during their cross-examination.

48 The defendants' key witness was the first defendant. He denied any representations were made to the plaintiffs. He clarified that statements in the various updates were not representations but only informal communications to flat owners. No representations were made to flat owners either, that the mandate for privatisation would only be taken on the Voting day and no other days. It was also evident from the Information Package that the mandate exercise could take place over a period of time. The exercise took place on one day purely for pragmatic reasons. Voting on that one day was not a polling exercise in the political sense.

49 The first defendant pointed out that it was clear from the voting update that flat owners could opt to sign their consents at the office of TAA, before and after the Voting day. If indeed the plaintiffs' complaint had any credence, it was strange that none of the flat owners objected to the continued canvassing for votes by the pro-tem committee, after the Voting day and before early 2002. Further, the circular of 16 April 1998 had urged flat owners who had not done so, to sign their consents at the law firm's office. There was no misrepresentation by him or the pro-tem committee in the circular of 16 April 1998 or in the seventh update of 8 June 1998 as, by those dates, the 75% mandate had indeed been achieved, according to TAA.

50 The first defendant denied he owed flat owners, including the plaintiffs, any duties of care in negligence. Neither did he owe them any duties not to make negligent misstatements. In any case, he had at all times taken care to provide accurate information to flat owners, pointing out that he and his fellow committee members (including some of the plaintiffs at one time) were all volunteers. He denied there was any understanding or agreement reached *inter se* between himself and the flat owners as alleged by Teo, and that the pro-tem committee members owed fiduciary duties to flat owners and acted as their agents. He disputed the plaintiffs' allegation that the percentage of votes for privatisation had dropped to a low of 64.14% at some stage. He contended that the witnessing by the defendants of consent forms was perfectly valid, which evidence was corroborated by the HDB's representative.

51 The first defendant revealed that despite privatisation, the flat owners still pay the same amount ($104) by way of maintenance charges, although not to the Aljunied Town Council but to the MCST. He concluded his written testimony with his surmise on why the plaintiffs had commenced this action - they were unwilling to pay the conversion fee and were attempting to obtain a waiver or reimbursement of the sum (if paid) from the HDB. The first defendant speculated that the real target of the plaintiffs is actually the HDB whom the plaintiffs are attempting to manoeuvre to the negotiating table, using the defendants as scapegoats. I believe his surmise is not unfounded as, when counsel for the plaintiffs cross-examined the first defendant, one of the first questions asked was whether the first defendant agreed that the HDB was at fault, and if so, should the court rule in the plaintiffs' favour.

52 The first defendant was cross-examined on why the language used in the 13th update differed from that used in earlier updates by the pro-tem committee. He explained it was due to his receipt of Teo's e-mail dated 5 July 2000 threatening legal action. On the advice of TAA, the pro-tem committee decided to put the following disclaimer in the 13th update:

> Any information we present to you in the updates or in any other form is unofficial. If you want to act on the information, you must check it for accuracy and validity.

53 The 25th, 49th 51st 52nd and 54th plaintiffs who (except for the 52nd plaintiff) moved in after the Voting day, alleged that the defendants had visited them, told them the Estate had been privatised and that their consents were necessary for the issuance to them of the SSCT. The first, second, fourth and fifth defendants denied they made this representation, which denial was also not challenged during cross-examination. Strangely enough, although he complained that two of the defendants had misled him (whose identity he was not at all certain), the 51st plaintiff testified he did not want the Estate to be de-privatised. In the case of the 25th plaintiff, it appeared from his oral evidence that his complaint was not levelled against the defendants. He insisted it was two ladies from the pro-tem committee (whose names he could not recall) who procured his signature to the consent form, even though the first defendant testified he witnessed the 25th plaintiff's signature, as evidenced from the consent form. The 51st plaintiff's oral testimony contradicted the plaintiffs' further and better particulars which alleged that the misrepresentation was made by the first and second defendants, but not the fifth defendant.

54 I refer next to the testimony of the HDB's representative, Ong-Gan Bee Ghee ("Ms Gan"). The Special Projects Unit of which she is the head (since 1994) is tasked by the MND with overseeing the privatisation process of HUDC estates. She testified that the Estate was the fourth batch of HUDC estates to be selected for privatisation.

55 In order to assist the pro-tem committee on how to initiate the privatisation process, Ms Gan said the HDB not only furnished the committee members with the Information Package but also gave them the contacts of pro-tem committee members of Gillman Heights, Pine Grove and Jurong East HUDC estates. Ms Gan stated that the HDB never intended that the mandate exercise must or should be conducted on a single day. The pro-tem committee was given a large measure of independence to perform their work. As far as the HDB was concerned, the pro-tem committee (with whom it worked closely) could continue to garner support for privatisation, until such time as the application under s 126 of the Act was lodged. In a summary of the briefing given by the HDB on 26 September 1996 sent by the first chairperson of the pro-tem committee to the other committee members was a section entitled "Pointers to note about the 'Polling' Exercise"; it stated:

> Individual owners are to indicate their support by signing Application for Subsidiary Strata Certificate of Titles.
>
> Exercise should be carried out over a few days, including weekends.
>
> Solicitor to witness and certify correctness of Application Forms.
>
> All lessees of the same unit must sign on the form.
>
> For death cases, Power of Attorney, change of name, etc, copies of legal documents are to be attached to Forms and verified against original documents.

56 Ms Gan confirmed that the HDB only received official confirmation of the 75% mandate from TAA on 4 May 1998. After the Voting day, the HDB was informed that the 75% vote was not achieved. The HDB checked and verified the original consents forwarded by the law firm on 4 May 1998 as well as those lodged for the application under s 126 of the Act, on 3 December 2001. The HDB was satisfied that the privatisation exercise was properly carried out by the pro-tem committee, in accordance with the law and the Guidelines. As the Estate was a phase LLI HUDC estate, the conversion fee included the loss to the HDB of income generated from car park lots in the Estate. This was clearly set out in the Information Package. The HDB had estimated the cost of each car park lot at $20,000; the Estate has 590 car park and 30 motorcycle lots. Further, unlike HUDC estates under

phases I and II, the Estate being a phase III estate, did not own the common property. Flats in phase I HUDC estates such as Pine Grove had been sold at prices higher than those in phase III estates, to factor in the cost of common property. The conversion fee was billed to the MCST which, in turn, would recover the same from the flat owners by way of contributions. The HDB allowed subsidiary proprietors a year's grace to pay the amount, subject to payment of interest commencing 60 days after the date of the bill.

57 Ms Gan revealed that even before the SLA's notices to issue the SSCT appeared in the newspapers on 6 December 2001, the HDB of its own accord had written (in late January 2002) a comprehensive letter to all flat owners in the Estate. It updated them on post-privatisation developments in the Estate, including the formation of the MCST and billing of the conversion fee. No response and/or objections were received by the HDB from any flat owner to either the letter or to the notices placed by the SLA in the press.

58 Ms Gan further revealed that she rendered a reply (dated 30 April 2002) on the HDB's behalf, to the plethora of complaints raised in the Petition presented by Dr Tan. At the behest of Minister George Yeo, the HDB agreed in the letter to carry out goodwill repairs to the aprons at three blocks in the Estate and indicated it would review sunken aprons at other blocks. She also wrote to Teo on 3 May 2002, replying to the e-mail he had addressed to the Prime Minister's office on 27 April 2002. In the letter, she explained the role of TAA in the privatisation process, the estimated conversion costs of $25,000 and the roles of the Aljunied Town Council before, and the role of the MCST after, privatisation. She had also replied on 13 May 2002 to Teo on other queries he had raised in an e-mail to the 60th plaintiff on 6 May 2002, copied to the HDB.

59 Cross-examined, Ms Gan testified that seeking the 75% mandate was a continuing exercise which could go on indefinitely, citing as an example the experience of Hougang HUDC estate. In the case of Shunfu, Ms Gan said there was no mandate for privatisation yet and the HDB was prepared to wait until such time as the residents obtained the 75% vote. Where the HDB was concerned, there was no cut-off date to sign the consent forms nor for the residents of any HUDC estate to agree to privatisation. No cut-off date was stated in the Information Package. She emphasised that what was crucial was that the 75% mandate must be obtained as at the date the application under s 126 of the Act was submitted. Ms Gan explained that by 3 December 2001, all the necessary works for privatisation of the Estate had already been undertaken and completed at the HDB's cost, including construction of fire engine access, hard standing areas and the boundary wall. Otherwise, TAA would not have been requested to lodge the application for SSCT.

The defendants' submissions

60 In their closing submissions, the first to fifth defendants accused Teo (and Dr Tan as well as Lim Beng Huat Henry (the 60th plaintiff/PW43) of having a hidden agenda in instigating the other plaintiffs to institute this suit. The trio was described (in para 103 of the defendants' submissions) as "ringleaders of a relentless propaganda campaign designed to stoke anti-privatisation sentiments among the residents of the Estate". Their agenda was to generate sufficient adverse publicity so as to induce the authorities (such as the HDB and the MND) either to unwind the privatisation process or to agree to certain gratuitous benefits, *eg* the rectification of alleged defects in the Estate. Consequently, the defendants argued, this action was brought in bad faith and is an abuse of the court process.

61 The defendants relied on an e-mail from Teo to the first defendant and his co-chairman, Henry Low, dated 22 April 2002, as evidence of Teo's true motive for whipping up dissent among the flat owners. The e-mail[1] states:

> Why was the application to privatise done only on 3 December 2001. *The valuation of my flat has dropped tremendously in the period* and I have been unable to refinance to enjoy a lower interest rate because of this delay. Who shall I make my claim for damages on?
>
> Why am I supposed to pay some $19,000 for the transfer of common property when to my understanding of the HUDC Act says that the transfer of common property is for a nominal sum of S$1.00.

Emphasis was placed on the italicised words by the defendants. Teo was described by the defendants as a dishonest witness whose numerous inconsistencies in his evidence were painstakingly highlighted by them in their submissions. The defendants also produced a transcript (which Teo and his counsel did not challenge) of Teo's remarks to attendees at the meeting on 11 May 2002, to reinforce their accusation that he stoked discontent amongst flat owners. Teo was also accused of taking liberties with the truth in his e-mail dated 6 May 2002 to the Minister of State, MND.

62 The defendants further referred to extracts from a circular dated 27 August 2002 sent to flat owners by the 60th plaintiff which stated:

> 18 Don't worry. It is not a question of we wanting to sue our PC [pro-tem committee]. It is not a question of we being not honourable. …
>
> 19 Others will know that we are serious in our affairs if we seek redress by suing – not by complaining or bemoaning. … There must be numbers. It is never too late, unless we wait till we bleed. Everyone is needed for the larger good.
>
> 20 The numbers taking action are very crucial. Let's show that there is an overwhelming dissatisfaction and injustice. The Court or the Government will look at the 'larger good' even if justice seemed to be ignored or thrown out of Court.
>
> 21 Also with overwhelming numbers, the legal fee is unlikely to be near $1,000 per SP [subsidiary proprietor], if we lose the case. If we win, the fee will be even lesser and we may get back our $25,000. Surely, this action is better than paying and paying with privatisation and that is after throwing away $25,000.

63 The defendants pointed out that the 60th plaintiff had admitted, under cross-examination, that his intention was to get the authorities involved in mediating the privatisation process, by getting as much support as possible for himself and his fellow dissidents. The 60th plaintiff had then admitted that the plaintiffs were forced to sue when the authorities did not intervene as he had hoped. Questioned on his e-mail dated 3 April 2003 where he indicated he would bankrupt those concerned, the 60th plaintiff agreed the threat was directed against the defendants. However, he disagreed he intended to bring the defendants to ruin by suing them, claiming he only wanted to seek justice. He denied Teo was the plaintiffs' ringleader. Although he opposes the privatisation process, the 60th plaintiff has paid the conversion fee, but he no longer resides in the Estate.

64 The defendants also singled out Francis Tan Seow Che, the 11th plaintiff (PW10), as another person with a hidden agenda. Notwithstanding that he had been a pro-tem committee member, he joined the action because he saw the court as an avenue to ventilate his unhappiness over the privatisation process.

65 Another observation made by the defendants was the lack of explanation (apart from that given by the 57th plaintiff) on why some co-lessees and spouses of plaintiffs (including Teo) did not

join in the action. In their submissions, the plaintiffs did not attempt to give any explanation for the discrepancy but merely dismissed it as irrelevant to the claim and the defence, pointing out it would make no difference to the remedies sought by the plaintiffs, if co-lessees were omitted as parties to the action.

The plaintiffs' submissions

66 The plaintiffs started their submissions with complaints on the defendants' conduct, alleging the latter bombarded the plaintiffs will numerous interlocutory applications (including applications for further and better particulars of the statement of claim, interrogatories and holding Teo in contempt of court) in an attempt to stop the case from coming to trial.

67 On the defendants' contention that they were used as scapegoats, the plaintiffs explained that they chose to sue the defendants and not the other members of the pro-tem committee because the defendants were the only ones who obtained statutory declarations from the plaintiffs, in breach of s 57 of the Act. In addition, the defendants were responsible for the material misrepresentations made to the plaintiffs.

68 Although the plaintiffs acknowledged that the defendants were gratuitous agents, they argued that such a fact did not exonerate the defendants from liability or responsibility. The plaintiffs submitted that the defendants still owed a duty of care to the flat owners to act in an honest and transparent manner; they cannot portray themselves as victims.

69 The plaintiffs argued that the words used in the updates were intended to create legal relations. They made much of the fact that the first defendant had used the words "voting" and "vote" in the updates and rejected his explanation that he had used the words out of convenience. The plaintiffs also criticised Ms Gan's testimony that the words "voting" and "polling" were used for lack of better words. In their opening statement, the plaintiffs urged the court to take into account that the HDB has a vested interest in the outcome of this suit and would naturally align itself with the defendants' position.

70 The plaintiffs contended the words "voting" or "vote" could only have meant that 22 February 1998 would be the polling day and no other. Consequently, the plaintiffs were led to believe it was a one-day exercise with a clear cut-off period. They disputed the defendants' submission that nowhere in the updates was it stated that only the consents received on 22 February 1998 counted and that no further consents were to be obtained or received after that date. They relied on the evidence of Teo that the voting update merely advised the flat owners that they could, on 22 February 1998, have the alternative of going to the office of TAA to vote, if they were unable to do so at the Estate itself. The plaintiffs submitted that although a sample voting form was circulated with the voting update, there was no proper or adequate explanation on how the form was to be utilised.

71 The plaintiffs accused the defendants of creating a wrong impression by the untruths contained in the unofficial announcement of 16 April 1998, that the 75% mandate had been obtained on the Voting day. The defendants were also accused of acting in a dishonest and improper manner in tricking the 25th, 49th, 51st, 52nd and 54th plaintiffs to give consent forms. They alleged that the defendants had a vested interest in witnessing the consent forms as they wanted the Estate to be privatised. The plaintiffs pounced on an attendance note of TAA of 26 February 1998 which stated that the second defendant (with the knowledge of the first defendant) instructed TAA *not* to inform the HDB until the 75% mandate for privatisation was secured. They alleged it showed the surreptitious manner in which defendants concealed the outcome of the Voting day. It is only fair to

point out that when he was cross-examined on the attendance note, the second defendant (DW3) explained that he was acting in accordance with the Guidelines as they stated that the HDB only wanted to be informed when the 75% vote was attained. In any case, Ms Gan testified that the HDB was informed by TAA of the outcome of the Voting day.

72 Although they admitted they were unhappy with the physical defects in the Estate, the plaintiffs denied that their instituting this suit was an indirect method to coerce the HDB into rectifying the defects. They denied they had a hidden agenda, claiming they were genuinely concerned about justice and wanted a proper legal recourse concerning the conduct of the defendants. The plaintiffs submitted that the defendants produced no evidence that Dr Tan instigated this suit or that he had influenced the decisions of the plaintiffs. They dismissed the allegations in this regard against Teo and the 60th plaintiff as baseless. The plaintiffs argued Teo was a concerned resident who gave his all to see that justice was done. Yet, the defendants attacked him to the extent that they served a statutory demand on Teo for failing to pay costs awarded to them for amendments to the statement of claim. The plaintiffs dismissed as irrelevant the Guidelines and the defendants' conduct in relation thereto. I note that this submission runs counter to Teo's evidence under cross-examination, that the Guidelines formed part of the terms of the agreement *inter se*.

73 In their closing submissions, the plaintiffs did not address the other claims they had made based on breach of fiduciary duties and agency, negligence and negligent misstatement, nor reply to the lengthy submissions made by the defendants on those claims. They relied, instead, on their opening statement for their arguments on those heads of claim.

The findings

74 Before I make my findings, there are certain preliminary observations which I wish to make at this juncture. One, it was apparent from the evidence adduced in court that not all the plaintiffs are/were conversant with the procedures and implications involved in the privatisation of HUDC estates. Indeed, some of them appeared to be misinformed. One of them, Lai Chang Kuan (77th plaintiff/PW39), even denied he had instructed the plaintiffs' solicitors that he was one of the persons (see para 42(f) of the statement of claim) to whom the defendants represented that 75% mandate had been obtained and that flat owners were legally obliged to sign the consent forms for purposes of obtaining their SSCT. His denial prompted counsel for the plaintiffs to make the unusual application (which I rejected) of wanting to treat the 77th plaintiff as a hostile witness. My surmise from such incidents is that some of the plaintiffs may have failed to read and/or understand the 16 updates distributed by the pro-tem committee. Even pro-tem committee members such as the tenth, 11th, 20th, 29th, 31st, 40th plaintiffs and the 69th plaintiff (as a member of the MCST), seemed not to have appreciated the meaning and consequences of privatisation. For this reason, I took pains to set out in the earlier part of this judgment, all the relevant facts pertaining to the Estate's change of status from a HUDC to a private estate.

75 Secondly, I would like to return to the subject of the unsuccessful privatisation of the Shunfu estate. The plaintiffs had produced a letter dated 5 October 2001 addressed to residents by the estate's MP, stating that the mandate exercise for privatisation carried out on 18 and 19 August 2001 failed to secure the requisite 75% vote. The plaintiffs argued that was how the mandate exercise should have been carried out. They should have been informed of the outcome on the Voting day. If they had known the real result of the votes collected that day, they would have had a choice to either opt out of privatisation altogether or continue to garner votes if they still wanted privatisation. Ms Gan, however, had explained that Shunfu was a different case. There, the pro-tem committee stopped the mandate exercise *after* 19 August 2001, preferring instead to carry out repair and redecorating works, which were already due. According to her, Shunfu and Eunosville were the only

HUDC estates which stopped garnering votes, after carrying out mandate exercises which rejected privatisation.

76 In the light of Ms Gan's explanation, the Shunfu experience cannot be said to support the plaintiffs' case that voting for privatisation could only be done once and once only and that residents of HUDC estates must abide by the outcome of one voting exercise.

Breach of agreement inter se

77 I now turn my attention to the first of the many claims put forward by the plaintiffs. It is trite law that to found an enforceable agreement at law, the following conditions must be fulfilled:

(a) an intention to create legal relations,

(b) consensus *ad idem*, and

(c) certainty of terms.

78 Apart from a bald assertion (para 16 of the plaintiffs' submissions) that the manner in which the updates were phrased indicated an intention to create legal relations, no credible evidence was produced by the plaintiffs to prove that the above requirements were indeed fulfilled. The plaintiffs had relied on Teo's evidence. Unfortunately, I found him to be an unreliable witness whose inconsistent and contradictory answers did nothing to advance the plaintiffs' case at all ([39] *supra*). Teo's testimony came in for harsh criticism in the defendants' closing submissions. I myself found it difficult to follow his convoluted and illogical reasoning – that the agreement *inter se* was reached between flat owners on the Voting day, whether they turned up to vote or not. Even more illogical was his contention that flat owners who purchased their units *after* the Voting day were bound by their vendors' previous consents given on that day. His interpretation cannot be right. It runs counter to the HDB's policy that such consents are no longer valid, once the parties that gave those consents relinquished their ownership of units in the Estate. Even more absurd was Teo's interpretation of the voting update to mean that those who did not vote at the Estate on the Voting day were supposed to visit the offices of TAA that Sunday to sign the consent forms. If flat owners are unable or unwilling to cast their votes on their own doorstep (in the presence of lawyers from TAA), why would they want to suffer the inconvenience of visiting the law firm's office on the very same day to cast their votes?

79 I would highlight other aspects where Teo's credibility as a witness was seriously undermined. At the meetings on 18 and 19 April 1998, his solicitor had informed attendees that the conversion fee contravened s 45(1) of the HUDC Housing Estates Act, which states that transfer of the common property should be effected for a $1.00 nominal consideration. Teo admitted in cross-examination that he knew (from information contained in the second update) that his solicitor's view was incorrect; the Estate did not come under that Act as it is a phase LLI HUDC estate. Yet, he made no attempts to correct his solicitor's interpretation, which he repeated in his own e-mail dated 22 April 1998 to the first defendant ([61] *supra*).

80 I find it difficult to accept the plaintiffs' argument that by merely issuing 16 (plus one voting) updates to flat owners, some (not all) pro-tem committee members intended objectively to enter into a legal relationship with their fellow flat owners. The updates (as the defendants contended) were only informal documents meant to disseminate information, nothing more.

81 Even if I am wrong and the 16 updates were indeed sufficient to create a legal relationship

between the defendants and the plaintiffs, what were the terms of that agreement? What was the consideration provided for the agreement? It bears remembering that some, if not many, of the updates contained a hotchpotch of topics (see [84] to [87] *infra*) other than privatisation. The essentials of an enforceable agreement, missing in our case, were not addressed by the plaintiffs.

82 In the case of the 57th plaintiff, she had withdrawn the following para 4 in her affidavit, in the course of her cross-examination:

> I crave leave to refer to the affidavit of Teo Boon Huat Patrick (the 7th plaintiff in the suit) and I concur with the contents therein.

with the result that she had no evidence to substantiate her various claims, other than her own statements that (a) she moved into the Estate on 10 March 1990; (b) she signed the dissent form on the Voting day; (c) she did not pay the conversion costs and (d) she was appalled by the disparity in treatment meted out by the pro-tem committee, in deciding who should or should not be given dissent forms to sign and in approaching those who did not consent to win over their votes.

Misrepresentations and negligent misstatements

83 It would be straining the legal definition to hold that the updates amounted to representations by the pro-tem committee, including the defendants, to all flat owners. At this juncture it may be appropriate to look at what constitutes effective misrepresentation at law. In this regard, I refer to the following relevant extract from *Chitty on Contracts* vol 1 (28th Ed, 1999) at para 6-004:

> The traditional rule is that a representation must be a statement of fact, past or present, as distinct from a statement of opinion, or of intention, or of law.

Further, the following requirements are needed for a representation to be actionable:

(a) the representation must be made with the intention that it should be acted on by the plaintiffs or a class of persons which includes the plaintiffs;

(b) the plaintiffs had acted on the false statement;

(c) the plaintiffs suffered damage as a result; and

(d) the representation was made to the plaintiffs knowing it was false.

In the statement of claim, the plaintiffs had relied on the representations allegedly contained in the first, fourth, fifth and sixth updates and the voting update. I shall now expand on my earlier brief references ([10] to [12] *supra*) to these updates as it would be relevant to my findings.

84 The pro-tem committee had informed flat owners in the first update that:

> There will be a mandate exercise carried out. The registered lessees of at least 75% of all the units in the estate must each sign a legal document signifying their approval.
>
> The voting is scheduled for the first quarter of 1997. Every registered lessee of units in favour of privatisation must sign a consent register which will form part of the formal application (a legal document). If there are two registered lessees (eg husband and wife) both of them must sign. A

lawyer will be present at our estate to witness the signing. A nominal legal fee will be charged.

85 In addition to informing flat owners of forthcoming door-to-door visits, the fourth update announced the holding of two block parties, explained the benefits and opportunities of privatisation, as well as the roles of the HDB and the Town Council on defects. Item 13 of the update stated:

> HDB and Town Council have clarified that defects/problems that require attention within the household are the responsibility of the lessees as the warranty period has long since expired. Their responsibilities to us are limited to attending to defects/problems of the common areas and facilities. Since it is a major effort for us to collate and redirect, we provide you instead with following contacts, whom you may contact directly …

and furnished the particulars of the Aljunied Town Council and the HDB (Bedok Branch office) for contact purposes, depending on the nature of the defects involved.

86 In the fifth update, the pro-tem committee announced that one block party instead of two would be held, advised flat owners not to feed birds, informed flat owners there had been a tree planting day by their MP on 2 November 1997, as well as set out in item 3 the following "Progress Towards Privatisation":

> We are pleased to inform you that we have successfully negotiated with HDB to re-surface all our car parks, re-mark the park lots (with enhancements), build hard-standing areas and fire-engine bays, replace fire-rated doors along emergency access routes, and renovate one office unit for future use as management committee's office. All this will be based on the goodwill from HDB. These works, however will only commence upon successful voting on privatisation.
>
> Meanwhile, the Aljunied Town Council which runs our estate, has been advised to hold back further landscaping works in our estate, in view of the construction work that will occur after successful privatisation. This is to minimise or avoid unnecessary expenses which may occur if landscaping is done now.

87 The sixth update, *inter alia*, talked about the successful block party held on 14 January 1998, detailed rectification works of minor defects carried out by the Aljunied Town Council, exhorted flat owners not to throw bulky rubbish into bins at bin centres or feed pigeons, gave a breakdown of the estimated conversion cost of $25,000 payable in about one and a half years' time, set out the mandate for privatisation and the contact particulars of the first, second and fifth defendants as well as those of other pro-tem committee members for flat owners who were still unsure about how to vote and needed clarification.

88 I am mystified why the plaintiffs view the five updates in question as actionable representation. Further, where have the defendants made negligent misstatements? The information given was factually correct, so too was the procedure required for a successful mandate for privatisation. No false statements were contained in those updates, let alone that the defendants made the statements knowing they were false. Accordingly, no question of reliance on the false statements can arise. Section 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed) relied on by the plaintiffs therefore has no application, as it provides for the award of damages for contracts affected by negligent misrepresentation. I have already held that there was no agreement *inter se* between the parties. The issue of fraudulent misrepresentation also becomes academic, in the light of my earlier findings. If negligent misrepresentation is not made out, fraudulent misrepresentation cannot arise as it requires a higher standard of proof than the former.

Breach of fiduciary duties as agent

89 It was the plaintiffs' case that the defendants were gratuitous agents. As such agents, the defendants owed fiduciary duties (in equity) to their principals who were/are the flat owners. The plaintiffs asserted that as pro-tem members, the defendants' duties were akin to those of promoters of companies. The plaintiffs' statement of claim pleaded that the defendants were entrusted with the tasks and responsibilities set out in the Guidelines. The defendants were allegedly in a position to unilaterally exercise their power or discretion so as to affect the legal or practical interests of the flat owners, rendering them vulnerable to or at the mercy of the defendants. It was pleaded that the flat owners relied on and acted on the information provided by the pro-tem committee members (which included the defendants) because there were no independent means of verifying such information.

90 Both sides were on common ground that the duties of gratuitous agents are as set out in *Bowstead and Reynolds on Agency* (17th Ed, 2001) at Art 44 (para 6-025) and followed in the case of *Chaudhry v Prabhakar* [1989] 1 WLR 29:

> A gratuitous agent will be liable to his principal if in carrying out the work he fails to exercise the degree of care which may reasonably be expected of him in all the circumstances.

Bowstead added (at para 6-026):

> Where there is no contract between principal and agent, it would seem that the alleged agent cannot be liable for pure failure to do what he undertook to do without consideration. However, he can certainly be liable in tort for negligently failing to complete, or to complete with due care, work he has undertaken and upon which he has embarked. Thus a person who gratuitously agrees to procure insurance for another may owe a duty of care in respect of the manner in which he does so.

91 The duties imposed on gratuitous agents, however, are a far cry from those imposed on the defendants in *Winnifred Wai Yue Yu v Allan Ni Kwan Kwok* [1999] NSWSC 992. In that case, the plaintiff had sued the partners of an accounting firm into whose trust account the plaintiff's moneys had (according to her) been wrongly credited. The plaintiff claimed her solicitor had instructed the defendants to deposit her moneys into the plaintiff's cheque account. Instead, the moneys were credited to the firm's trust account after which the defendants placed them on fixed deposits with BCC. Subsequently, a provisional liquidator was appointed to BCC, as a result of which the plaintiff, after receiving certain dividends from the provisional liquidator, lost $300,929.21. The plaintiffs' reference in their opening statement to an extract (para 118) from Simos J's judgment, on the non-fiduciary equitable duty arising from the parties' fiduciary relationship, is therefore out of context.

92 Applying the facts in relation to the principles enunciated in *Bowstead* as well as in *Chaudhry v Prabhakar* and *Winnifred Wai Yue Yu v Allan Ni Kwan Kwok*, it is my view that the duties of the defendants as gratuitous agents were to select competent lawyers to act for the Estate in the privatisation exercise. They discharged this duty by their appointment of TAA. There can be no criticism of their choice as TAA had a track record and offered a competitive rate for their services. Since the plaintiffs have withdrawn their claims against the sixth to tenth defendants, complaints about TAA's performance, conduct and all other allegations levelled against the latter are no longer in issue. It follows therefore that the defendants' appointment of TAA is not open to question anymore.

93 Were there other duties which the defendants owed to the plaintiffs as gratuitous agents? It bears remembering at this juncture that the defendants are all laymen. In volunteering their services for the common good, on their own time and without payment, in what has turned out to be a

thankless task, I believe it would be unduly onerous and unfair to saddle them with fiduciary duties of the standard imposed on the accountants in *Winnifred Wai Yue Yu* by the Supreme Court of New South Wales. The facts there showed the parties had a past relationship of accountant and client, since 1978. In our case, the privatisation exercise was the only occasion that the five defendants (and other pro-tem committee members) got together to represent their fellow flat owners. The principles in *Hedley Bryne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 relied on by the plaintiffs clearly cannot apply. I also disagree that the defendants have duties akin to those of promoters of companies. No authorities were cited by the plaintiffs to support this proposition.

94 Apart from choosing TAA as the law firm for the Estate, I find on the evidence, contrary to the plaintiffs' many allegations and submissions, that the defendants did not exercise their own discretion on other matters relating to the privatisation or the maintenance of the Estate. I cite two examples. The first was the second defendant's assiduous copying, chapter and verse, of the wording in the notices for the Voting day, from that used by the Jurong HUDC privatisation committee. Another example was the new name of the Estate. Waterfront View Condominium was chosen only after flat owners were consulted, by a voting slip attached to the 13th update. The new name was a compromise on the first choice of "Waterfront" by flat owners, after application to the Street Names Committee, which rejected "Waterfront" as inappropriate and counter-proposed Waterfront View, which was accepted by the pro-tem committee.

95 It was therefore mischievous of the plaintiffs (in particular the trio referred to by the defendants) to contend that the defendants acted on their own accord, without consulting the other flat owners. Nothing could be further from the truth. I cite as a third example Yu's allegation that the boundary wall was erected without due consultation of the flat owners. He did not know or had forgotten (until it was drawn to his attention during cross-examination) that construction of the boundary wall was not the doing of the pro-tem committee or the defendants but that of the Aljunied Town Council who conducted a tender exercise. Like many of the other plaintiffs, the 69th plaintiff did not know the full facts nor did he take the trouble to find out. Yet, he opined in court that there had been a fair bit of non-transparency. It is very easy to criticise as Yu did, after the event, that the wall was too expensive and lights on the boundary wall were unnecessary. Why did he and the other plaintiffs not make their views known to the Aljunied Town Council *before* the wall was constructed? The flat owners were given every opportunity to contact either the HDB or the Aljunied Town Council or give their feedback on the Estate's improvement before (in the fourth update), during (in the seventh update), and after (in the 14th update), the privatisation exercise.

96 In relation to the privatisation process itself, it cannot be denied by the plaintiffs that the defendants followed the Guidelines and/or the steps taken by other HUDC estates (Gillman Heights, Jurong East). They consulted the HDB often, according to Ms Gan's testimony. I find that the plaintiffs have failed to discharge their burden to prove that the defendants did not carry out their duties properly as gratuitous agents of the plaintiffs and other flat owners in this regard.

Breach of duty of care

97 In order to succeed on this head of claim, the plaintiffs must prove there was sufficient proximity between themselves and the defendants for such a duty to arise, based on the "neighbour test" propounded by Lord Atkin in *Donoghue v Stevenson* [1932] AC 562. If such a duty did exist, the plaintiffs must further prove that they suffered loss and damage consequent on the defendants' breach of this duty, which was foreseeable by the defendants. The defendants, I repeat, were volunteers who received no payment for their services. I have held that their duty as gratuitous agents of the plaintiffs and other flat owners was to appoint suitable lawyers and to follow the Guidelines and precedents set by other HUDC estates in privatisation. The defendants discharged all

those duties; I cannot see what other duty of care they owed to the plaintiffs which they have breached.

98 Even if I am wrong in my findings and the defendants did owe a duty of care to the plaintiffs over and above what I have determined, what loss or damage have the plaintiffs suffered? No damage in negligence has been proved apart from the allegation that the plaintiffs "suffered harm" (in para 55(b)(i) of the statement of claim).

99 In para 104 of the statement of claim, the plaintiffs pleaded that their claims based on breaches of the agreement *inter se*, negligent misstatement and misrepresentations were the following:

(a) The difference between the amount paid or payable for the common property and the true and proper value of the common property.

(b) The difference between maintenance fees payable by the plaintiffs for a privatised estate and maintenance fees payable if the Estate had remained a HDB property.

(c) Costs and expenses which the plaintiffs as flat owners will have to bear in consequence of privatisation which they would not have had to bear otherwise, for which the plaintiffs sought an indemnity against the defendants. These included costs and expenses for construction works to be carried out, costs of rectification of structural and other defects and, costs for maintenance of the Estate undertaken by the HDB before privatisation.

100 In relation to item (a), the claim is misconceived. It is clear from the evidence that, the Estate being a phase LLJ HUDC estate, the HUDC Housing Estates Act is not applicable. The HDB did not sell the common property to flat owners in the Estate initially. Consequently, flat owners must pay to the HDB a market price for the common property, which has since been transferred to them together with issuance of the SSCT. Item (b) is equally unfounded. The first defendant had testified that maintenance fees have not increased after privatisation. Indeed, an immediate benefit from privatisation is, flat owners who owned motor vehicles no longer had to pay monthly car parking charges of $65 to the HDB, on top of monthly maintenance fees of $104. It is no longer open to the plaintiffs to claim item (c). Construction works and rectification of defects were carried out and completed well before the application under s 126A of the Act was lodged, with the full knowledge of the plaintiffs, from information provided in the updates. The works were *not* undertaken by the defendants but by the HDB and/or Aljunied Town Council. As the plaintiffs had not objected at the material time to the works, it is too late for them to do so now, let alone to object to paying for the same.

The validity of the application under s 126A of the Act

101 The only person whom I would consider to be authoritative or familiar with the privatisation process would be Ms Gan, by virtue of her position and experience with the HDB. It is not for the plaintiffs to come to court and give their own interpretation of how the privatisation process should have been carried out. It is completely out of turn, therefore, for the plaintiffs to attempt to usurp the roles of the HDB and/or the SLA in this regard. It is a matter for the SLA, not the plaintiffs, to decide whether the consent forms witnessed by the defendants were valid. In any case, Teo withdrew his allegation that the consent forms could only be witnessed by solicitors. Similarly, it is for the SLA, not the plaintiffs, to determine whether the application lodged on 3 December 2001 by TAA was valid or otherwise. The SLA had obviously decided that the application was valid by proceeding to issue SSCT to flat owners. Their decision is not open to question by the plaintiffs nor can the

plaintiffs rescind the same.

102 In their submissions, the defendants had highlighted the shift in position by the plaintiffs, even before the commencement of these proceedings. In the letter of demand to the first defendant from the plaintiffs' solicitors dated 13 May 2002, it was alleged that the former had represented to flat owners that 75% votes were obtained by May 1998. This was to be contrasted with the plaintiffs' previous stand, that the mandate had not been obtained on the Voting day itself. The defendants submitted that the change in position was due to Teo's realisation that the 75% mandate was indeed obtained by May 1998, giving rise to suspicions, not unfounded, as to whether the plaintiffs' action is *bona fide*.

103 It is my view from the evidence adduced in court that the defendants:

(a) did not deliberately conceal from flat owners that no mandate of 75% had been achieved on the Voting day;

(b) did not state in the updates that the mandate exercise on the Voting day would be a one-day exercise;

(c) did not surreptitiously garner more votes in support of privatisation after 22 February 1998, without disclosing the outcome of the vote on Voting day;

(d) did not mislead flat owners by the unofficial announcement of 16 April 1998 and the seventh update into believing that 75% mandate had been obtained on the Voting day. Vote counting was the task of TAA on whom the defendants could, and did, rely.

The plaintiffs' allegations are contrary to all the pre-privatisation updates, which documents made it clear that the pro-tem committee would continue in their efforts to garner more consents from flat owners. The defendants made no secret of their intention, nor concealed their door-to-door visits, in that regard.

104 I would add that the only fault if it can be called a fault, on the part of the defendants, was their enthusiasm for privatisation. Their indefatigable energy and commitment in that regard was commendable, especially on the part of the first defendant, who obviously devoted a great deal of his time to the cause.

105 I am puzzled as to what prompted the plaintiffs to commence these proceedings, particularly when some (like the 51st plaintiff) did not want the Estate to be de-privatised (if turning back the clock is possible). What have the plaintiffs lost, even if they were misled by the defendants' actions into believing the mandate exercise was on 22 February 1998 and no other days? The usual benefit of privatisation of a HUDC estate is an increase in value of such flats. The immediate benefits the plaintiffs obtained, after the HDB was satisfied there was a 75% mandate, were the removal of restrictions imposed by the HDB on HUDC flat owners. Teo was one of those who benefited in this regard, as his wife purchased a resale HDB flat in 2002 whilst being a co-lessee with him of Block 727 #04-5034 in the Estate, which would otherwise not have been allowed under s 47 of the Housing and Development Act (Cap 129, 1997 Rev Ed).

106 By instituting these proceedings, the majority of the plaintiffs were swayed by the wishes of a few who, for reasons best known to themselves, chose to take the defendants to court, when the defendants were obviously not the target of the plaintiffs' discontent. In so doing, the plaintiffs were foolhardy and have done themselves, the defendants and other flat owners of the Estate a great

disservice. There should have been a windfall for flat owners in the way of capital gains by the enhanced value of their flats after privatisation. Instead, by their actions, the plaintiffs have created adverse publicity for the Estate and prejudiced their own interests in the process. If the plaintiffs were genuinely against privatisation, the proper recourse would have been to move out of the Estate, lease out or sell their flats and use the sale proceeds therefrom to purchase alternative homes.

107 Apart from the defendants, another party, who seems to be hard done by as a result of the plaintiffs' action, is the HDB. Indeed, the HDB is the only party that appears to have a legitimate claim based on misrepresentation. Acting in good faith and in the belief that flat owners of the Estate had voted for privatisation, the HDB expended time and money on construction and upgrading works (together with the Aljunied Town Council) necessary to bring the privatisation process to fruition, only to find, to its detriment, that those plaintiffs who voted for privatisation appeared to have changed their minds.

Conclusion

108 It follows from my findings above that the plaintiffs' allegations against the defendants are unfounded and their claims, wholly unmeritorious. Accordingly, the plaintiffs' action is dismissed with costs to the defendants.

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[1](at 6AB2370)