Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes and Another
[2007] SGHC 84

Case Number : OS 618/2007

Decision Date : 25 May 2007

Tribunal/Court : High Court

Coram : Paul Tan AR

Counsel Name(s) : Francis Goh (Central Chambers) for the applicant; Gan Beng Cheng Raynes and Ching Siew Yin in person

Parties : Sim Lian (Newton) Pte Ltd — Gan Beng Cheng Raynes; Ching Siew Yin

25 May 2007 Judgment Reserved

Assistant Registrar Mr Paul Tan:

1 The proverbial question, "Who is my neighbour?" finds an awkward answer in the case of respondents Mr Gan Beng Cheng Raynes and his wife, Mdm Ching Siew Yin, who have found that all their neighbours have moved out of 22 Surrey Road, Singapore 307755, a condominium development otherwise known as Lincolnsvale, pursuant to an en-bloc sale to the applicant. The respondents further allege that at least a few of their neighbours who formed the sale committee did not follow due process in the collective sale of Lincolnsvale. As a result, they now turn to this court seeking that it fulfils its familiar role as Protector of the rights of minorities; to stand as a bulwark between what they claim continue to be their indefeasible and yet-undefeated proprietary rights in unit number #01-02, Lincolnsvale, and the applicant's bulldozers.

2 As to the cardinal principle, if not constitutional imperative, that the courts must within the framework of the rule of law hold in balance the rights and interests of minorities and majorities, there can be no doubt. While this is most commonly illustrated in the context of criminal law, where for example, Choo Han Teck JC (as he then was) astutely observed in *Public Prosecutor v Quek Loo Ming* [2002] SGHC 171 at [3] that "the court stands between the accused and the lynch mob, not in place of it", this anthem plays with equal force in other spheres of the law as well.

3 Whether or not it is accurate to portray the present case as simply an archetypal battle between Good and Evil is another story all together; and it is to this issue that I now turn my attention.

The background to OS 618 of 2007

4 The applicant in this case is Sim Lian (Newton) Pte Ltd ("Sim Lian"), a property developer who purchased Lincolnsvale. The respondents are, as stated above, subsidiary proprietors of unit #01-02 in Lincolnsvale.

5 Sometime prior to November 2005, the idea to put Lincolnsvale up for an en-bloc sale was hatched; and pursuant to that plan, a sale and purchase agreement dated 25 November 2005 ("the S&P Agreement") was eventually signed between Sim Lian and the subsidiary proprietors of the lots representing not less than 80% of the share values in Lincolnsvale (hereinafter referred to as "the Vendors").

6 Subsequently, the Strata Titles Board ("the STB") confirmed the sale of Lincolnsvale on 22

June 2006 ("the first STB Order") pursuant to s 84A of the Land Titles (Strata) Act (Cap 159, 1999 Rev Ed) ("the LTSA"). In this Order, it was recorded, *inter alia*, that:

(a) No objection to the sale of Lincolnsvale had been filed with the STB; and

(b) The STB was satisfied that the sale was in good faith taking into account the sale price, the method of distributing the sales proceeds, and the relationship of Sim Lian to any of the subsidiary proprietors;

7 Accordingly, it was ordered, *inter alia*, that:

(a) All the units in Lincolnsvale be sold collectively to Sim Lian in accordance with the S&P Agreement;

(b) All the subsidiary proprietors of Lincolnsvale be bound by all the terms of the S&P Agreement as if they were parties to it; and

(c) All the subsidiary proprietors of Lincolnsvale execute, sign, deliver and perfect all the necessary instruments to convey Lincolnsvale to Sim Lian.

8 Because the respondents did not obey the first STB Order, an application was brought under s 84C of the LTSA to appoint one Mr Wong Kok Seng and one Mr Tan Tze Suan to jointly deal with all matters in connection with the sale of the respondents' unit, including the redemption of mortgages and charges, the execution of the transfer, the receipt of moneys, the settlement of encumbrances of the unit, applying for a replacement or subsidiary certificate of title, giving valid receipts thereof and paying the remaining moneys into court under s 62 of the Trustees Act (Cap 337, 2005 Rev Ed). The STB so ordered on 30 September 2006 ("the second STB Order").

9 Consequently, the instruments necessary to effect the conveyance of the respondents' unit were signed on behalf of the respondents by Mr Wong and Mr Tan. This included the instrument of transfer, which was dated 10 October 2006 and registered on 25 October 2006.

10 According to cl 17(1) of the terms and conditions of the Vendors' tender dated 22 November 2005 ("the Tender"), which formed part of the S&P Agreement, all units in Lincolnsvale were to be sold with vacant possession; and that vacant possession was to be delivered not more than six months from the date of completion, which in the respondent's case was 10 October 2006. Six months from 10 October 2006, the respondents had not delivered vacant possession of their unit and a letter of demand was issued and sent to the respondents' unit on 13 April 2006 by registered and normal post requesting that the respondents move out by 18 April 2006. The respondents did not do so, and another letter dated 19 April 2007 and delivered by hand and/or post advised the respondents to deliver vacant possession immediately and that construction work was going to start in Lincolnsvale. Two further reminders were sent on 20 and 21 April 2007. It appears that the respondents finally replied to these letters on 22 and 23 April 2007, seeking proof of the STB Orders.

11 Sim Lian's solicitors then took out the present application on 23 April 2007 to force the eviction of the respondents. This was served personally on the respondents, who accepted service at their unit in Lincolnsvale on 24 April 2007.

12 In the evening before the hearing before me, the respondents handed the key to their unit in Lincolnsvale under protest to the night watchman, one Mr Ganesan Rajakumaran. The handing over of the key was accompanied by a letter dated 6 May 2007, which read:

> As far as the notification went, I am able to declare to any Court that I have not received a single cent over the enforced and purported sale of my subsidiary property although I am forced to vacate from it. It was only through my own diligence that I realised, but too belatedly, that some money has gone into my CPF account. If this payment to the transaction [*sic*], it will still be partial and huge shortfall remains.
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> That I am now leaving a door key to my property to your end's watchman [*sic*] is done strictly and solely under severe duress and intimidation for I do not wish myself and wife to go bankrupt, guaranteed, given the project delays your end was hovering over my head and, the lack of confidence of a sympathetic court [*sic*].

13 Because of this letter, Sim Lian was not satisfied that the respondents' handing over of the key to their unit to Mr Rajakumaran constituted an unqualified delivery of vacant possession. As such, Sim Lian instructed its solicitors to persist in its application in OS 618 of 2007.

14 On 7 May 2007, I heard argument for approximately two hours. Sim Lian was represented by Mr Francis Goh; while the respondents appeared in person. I should point out that the respondents had not entered appearance formally as required under O 12 r 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules") and that according to O 13 r 4, Sim Lian would ordinarily have been entitled to judgment in default of appearance. However, given that the respondents had appeared personally and were prepared to proceed, and since any judgment obtained in default of appearance could be set aside subsequently pursuant to O 13 r 8, I allowed the respondents to present their case in the interests of both fairness and expedience.

Issues raised by the parties

Sim Lian's case

15 Sim Lian's position is relatively straightforward: due process having been followed, it is contractually entitled to the delivery of vacant possession of all the units in Lincolnsvale. Accordingly, the court should allow its application under O 81 of the Rules and order that the respondents hand over possession of their unit immediately.

16 Specifically, it was argued by Mr Goh that Sim Lian may rely on the face of the first STB Order confirming the legitimacy of its purchase of Lincolnsvale; and the second STB Order, which appointed Mr Tan and Mr Wong to execute the conveyance of the respondents' unit to Sim Lian when the respondents refused to do so. Once Mr Tan and Mr Wong had effected the transfer on 10 October 2006, time started running for the respondents to deliver vacant possession.

17 Mr Goh also suggested that the true objection of the respondents, as evidenced in their letter dated 6 May 2007 (see [12] above), appears to be that they have not received their share of the sale proceeds. In this regard, Mr Goh noted that the respondents have received some of the moneys. The balance has been paid into court, although 5% of the sale proceeds continue to be withheld by the Vendors' solicitors, and will be released only after vacant possession is delivered as provided for in cl 17(1) of the Tender. Furthermore, since it is the Vendors' solicitors who are in charge of disbursing the sale proceeds, any failure on their part to release the respondents' share of the sale proceeds do not concern Sim Lian.

18 At the conclusion of the hearing, I directed Mr Goh to submit (and serve on the respondents) further arguments and authorities on whether, assuming that the collective sale process was irregular or defective, Sim Lian would still be entitled to judgment.

19 Mr Goh's submission was that Sim Lian, being the registered owner of Lincolnsvale, holds an indefeasible title free from all unregistered encumbrances, liens, estates and interests. This is sufficient to find that the respondents are trespassers and that they must turn in vacant possession of their unit to Sim Lian. It was also contended that there is no place for equity to intervene in the present context, primarily because the respondents knew of the ongoing collective sale but wilfully chose not to participate or even register their protests in accordance with the procedures laid down by the relevant statutory provisions.

The respondents' case

20 When the respondents were first asked to present their position, Mr Gan acknowledged that they had no right to remain on the property; and that their only concern was that they had not received their share of the sale proceeds.

21 Mdm Ching took exception to this characterisation of their case, and instead raised, *inter alia*, the following arguments:

(a) The process of the sale was defective, as evidenced in the following instances:

(i) The sale committee was randomly formed based on who signed up first rather than who was most suitable;

(ii) The extraordinary general meetings ("EOGMs") on 12 January 2006, 17 March 2006 and 26 April 2006 to consider the sale were held only after the S&P Agreement had been signed, and to this extent, they were a sham and orchestrated simply to fulfil a statutory requirement that there must be an EOGM to consider the sale;

(iii) There was no voting at any of the EOGMs;

(iv) The proper disclosures of vested interest were not made. For example, the sale committee and/or the lawyers involved in the en-bloc sale might have been affiliated to Sim Lian. Also, one of the sale committee members appears to have been related to the owner of certain drainage reserve land in Lincolnsvale (which was sold under a separate contract to Sim Lian) but this kinship was not declared to the STB;

(v) They (*ie* the respondents) were not fully informed, if at all, about the sale of Lincolnsvale until everything had been signed. Notices should have been sent to their Post Office Box address rather than any other address since they were constantly moving between apartments;

(vi) They (*ie* the respondents) had written to inquire as to whether there were other parties who had submitted tender bids for Lincolnsvale during the EOGM on 12 January 2006 EOGM but no reply was forthcoming;

(vii) Statute dictates that STB Orders must be "certified" before it has binding effect in accordance with s 119 of the Building Maintenance and Strata Management Act 2004 (No. 47 of 2004) ("the BMSMA"). This was not done for the first and second STB Orders; and

(viii) They (*ie* the respondents) have yet to receive the full sum they are entitled to under the sale of Lincolnsvale;

(b) Even on Sim Lian's best case, vacant possession should be delivered only on 15 May 2007 at the earliest, as this was the indication in the EOGM minutes; and

(c) The respondents have a fee simple title to their unit in Lincolnsvale and this was inviolable and insulated them from any court proceedings, including the present application by Sim Lian.

22 Above all, Mdm Ching was extremely upset at being dragged through the present court proceedings and said as much that the application was an abuse of process and an attempt at intimidating them. She also expressed that she and her husband were under a lot of stress as a result of the entire affair and had, in fact, suffered financially by having to pay some $5,500 to rent alternative accommodation in such short notice.

Analytical framework of O 81

23 This is the first time that a Singapore court has had the opportunity to rule on O 81 of the Rules; although, judging by the growing dissension as to the propriety of en-bloc sales, this may not be the last. It may therefore be useful to set out the key aspects of analysing applications under this provision.

24 For convenience, O 81 r 1 of the Rules is set out, as follows:

> Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

25 O 81 of the Rules was introduced in 1993 and is *in pari materia* with O 113 of the former English Rules of the Supreme Court, which has since been enacted as r 55.1(b) of the UK Civil Procedure Rules 1998 (SI 1998/3132). The same language is also found in O 89 of the Malaysian Rules of the High Court. Therefore, jurisprudence from the UK and Malaysia are especially helpful.

26 To begin with, it is clear from the wording of O 81 r 1 itself that the provision is intended to apply only in specific situations. The procedure cannot be used against a tenant or a tenant holding over at the end of tenancy. In addition, the English courts have held that where a tenant allows the defendant into the premises, the landlord cannot use the procedure against the defendant unless the tenancy has been determined or surrendered: see, *Auto Finance Ltd v Pugh* (10 June 1985, unreported). In addition, where complex issues as to title are engaged (*Cudworth v Masefield*, The Times, 16 May 1984) or where there has been a surrender of a tenancy by operation of law (*Cooper v Vardari* (1986) 18 HLR 229), the procedure is not appropriate. This is presumably due to the summary nature of the procedure.

27 O 81 may, however, be used where (a) the occupier has entered into occupation without licence or consent; or (b) having initially entered with licence or consent, has remained without licence or consent. Therefore, apart from the easy case of an owner in fee simple in possession claiming against a squatter, the procedure may be used by (see, Stuart Sime, *A Practical Approach to Civil Procedure* (New York: Oxford University Press, 8th ed, 2005) at 226):

(a) A head landlord against unlawful subtenants (*Moore Properties (Ilford) v McKeon* [1976] 1 WLR 1278);

(b) The owner of premises against a person who had gone into possession as a licensee but whose licence has expired (*Greater London Council v Jenkins* [1975] 1 WLR 155). This includes a former employee whose right to remain has been terminated (*Whitbread West Pennines Ltd v Reedy* [1988] ICR 807);

(c) A tenant of premises against a person who, while the tenant was absent, was let into occupation with the consent of the landlord (*Borg v Rogers* (1981) 132 NLJ 134); and

(d) A licensee who was not in occupation of the land against a trespasser where possession was necessary to give effect to the licensee's contractual rights of occupation (*Dutton v Manchester Airport plc* [1999] 2 All ER 675).

It should be noted that, on the basis of *Greater London Council v Jenkins* [1975] 1 All ER 354, once an applicant shows himself to fall within the terms of O 81, the court has no discretion to prevent him from exploiting this provision.

28 In my judgment, there can be no doubt that Sim Lian may proceed under O 81 in the light of the fact that it claims to be the rightful owner of all the units in Lincolnsvale and that the respondents, having transferred their rights in unit #01-02 to Sim Lian on 10 October 2006, were obliged to hand over vacant possession within six months of the transfer as stated in the S&P Agreement. This is therefore a clear case of owner versus alleged trespasser, the paradigm scenario contemplated by O 81. Similar to the present case is *Toh Kheng Heng & Anor v Ahmad Fauzi bin Mohd Taufek* [1994] 1 MLJ 356 ("*Toh Kheng Heng*"), wherein the applicants were the registered owners of a piece of land which they had bought from the previous owner with vacant possession. They then sought to sell the land to another buyer and inspected the land before doing so. They found the defendant and others in occupation of the land and when the latter refused to obey a notice to quit, an application for possession of land was brought. The High Court of Penang found that the equivalent of our O 81 was the appropriate vehicle with which to enforce the applicants' rights in the land.

29 O 81 is intended to be a summary procedure, not unlike that provided for in O 14 of the Rules. Thus, it is no surprise that principles familiar to summary judgment are equally applicable to summary proceedings for possession of land; and that this is also the current position in Malaysia. In *Chiu Wing Wa v Ong Beng Cheng* [1994] 1 MLJ 89 ("*Chiu Wing Wa*"), Mohamed Azmi SCJ, writing for the Supreme Court, Kuala Lumpur, held that (at 93):

> The summary procedure under O 89 is governed by the same principles as those under O 14 of the RHC 1980. To entitle a defendant to a trial, all he needs to do is to show that there is a triable issue of law or fact. It is only in clear cases of trespass that a summary order can be made under O 89.

See also, an earlier decision (*Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343) in which Azmi SCJ employed terminology well-known to proceedings for summary judgment such as "triable issues" or "arguable case".

30 The rationale for the summary nature of this provision was explained by Lord Denning MR in *McPhail v Persons, Names Unknown; Bristol Corporation v Ross and Anor* [1973] 3 Ch 447 ("*McPhail*") at 457:

> Although the law thus enables the owner to take the remedy into his own hand, that is not a course to be encouraged. *In a civilised society, the courts should themselves provide a remedy*

which is speedy and effective: and thus make self-help unnecessary. The courts of common law have done this for centuries. The owner is entitled to go to the court and obtain an order that the owner "do recover" the land, and to issue a writ of possession immediately. That was the practice in the old action of ejectment which is well described by Sir William Blackstone in his *Commentaries*, 8th ed. (1778), vol. III, pp. 200-205 and Appendix No. II; and by Maitland in his *Equity* (1909), pp. 352-354.

[emphasis added]

31 Several consequences flow from the summary nature of proceedings under O 81. First, where there is a dispute on the facts or on the legal issues, O 81 would not be the appropriate procedure and the applicant should have his claim adjudicated by the usual process, including trial if necessary: see, for example, *Henderson v Law* (1984) 17 HLR 237; *Filemart v Avery* (1989) 46 EG 92. In *Chiu Wing Wa*, it was also elaborated that where there are "complex and arguable" questions of law involved, the case should not be disposed of summarily. However, where the issue raised is solely a question of law which is readily unarguable without reference to any fact, or where the facts are clear and undisputed, the court should exercise its duty to grant a summary order.

32 As with applications under O 14, not *any* dispute warrants a dismissal of the application. Only those disputes that "ought to be tried" (see O 14 r 3(2)) are sufficient to repel judgment for the applicant. Therefore, a mere assertion that there is a dispute as to whether the respondent to an O 81 application is a trespasser, unaccompanied by any substratum of evidence, is woefully inadequate to attack the application. As put by Lord Diplock in the Privy Council case of *Eng Mee Yong v Letchumanan* [1979] 2 MLJ 212 at 217:

Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements or by the same deponent, or inherently improbable in itself it may be.

33 Lord Diplock's *dictum* leads to a second point, which is that in summary proceedings, it is not the function of the court to resolve the case on its merits but only to judge whether there is a dispute that ought to be adjudicated by trial. In this regard, once the applicant has presented a *prima facie* case, it falls on the responding party to "lead trump or risk losing" (see, *1061590 Ontario Ltd v Ontario Jockey Club* (1995) 21 O.R. (3d) 547 at 36). As articulated in Jeffrey Pinsler ed, *Singapore Court Practice 2006* (Singapore: LexisNexis, 2006) ("*Singapore Court Practice*") at para 14/3/1:

Usually, the plaintiff will commence by making the appropriate introduction and describing his claim. He may also have to deal with preliminary matters raised by the court or the other party, such as irregularities in the documents. If everything is in order, the defendant will be called upon within a short time to make his case as the burden lies on him to establish his entitlement to defend the action. It is for the defendant to 'show cause' to the satisfaction of the court (r 2(3)).

34 Finally, because O 81 is a summary process, evidence is led by way of affidavit: see, *Singapore Court Practice* at para 81/1-9/6. However, while the applicant must file an affidavit in support (see O 81 r 4), there is no such obligation on the respondent. Nevertheless, a respondent is ill-advised to adopt the risky strategy of not filing an affidavit because, without evidence of its own, the respondent will be limited to pointing out *internal* inconsistencies or contradictions in the

applicant's case. Assertions of *fact* unsupported by an accompanying affidavit are treated as bald statements and should be given little, if any, weight. The requirement for affidavit evidence is necessary to ensure that the evidence is credible, for there are serious (including penal) consequences for lying in an affidavit.

Assessment of the contentions raised by parties

35 Only Sim Lian filed an affidavit in support of its application. Even though I heard the respondents on 7 May 2007, this was in the absence of any affidavit filed in support of their opposition to the application. Notwithstanding that, the respondents did refer me to several documents, and Mdm Ching also claimed that there were others that they did not have with them at the time. Mindful that they were lay persons representing themselves, I returned these documents to the respondents and gave them the opportunity to file an affidavit exhibiting these and other documents (together with any further submissions that they might have) by the following Monday, 14 May 2007. They did not do so. Strictly speaking, it should follow that their arguments should be disregarded as being baseless since they refer to facts not in evidence. Accordingly, as long as I satisfy myself that Sim Lian has made out a *prima facie* case, order in terms of OS 618 of 2007 should be granted.

36 Nonetheless, out of deference to the effort made by the respondents, and in order to ensure that substantive justice is done, I will analyse parties' submissions accordingly.

37 In my view, this case may be resolved by asking whether there are triable issues along the following dimensions:

(a) The purported irregularities in the sale of Lincolnsvale and whether they would be sufficient to call into question Sim Lian's registered title in Lincolnsvale;

(b) The accuracy of the suggestion that even on the respondents' worst case, they should deliver vacant possession only on 15 May 2007 and that this application is premature; and

(c) The correctness of the respondents' assertion that their ownership of a fee simple in unit #01-02 insulates them from the present proceedings.

Whether there are triable issues in respect of the purported irregularities in the sale of Lincolnsvale, and their sufficiency to call into question Sim Lian's registered title in Lincolnsvale

38 The majority of the respondents' complaints boil down to their belief that the process of the collective sale of Lincolnsvale was defective in one way or another (see [21(a)] above). This, in turn, raises the question of whether there are triable issue issues regarding the purported deficiencies in the process of the sale of Lincolnsvale. In order to ascertain whether it is even necessary to reach the question just articulated, a brief discussion on Mr Goh's submission that registration-is-all (see [19] above) is apposite.

39 Sim Lian is undoubtedly the registered proprietor of Lincolnsvale. Under the Torrens system employed by Singapore, it is deemed to take the land free from any unregistered encumbrances. For all intents and purposes, it may deal with it as it wishes. This much is clear from s 46(1) of the Land Titles Act (Cap 157, 2004 Rev Ed) ("the LTA"):

46. —(1) Notwithstanding —

(a) the existence in any other person of any estate or interest, whether derived by grant from the State or otherwise, which but for this Act might be held to be paramount or to have priority;

(b) any failure to observe the procedural requirements of this Act; and

(c) any lack of good faith on the part of the person through whom he claims,

any person who becomes the proprietor of registered land, whether or not he dealt with a proprietor, shall hold that land free from all encumbrances, liens, estates and interests except such as may be registered or notified in the land-register, but subject to —

(i) any subsisting exceptions, reservations, covenants and conditions, contained or implied in the State grant or State lease thereof;

(ii) any subsisting easement or public right of way which was in existence at the date on which the land was brought under the provisions of this Act and any right on, above or under any land created before or after 1st March 1994 in favour of a public authority under any statute and any statutory easement implied under sections 98, 99, 101, 102 and 104;

(iii) any statutory obligation as defined in section 142;

(iv) the power to correct errors conferred on the Registrar by section 159;

(v) the power to rectify the land-register conferred upon the court by section 160;

(vi) the rights of any person in occupation of the land under a tenancy when the proprietor became registered as such, being a tenancy the term of which does not exceed 7 years and could not have been extended by exercise of the option of renewal to exceed an aggregate of 7 years; and

(vii) the power conferred on the court to make a declaration in respect of any transfer or an order to rectify the land-register and the power conferred on the Registrar to suspend or cancel the registration of the transfer and any relating instrument by section 24 of the Residential Property Act (Cap. 274) in respect of any residential property (the expressions "transfer" and "residential property" to have the meanings assigned by that Act).

[emphasis added]

40 The strict regime envisioned by the Torrens system is consistent with its objectives, which were stated in the following terms in *Gibbs v Messer* [1891] AC 248 at 254:

> The object is to save persons dealing with the registered proprietors from all the trouble and expense of going behind the register in order to investigate the history of their author's title, and to satisfy themselves of its validity. That end is accomplished by providing that everyone who purchases in *bona fide* and for value from a registered proprietor and enters his deed of transfer or mortgage on the register, shall thereby acquire an indefeasible right, notwithstanding the infirmity of his author's title.

41 This rationale was accepted by the Minister during the second reading of the Land Titles Bill (see, *Singapore Parliamentary Debates, Official Report* (24 August 1955) vol 1 at cols 569–571). It was also mentioned at col 570 that:

> *The new Register will afford conclusive proof of the ownership of land, by an instrument called a Certificate of Title*. The difference between the Title Register and the present Deeds Register is the difference between the positive and the negative. The Registration of Deeds Ordinance, in effect, says, "If you do not register your deed, it will be bad." The Land Titles Bill says, in effect, "If you do register your deed, it will be good." Between the economic consequences of these two effects, there is a wide gulf.
>
> [emphasis added]

42 All this might lead one to think, as do the learned authors of *Halsbury's Laws of Singapore* (Singapore: Lexis Nexis 2005), vol. 14, at [170.0233], that "a registered proprietor gets an *immediate* indefeasible title, even where his registration is based on a void instrument." [emphasis added] If this is true, Sim Lian's registered title can only be defeated by the respondents bringing themselves (a) within any of the recognised exceptions to indefeasibility in s 46(2) of the LTA; or (b) within the scope of s 160 of the LTA, which allows the court to rectify the register if there is "fraud, omission or mistake".

43 There is, however, considerable debate in the common law world (and in particular in those jurisdictions employing the Torrens systems) regarding whether a purchaser of property who registers his purchase obtains an indefeasible title *vis-à-vis* the original proprietor such that the validity of the documents on which registration took place or any irregularity in the process of registration could not defeat a registered title; or whether only a *subsequent* purchaser who had dealt on the faith of the register would have an indefeasible title. These positions are known, respectively, as the theories of *immediate* and *deferred* indefeasibility. The practical difference between the two is illustrated in a situation where there has been fraud on the part of a third party in connection with the sale and purchase of property between the original proprietor and the registered purchaser; and the latter has no knowledge of the fraud. If registered titles are immediately indefeasible, the registered purchaser has good title unless the fraud occurred before registration and the fraud is brought home to him. If indefeasibility is deferred, only a subsequent purchaser will not be affected by the fraud. It has been argued by Professor Tan Sook Yee in *Principles of Singapore Land Law* (Singapore: Butterworths Asia, 2nd ed, 2001) ("*Principles of Singapore Land Law*") at 247-252 that the LTA is "schizophrenic" in so far as s 46 appears to support the theory of immediate indefeasibility, while s 160, which allows the correction of the register on the basis of fraud, omission and mistake as long as the "proprietor is a party or privy to the omission, fraud or mistake in consequence of which the rectification is sought, or has caused that omission, fraud or mistake or substantially contributed thereto by his act, neglect or default" seems to support the theory of deferred indefeasibility because it does not expressly require the mistake, fraud or omission to have been committed by the registered proprietor or his agent before registration. Professor Tan also posits that even as a matter of principle, it is not immediately obvious which theory the Torrens system supports; although, to be sure, the Land Titles Ordinance 1956 (the predecessor to the LTA) was based on immediate indefeasibility. On the one hand, it may be argued that immediate indefeasibility would make transactions efficient. Moreover, it does not result in the unpalatable consequence of an innocent registered purchaser being forced to forfeit his property even though he commits no wrong. On the other, it may be asserted that efficiency is not greatly compromised by a system that makes a title indefeasible only when the property is on-sold. Additionally, deferred indefeasibility protects the original proprietor who may be innocent of any wrongdoing.

44 These arguments met their fate in a recent Court of Appeal decision, *United Overseas Bank Ltd v Bebe bte Mohammad*[2006] 4 SLR 884 ("*Bebe*"), in which it was held that in order to be consistent with the LTA's framework, the fraud, omission or mistake in s 160 must take place before the registration of any transfer of property and must be brought home to the registered proprietor.

Any fault on the part of third parties would not affect a registered title. As Chan Sek Keong CJ, writing for the court, observed at [47]:

> [This interpretation] avoids the incongruence of Parliament conferring indefeasibility upon the registered proprietor in terms of s 46(1), while empowering the court to take it away not on the basis of the dishonest act or conduct of the registered proprietor, but on the basis of someone else's dishonest act or conduct of which the registered proprietor might have had no knowledge.

Accordingly, the court was of the view that the LTA firmly supported the theory of immediate indefeasibility. At [95], Chan CJ elaborated:

> We have explained earlier that s 160 is intended to apply to cases that fall within the exceptions in ss 46(2)(*a*)–46(2)(*e*), and that such exceptions will have effect only if they existed before or at the time the contract relating to the dealing is entered into or the instrument of dealing is registered. For this reason, s 160 does not affect the principle of immediate indefeasibility. The effect of the doctrine of immediate indefeasibility under ss 46(1) and 47(3) is to limit all personal equity claims to those existing at the time the relevant contract relating to the dealing was entered into or before or at the time of the registration of the instrument relating to the dealing, and to exclude all those which come into existence after.

Harking back to the policy reasons behind the Torrens system, the court rationalised that (at [92]):

> The LTA in introducing the Torrens system was designed to simplify land dealings and to give finality to the title of the registered proprietor. Section 46(1) gives him an indefeasible statutory title upon registration of the instrument of transfer or mortgage, subject only to the overriding interests in s 46(1) and the exceptions to indefeasibility in s 46(2).

45 Be that as it may, it not necessary to disentangle this knot on the facts of this case. The respondents are not relying on any act done by any third party that might vitiate Sim Lian's title. Sim Lian is itself the registered purchaser of Lincolnsvale from its original proprietors, who include the respondents; and is (through its solicitors) a party to the (allegedly defective) collective sale. In addition, given the proximity of Sim Lian to the collective sale, it would have been privy to any flaw in the sale process, if they existed. Moreover, the respondents are alleging irregularities in the process of the sale and purchase of Lincolnsvale prior to the registration of the transfer. Therefore, even if indefeasibility is immediate, it is possible that if the transfer was diseased, Sim Lian may not have good title.

46 In order to determine the precise boundaries of the court's powers to find that a registered title has been defeated, it is necessary to refer first to s 46(2) of the LTA, which is in the following terms:

> Nothing in this section shall be held to prejudice the rights and remedies of any person —
>
> (a) to have the registered title of a proprietor defeated on the ground of fraud or forgery to which that proprietor or his agent was a party or in which he or his agent colluded;
>
> (b) to enforce against a proprietor any contract to which that proprietor was a party;
>
> (c) to enforce against a proprietor who is a trustee the provisions of the trust;
>
> (d) to recover from a proprietor land acquired by him from a person under a legal disability which

was known to the proprietor at the time of dealing; or

(e) to recover from a proprietor land which has been unlawfully acquired by him in purported exercise of a statutory power or authority.

Section 46(2) of the LTA should be read in conjunction with s 160, which provides that the court may rectify the register in certain circumstances and in order to give substance to any justified claim that the registered proprietor's title has been defeated on the grounds enumerated in s 46(2):

160. —(1) Subject to subsection (2), the court may order rectification of the land-register by directing that any registration be cancelled or amended in any of the following cases:

(a) where 2 or more persons have, by mistake, been registered as proprietors of the same registered estate or interest in the land comprised in a folio;

(b) where the court is satisfied that any registration or notification of an instrument has been obtained through fraud, omission or mistake; or

(c) where the court has declared that any instrument which purports to pass any estate or interest in any residential property within the meaning of the Residential Property Act (Cap. 274) is void under section 24 of that Act.

(2) The land-register shall not be rectified so as to affect the registered estate or interest of a proprietor who is in possession unless that proprietor is a party or privy to the omission, fraud or mistake in consequence of which the rectification is sought, or has caused that omission, fraud or mistake or substantially contributed thereto by his act, neglect or default.

(3) Subsection (2) shall not apply in the circumstances referred to in subsection (1) (c).

47 Sections 46(2) and 160 are self-explanatory; but one thorny issue remains, which is this. Despite their relatively clear words, it was held in *Ho Kon Kim v Lim Gek Kim Betsy and Others and Another Appeal* [2001] 4 SLR 340 ("*Betsy Lim*") that among the recognised exceptions to indefeasibility are claims *in personam* made against the registered proprietor by reason of his own conduct. This position – that personal equity may defeat title – is consistent with prior case law (*United Overseas Finance Ltd v Victor Sakayamary & Ors* [1977] 3 SLR 211; *Teo Siew Peng v Neo Hock Pheng* [1999] 1 SLR 293) as well as the stance adopted in other jurisdictions employing the Torrens systems; and in particular, Australia (see, *Frazer v Walker* [1967] 1 AC 569 and *Bahr v Nicolay (No 2)* (1988) 62 ALJR 268). But, with respect, there is some conceptual difficulty in reconciling this position with ss 46(2) and 160 of the LTA, as well as the overriding directive expressed in s 3(1) of the LTA, which repeals "all Acts, regulations, rules, and other laws, and all practices, relating to estates and interests in land…so far as they are inconsistent with the provisions of [the LTA] in their application to registered land". As Professor Tan notes in *Principles of Singapore Land Law* at 246:

The point of confusion in regard to the personal equity and the Land Titles Act lies not in the overlapping between the statutory provisions and the general law, but in the placing of the court's power to rectify the register on grounds set out in section 160 as an overriding interest as distinct from a simple exception to the indefeasibility of the registered title under section 46(2).

48 It was only in *Bebe* that the Court of Appeal recognised this philosophical inconsistency; and

the court all but prospectively overruled its decision in *Betsy Lim* (see, in particular, [77] of the judgment: "should a dispute on similar facts come before this court in future, the decision in *Betsy* would have to be reconsidered for consistency with the policy of the LTA"). Thus, the effect of *Bebe* in respect of the compatibility of personal equities within the framework of the LTA is that (at [91] of the judgment):

> (a) In so far as whether "fraud" under the LTA could be given an extended meaning that would include "equitable fraud where there is present dishonesty or moral turpitude", this remained an open question; and
>
> (b) To the extent that there may other forms of personal equities, the courts should be "slow to engraft onto the LTA personal equities that are not referable directly or indirectly to the exceptions in s 46(2) of the LTA". This caution applies equally to the "amorphous concept of conscience": see [71] of the judgment in *Bebe*.

49 Perhaps I should add just one further observation on *Bebe*. It is clear from the reasoning of the court that s 160 should be read in relation to s 46(2), and that the two provisions are linked as follows:

> With this contextual background in mind, the meaning of the words "*registration of any instrument has been obtained*" in s 160(1) is plain: they refer to the fraud, omission or mistake of the party who presents the instrument to the registry for registration. With respect to fraud, this interpretation provides the linkage to s 46(2)(*a*) as it is only the fraud to which the registered proprietor or his agent is a party or in which he or his agent colluded that is capable of defeating his otherwise indefeasible title. With respect to omission or mistake, this interpretation provides the linkage to ss 46(2)(*b*)–46(2)(*e*) as it should only be the mistake or omission of the registered proprietor that is capable of prejudicing the rights of other parties in relation to the properties in question.
>
> [emphasis in original]

From this passage, one might be get the impression that the court was attempting to narrow the seemingly broad scope of the court's powers to rectify the register on any "fraud, omission or mistake". In my view, the court was simply making the point that in order for s 160 to be consistent with the overall regime of the LTA, including s 46, the fraud, omission or mistake had to belong to the registered proprietor or his agent before any rectification can be contemplated. It does not appear that the court intended to limit the breadth of s 160 in any other regard. In fact, the court had earlier held that (at [28]):

> The LTA conferred an indefeasible title on the mortgagee, subject only to certain *overriding interests*, which included the powers of the Registrar and the court to rectify the land-register under ss 159 and 160 respectively, *and the exceptions specified in s 46(2) of the LTA*.
>
> [emphasis added]

If the court intended for s 160 to ape s 46(2) – that is, for it simply to be the remedial provision for the substantive provisions in s 46(2) – s 160 would not be considered an "overriding" provision; nor would the court list the exceptions specified in s 46(2) of the LTA separate from s 160. Thus, while s 160 may encompass s 46(2), the converse is certainly not the case. As to the precise ambit of s 160, that can, presumably, only be refined through the factual matrices presented in future cases.

50 The upshot of the foregoing discussion is this: notwithstanding that titles registered possess immediate indefeasibility, that indefeasibility may still be undercut if the registered proprietor has committed or colluded in any act enumerated in ss 46(2) or 160 prior to the registration of his ownership in the property. Here, the respondents are alleging that the various deficiencies in the sale process are sufficiently grave to defeat Sim Lian's title in that:

(a) There would be fraud contrary to s 46(2)(*a*) and 160(1)(*b*), particularly in respect of Sim Lian's failure to disclose its relationship to the subsidiary proprietors and its non-payment of the sale proceeds to the respondents;

(b) That because of the irregularities of the collective sale, the first and second STB Orders were improvidently granted, and that Sim Lian had, in violation of s 46(2)(*e*), unlawfully acquired Lincolnsvale in purported exercise of a statutory power or authority under the relevant statutes;

(c) That, contrary to s 160(1)(*b*), it was mistake on the part of Sim Lian to rely on the first and second STB Orders in registering the respondents' transfer of unit #01-02 because they were not duly "certified"; and

(d) On the assumption that it may still be open (at least in some circumstances) to argue that an original proprietor's personal equity against the registered purchaser is an exception to indefeasibility, the conduct of Sim Lian in its purchase of Lincolnsvale (especially in failing to apprise the respondents of what was going on) is unconscionable.

51 Before embarking on an analysis of whether Sim Lian's title is liable to be defeated in the manner explicated above, I wish to impress upon the respondents that, in truth, the present application is not the appropriate forum to vent many, if not all, their grievances relating to the purported irregularities in the process of the sale of Lincolnsvale. This is because under s 98(1) of the BMSMA, it is explicitly stated that "no appeal shall lie to the High Court against an order made by [the STB] under this Part or the [LTSA] *except on a point of law*." [emphasis added] It stands to reason that a purchaser of a development pursuant to a collective sale is entitled to rely on any order issuing from the STB, bar any reversal by the High Court on appeal against a point of law. *Facts* forming the basis of orders and which have been taken to be accurate by the STB are *not* subject to appeal. Accordingly, when the STB in the present case held that the sale was legitimate and conducted in good faith and at arm's length (at [6] above), that finding is immune from attack. To raise allegations in this application pertaining to the veracity of the facts asserted in the STB Orders is tantamount to an appeal by the back-door and ought not to be allowed. Whether or not s 98(1) of the BMSMA is advisable in view of growing public concerns that the current regime controlling collective sales is inadequate to protect the rights and interests of subsidiary proprietors who dissent from a collective sale is beyond the purview and jurisdiction of this court.

52 Furthermore, no appeal having been lodged, the respondents must also be taken to have accepted the *legal* basis on which the first and second STB Orders were made. It is pertinent to note that it was conceded by Mdm Ching that, at the very least, the first STB Order was properly served on them. Hence, any quarrel that the respondents may have in respect of the legitimacy or authenticity of the STB Orders (including the allegation at [21(a)(viii)] above) should have been raised on appeal.

53 I should also add that while s 98(1) of the BMSMA forbids *appeals* except on questions of law, it does not foreclose the possibility of *judicial review*. This was yet another avenue open to the respondents had they thought that the first and second STB Orders were *ultra vires* the statute and/or where there is illegality, irrationality or procedural impropriety in the manner in which it made

its decisions: see, the most recent exposition on the principles of judicial review in *Chee Siok Chin and Others v Minister for Home Affairs and Another* [2006] 1 SLR 582.

54 I now return to the question of whether the respondents have demonstrated a triable issue in respect of whether Sim Lian's title ought to be defeated.

55 In order to assess whether the facts are sufficient to discharge the respondents' burden in this application, it is first necessary to sketch the legal context within which collective sales are initiated and carried through. At the risk of over-simplification, the following are the relevant considerations:

(a) Subsidiary proprietors of any development may decide to collectively sell their development by signing a collective sale agreement between themselves (para 1 of the Schedule to the LTSA);

(b) The subsidiary proprietors have 12 months from the time of the first signature to obtain the requisite number of signatures and to file the application for approval by the STB (para 1(*a*) and 1A of the Schedule to the LTSA);

(c) Every eight weeks, a notice setting out the number of subsidiary proprietors who have signed the collective sale agreement and the proportion of the total share value of the development that these subsidiary proprietors represent must be affixed at a conspicuous part of each building in the development in the four official languages (para 1(*b*) of the Schedule to the LTSA);

(d) The sale must be considered at an extraordinary general meeting of the management corporation in accordance with s 27(3) of the BMSMA read with the first Schedule to the BMSMA (para 1(*c*) of the Schedule to the LTSA);

(e) An advertisement of the proposed sale in the four official languages must be placed in the local newspapers (para 1(*d*) of the Schedule to the LTSA);

(f) All collective sales that are not unanimously agreed upon must then be approved by the STB (s 84A(1) of the LTSA);

(g) A threshold requirement is that for developments over 10 years, subsidiary proprietors representing at least 80% of the share value of the development must assent in writing to the sale. The threshold is 90% for developments fewer than 10 years (s 84A(1)(*a*) and (*b*) of the LTSA);

(h) Applications to the STB to confirm the sale should be made by not more than three representatives from among the subsidiary proprietors (s 84A(2) of the LTSA);

(i) For subsidiary proprietors who have not written to assent to the sale (so-called "affected parties" under the LTSA), they have 21 days to lodge an objection with the STB from the time notice of the proposed application to the STB to confirm the sale is sent to them (s 84A(4) of the LTSA);

(j) Notice is effected by registered post to the address shown on the strata roll if the affected party is a subsidiary proprietor of a lot in the strata title plan (which he invariably will be). If the affected party is a proprietor of a flat or land, notice must be sent by registered post

to the last recorded address at the Registry of Titles or Registry of Deeds. (See further, para 2 of the Schedule to the LTSA for other scenarios not presently applicable.) Notice by registered post is deemed effective on the person to whom it is addressed two days after the day on which the notice was posted, notwithstanding the fact that the letter may be returned by the post office as undelivered (s 84A(13) of the LTSA);

(k) The notice must include the collective sale agreement, the sale and purchase agreement that is going to be placed before the STB, a statutory declaration by the purchaser on the nature of his relationship to any subsidiary proprietor, the minutes of an extraordinary general meeting or meeting held to consider the sale, a copy of the advertisement to publicise the application to the STB, a valuation report not more than three months old, and a report stating how the proceeds of sale will be distributed (para 1(*e*) of the Schedule to the LTSA);

(l) This notice, with the accompanying documents, must also be placed under the door of every subsidiary proprietor in the development and affixed to a conspicuous part of each building within the development in the four official languages (para 1(*e*) and (*f*) of the Schedule to the LTSA);

(m) Once the application to the STB is made, it has various statutory powers to enable it to ensure that the sale is approved only after taking into account any objections lodged with it and to assess whether the transaction is in good faith and commercially sensible (ss 84(5) to (9) and (11) to (12) of the LTSA);

(n) If no objections are filed, the STB is entitled to base its decisions on the facts available before it (s 84A(10) of the LTSA);

(o) Once an order is made by the STB, it binds all subsidiary proprietors of the development (84B(1) of the LTSA); and

(p) Where the STB has confirmed the sale of the development, it may appoint any person to deal with all matters in connection with the sale of any lot if the subsidiary proprietor has died or in any other suitable event (s 84C of the LTSA).

56 This matrix of rules and regulations governing en-bloc sales is an attempt at striking a balance between the interests of the majority in wanting to sell the development (together with the public interest in allowing privately-initiated renewal of old developments) and the interests of individual subsidiary proprietors. Some of these regulations may be amended if the proposals announced by Deputy Prime Minister and Minister for Law S Jayakumar during the Committee of Supply Debate 2007 are adopted (see, the Ministry of Law website at http://www.minlaw.gov.sg (accessed: 21 May 2007)). The present application must, however, be assessed on the *present* incarnation of the LTSA and other relevant statutes.

57 To assess whether there are triable issues in respect of whether Sim Lian's title remains indefeasible, I will now examine the specific allegations raised by the respondents in relation to the purported inadequacies of the process of the collective sale.

Composition of the en-bloc sale committee

58 The respondents first argued that the en-bloc sale committee appointed by the subsidiary proprietors was not properly constituted because it was simply picked on the basis of who had signed up for the position earliest and that there was no consideration of the merits of the members of the

sale committee. It was also submitted that the respondents had asked the sale committee for details of other bids for the development but received no reply.

59 This description may not be entirely accurate. In fact, an examination of the minutes of an EOGM held on 26 April 2006 showed that there was a discussion on the number and details of other bids (see [65] below). Had the respondents been patient, they would have received their answer. But even if the respondents' portrayal of the sale committee's ineptness is correct, it is clear that the LTSA and the BMSMA do not presently regulate the composition of the en-bloc sale committee; and therefore the subsidiary proprietors are free to select whomever they wish to represent them in whatever manner they choose to make that selection. Moreover, the LTSA does not regulate how the sale committee should respond (or indeed if they have to respond at all) to queries and concerns of the subsidiary proprietors. Thus, while one may sympathise with the respondents' grievances, the only recourse of subsidiary proprietors who are dissatisfied with the sale committee's performance appears to be that they may refuse to sign on to the collective sale agreement and/or lodge an objection with the STB.

60 That this is the correct interpretation of the relevant statutes is reinforced by the fact that the Ministry of Law is now proposing that sale committees should be appointed at an extraordinary general meeting convened by the management corporation meeting in order to address feedback from minority owners over the transparency of the sale process: see, para 12-14 of the *Consultation Paper on Review of Enbloc Sale Legislation* (April 2007), available at http://www.minlaw.gov.sg (accessed: 21 May 2007). Accordingly, this complaint cannot stand.

Non-disclosure of certain relationships

61 The respondents further allege that it was not disclosed that one of the members of the sale committee was related to the owner of certain drainage reserve in the development and that there might have been an affiliation or relationship between Sim Lian and/or its solicitors and the subsidiary proprietors.

62 The first instance of non-disclosure, if true, is not material. The LTSA does not forbid a member of the sale committee to possess a vested interest in the sale of a development by virtue of the fact that he owns other lots apart from his residential unit in the same development. What the LTSA does mandate is the disclosure of any links between the proposed purchaser and the subsidiary proprietors in order to ensure that the sale is at arm's length: see para 1(*e*) of the Schedule to the LTSA.

63 In this regard, it is a mere hypothesis on the part of the respondents that a relationship existed between Sim Lian and the subsidiary proprietors, which ought to have been disclosed. It was not even explained whom among the subsidiary proprietors were related to Sim Lian. Clearly, this bare assertion is not sufficient to warrant a trial.

64 In any event, Sim Lian would have had to make a statutory declaration of any relationship (if any) it had with the subsidiary proprietors pursuant to the application to the STB to confirm the sale. Having done so, there is no reason to doubt the veracity of the contents of the declaration given the consequences that Sim Lian faces if it had made any false declarations.

65 More to the point, the LTSA only directs that such relationships are *disclosed*; it does not *forbid* them *per se*. In the end, the overriding concern is to protect the commercial interests of the subsidiary proprietors and to ensure these interests are not subservient to any other considerations. In other words, even if the proposed purchaser and subsidiary proprietors are related, it is not

conclusive of whether the sale should be confirmed. Here, the minutes of an EOGM held on 26 April 2006 recorded that four bids (of between $48.5 m and $50.53 m) and two expressions of interest were received after a tender for Lincolnsvale was circulated. Given that the collective sale was concluded at $50.53 m, it is only reasonable to assume that the majority of the subsidiary proprietors simply picked the highest bid. In the circumstances, there is no reasonable basis to hold that anything other than commercial interests were at play. Put another way, even if Sim Lian did share a relationship with the subsidiary proprietors, and even if this was disclosed, the STB would in all probability have still confirmed the sale.

66 Therefore, the respondents have not done enough to show that there is a triable issue in respect of whether Sim Lian's title can be impugned due to the alleged non-disclosure of its relationship with the Vendors.

Failure to serve notice of sale and proposed application to STB

67 It was a constant refrain of the respondents' case that they were kept in the dark for the most part and that they were only informed of what was happening after everything had been signed.

68 It strikes me that the reason for the respondents' unfortunate situation may have been the result of an accidental confluence of two factors. First, when an en-bloc sale is initially proposed, the LTSA does not make it compulsory for each subsidiary proprietor to be personally informed. While personal notice is eventually required, there is nothing mandating a sale committee (so long as it is able to garner the requisite shareholding) to publicise the sale to each and every subsidiary proprietor personally, save that a notice of who has assented to the collective sale agreement must be affixed in a conspicuous part of each building in the development every eight weeks (para 1(*b*) of the Schedule to the LTSA).

69 In fact, looking at the various regulations together, personal notice is only required when an application to the STB to confirm the sale is nigh. By this time, the collective sale agreement and sale and purchase agreement would, presumably, have been concluded. For instance, para 1(*d*) of the Schedule to the LTSA directs an advertisement to be placed publicising the proposed application to the STB to confirm the sale. The application must then be made 14 days from the advertisement: see para 4 of the Schedule to the LTSA. In turn, this advertisement must be part of the documents included in a notice served on all subsidiary proprietors of the proposed application: see para 1(*e*) of the Schedule to the LTSA. As I understand the interaction of these provisions, personal notice of the proposed application is thus only required less than two weeks from the application to the STB. There must, of course, be an EOGM to consider the sale, but no time-lines are mandated in the LTSA. Thus, as in this case, the EOGM held to consider the sale may well take place *after* the collective sale agreement and/or the sale and purchase agreement with the prospective purchaser are concluded. Although this would defeat what I assume to be at least one of the purposes behind the LTSA requiring an EOGM – *viz*., to publicise and discuss the prospective sale *before* it is concluded – this cannot be considered, in the absence of legislation stating otherwise, contrary to law.

70 The short point is this: as long as the sale committee (who may be composed of anyone) has been able to amass the requisite majority, it is under no obligation to bring the sale to the individual attention of all the subsidiary proprietors. Of course, *in practice*, it would be difficult to get a majority without some active publicity. But that may still leave a significant minority of owners whom, for instance, may not actually reside in their units on a daily basis, completely out of the loop.

71 In the present case, and this is the second factor, Mdm Ching informed me that the respondents did not move into Lincolnsvale until March 2006. By then, the requisite number of

subsidiary proprietors had assented to the en-bloc sale and the S&P Agreement was concluded on 25 November 2005. Even though the respondents did attend the first of three EOGMs held to consider the collective sale on 12 January 2006 (they did not dispute receiving notices of all three EOGMs), this would still have been only after the collective sale had all but gone through.

72 Reverting to the respondents' chief grouse that they had been ignorant of the sale until it had been concluded, this is, as alluded to above, entirely possible. But because the sale committee was simply following the rules laid down in the LTSA, this alone is not sufficient to raise a triable issue in respect of whether there had been a fraud on the respondents or any sharp practice amounting to unconscionable conduct. The statutory rules governing en-bloc sales were designed to strike a balance between minority and majority home owners, and if the rules need to be fine-tuned, it is for Parliament to do so, and not for this court to pass judgment on the rules by holding that even though the sale committee played by the book, the registered title that Sim Lian acquired through the sale ought to be impugned.

73 In addition, I find that any equity that one might think ought to arise in favour of the respondents is militated by the respondents' own conduct, as follows:

(a) At the very latest, the respondents knew on 12 January 2006 that Lincolnsvale was being put up for sale. This was the date of the first EOGM held to consider the sale, which the respondents attended but left mid-way through the meeting;

(b) The respondents also admitted that they received notices of all three EOGMs held to consider the sale;

(c) They were also in possession of the minutes of these EOGMs, and were able to make reference to them in the hearing before me;

(d) At all three EOGMs, owners were told that if the sale was not supported by all the owners, an application would have to be made to the STB to confirm the sale; and that once the STB made its order, completion of the sale would take place within three months and that vacant possession was to be delivered six months from the completion;

(e) A notice was sent on 8 May 2006, as required under para 1(*e*) of the Schedule to the LTSA, informing the respondents of the intention to apply to the STB for an order confirming the sale of Lincolnsvale. This notice included information on how to lodge a formal objection with the STB;

(f) The notice mentioned in [73(*e*)] above was sent to the respondents at both addresses indicated on the strata title roll, including their Post Office Box address, which Mdm Ching said was the appropriate address to send documents to. The notice was also placed under their door in Lincolnsvale. It should be noted that by 8 May 2006, the respondents were already residing in Lincolnsvale;

(g) The application to the STB to confirm the sale was itself served on 17 May 2006 on all subsidiary proprietors by placing a copy at the main door of each unit and by affixing a copy to a conspicuous part of each building in the development. Subsidiary owners who had not yet assented to the sale were also sent copies by registered post to the addresses recorded in the strata roll and to their last recorded addresses at the Singapore Land Authority;

(h) On 1 June 2006, Mr Gan wrote a letter to a few of his neighbours, referencing the

"bundle of documents recently dropped under our door in the name of your private arrangement to sell the estate of Lincolnsvale together with some fellow residents." This clearly showed that the respondents were receiving all the notices sent to their unit in Lincolnsvale (see [73 (*e*) and (*g*)] above). Despite this, Mr Gan continued to insist that all correspondence be sent to his Post Office Box address.

(i) The respondents did not file any objections to the sale of Lincolnsvale with the STB;

(j) The Vendors' solicitors, M/s Phang & Co, sent a letter to all owners, attaching a copy of the first STB Order on 26 June 2006. In this letter, it was spelt out that completion was scheduled to take place on 21 September 2006, and reiterated that owners had six months from then to deliver vacant possession. M/s Phang & Co's contact details were provided;

(k) Mdm Ching admitted in the hearing before me that she had sight of the first STB Order through her neighbour;

(l) M/s Phang & Co sent a letter dated 21 August 2006 to the respondents and addressed it to both the Lincolnsvale and Post Office Box addresses. This letter advised the respondents on their obligations under the first STB Order, and explained the consequences of a failure to comply (*viz*., that the Vendors would apply to appoint representatives to conduct the sale on the respondents' behalf);

(m) This letter also mentioned that Mr Gan had been contacted by phone but that he refused to listen and insisted on written correspondence;

(n) A letter dated 26 August 2006 informing the respondents that an application was going to be made to the STB to appoint two majority owners to execute the necessary documents on the respondents' behalf was sent to the respondents at three different addresses, including the Post Office Box address. This letter also enclosed the said application;

(o) Another letter dated 28 August 2006 was sent informing the respondents that the hearing of the said application [see 73(*n*) above] was scheduled for 23 September 2006;

(p) The respondents did not appear before the STB on 23 September. The STB directed that notice of the application and hearing be advertised. This was done on 26 September 2006 in *The Straits Times* at page C 17;

(q) On 30 September 2006, the respondents still did not attend the hearing before the STB and the latter finally made its second Order appointing Mr Wong and Mr Tan to handle the sale of the respondents' unit;

(r) M/s Phang & Co again wrote to the respondents in a letter dated 3 October 2006 to serve the second STB Order and inform them that the new date for completion was 10 October 2006. This letter was also sent to the respondents' Post Office Box address;

(s) On 5 October 2006, the respondents were told that, pursuant to a letter that was again sent to the respondents' Post Office Box address, the proceeds of the sale of their unit were being paid into court;

(t) From the sale proceeds of $1,247,654.30, a sum of $889,711.97 was repaid to the respondents' Central Provident Fund account. After deducting various costs and expenses, the

balance up to 95% of the sale proceeds (*ie*, $207,645.71) was paid into court. M/s Phang & Co is holding the remaining 5% of the sale proceeds until vacant possession is delivered. This is in accordance with cl 17(1) of the Tender; and

(u) The information at [73(*t*)] above was conveyed by registered post to three addresses, including the respondents' Post Office Box address. The respondents also refused service of this letter at their Lincolnsvale unit.

74 Given the torrential flood of letters and notices, it is beyond belief that the respondents did not know that their unit in Lincolnsvale was being put up for an en-bloc sale. They were provided every opportunity to engage legal advice, to respond or to simply speak with, *inter alia*, M/s Phang & Co to explore their options. In my judgment, having failed to avail themselves of the assistance offered, having wilfully spurned any attempts at contacting them, and having purposefully refused to participate in the process, it does not lie in the respondents' mouth to claim that they were at the sorry end of any unconscionable conduct by the sale committee, the Vendors, the Vendors' solicitors, and Sim Lian or its solicitors.

The propriety of the STB Orders

75 The respondents argued that pursuant to ss 119(1) and (2) of the BMSMA, orders issued by the STB need to be "certified". But ss 119(1) and (2) say no such thing:

119. —(1) Subject to subsection (2), the registrar shall serve a copy of every order (including an interim order) made by a Board, the president or a deputy president pursuant to any application made under this Part on —

(a) the applicant;

(b) the management corporation or subsidiary management corporation for the strata title plan concerned;

(c) the person against whom the order is made; and

(d) any person who made a written submission to the Board in response to the Board"s invitation.

(2) If the order (including an interim order) of the Board, the president or a deputy president is a declaratory or other order affecting the subsidiary proprietors or occupiers of the lots in a strata title plan generally, or a particular class of the subsidiary proprietors or occupiers, the registrar need not serve a copy of the order on each subsidiary proprietor and occupier affected individually, but may instead give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all subsidiary proprietors and occupiers or all subsidiary proprietors and occupiers in that class.

76 The provisions relied on by the respondents only speak of the need to serve orders of the STB, which in this case was clearly fulfilled: see [73(*i*) and (*r*)] above. The only time that any certification is mentioned in s 119 of the BMSMA is in sub-section (3), where it states that copies of STB orders must be certified as true copies:

Every copy of an order served under subsection (1) or (2) shall be certified by the president to be a true copy of the order.

Since it was not alleged that the copies of the first and second STB Orders were not certified as true copies, this complaint must also fall.

The propriety of the EOGMs

77 The respondents raised the point that the EOGMs held to consider the collective sale did not comprise any voting and were therefore void or invalid. This argument holds no substance. Under para 1(*c*) of the Schedule to the LTSA, the EOGMs are held to "consider" the sale; there is no requirement for any voting or any passing of any resolution.

The failure of Sim Lian to make payment

78 The respondents consistently submitted that they had not yet been paid for the sale of their unit. As noted in [73(*t*)] above, this could not be further from the truth. The bulk of the sale proceeds has already been credited to the respondents' Central Provident Fund accounts. The balance has either been paid into court (pursuant to s 84C(2) of the LTSA) or withheld by M/s Phang & Co until vacant possession is delivered (pursuant to cl 17(1) of the Tender). There is nothing to suggest that once the respondents hand over their unit to Sim Lian, these moneys will not be released to them. In any event, as Mr Goh pointed out, this issue is not relevant to Sim Lian's application. Having paid over the sale price ($50.53m) to the Vendors' solicitors, they are entitled to the delivery of Lincolnsvale under the S&P Agreement.

Conclusion on whether there are triable issues in respect of the respondents' case that Sim Lian's title may be defeated because of their conduct

79 I have examined the arguments raised by parties, and in particular those submitted by the respondents, in order to ascertain whether there is any genuine conflict either on the legal issues or on the factual contentions that warrants sending this case to trial. In my judgment, there is none. At every turn, the parties to the sale (and in particular Sim Lian as purchaser) have scrupulously adhered to the requirements in the LTA, the LTSA and the BMSMA. This does not mean that at least a few of the complaints of the respondents are far-fetched. That Parliament is now in the process of amending the relevant legislation testifies as to the legitimacy of some of these concerns. But in so far as *the law as it stands* is concerned, the respondents have not been able to discharge their burden in this application.

Whether there are triable issues in respect of the respondents' position that even on their worst case, they should deliver vacant possession only on 15 May 2007 and that this application is premature

80 The respondents argued that in the minutes of the EOGMs, it was stated that vacant possession should be delivered only on 15 May 2007, at the earliest. Therefore, the application is premature and ought to be "quashed".

81 This submission is based on an erroneous reading of the minutes. I refer to the minutes of the EOGM on 26 April 2006 as an example. Here, two scenarios were presented:

> In scenario 1, if 100% consent is not obtained. The application to STB is *targeted* to be made in May 2006. If *assuming* the STB order is given in *August 2006 or thereabouts*, legal completion will be in *November 2006 or thereabouts* and vacant possession to be delivered to the purchaser by *May 2007 or thereabouts*.

> In scenario 2, if 100% of the owners consent to the [collective sale agreement] in May 2006. Legal completion will be in *August 2006 or thereabouts* and vacant possession to be delivered to the purchaser in *February 2007 or thereabouts*.
>
> …
>
> The owners were informed that *usually*, the STB would give a hearing date about *2 to 4 months* from the time of the filing of the application to the STB.
>
> If *assuming* the STB order is granted, *completion is scheduled 3 months from the date of the STB order*.
>
> The owners have *6 months from the date of completion to deliver vacant possession*.
>
> [emphasis added]

82 Even a cursory study of the relevant portion of the minutes, as quoted above, will reveal that the minutes do not indicate a firm date of 15 May 2007. More importantly, the tenor of the minutes suggests that any dates indicated were only *estimates*. After all, so much hung on whether all the subsidiary proprietors would assent to the sale, and if not, when the STB would give its order confirming the sale. What was certain was that completion would take place within 3 months of the STB order and vacant possession was to be delivered six months thereafter. Since, in the respondents' case, completion was on 10 October 2006, vacant possession must be delivered on 10 April 2007. This is not at all difficult to comprehend.

83 Even if it could be argued that it had been agreed that vacant possession should be delivered only on 15 May 2007 – or that the minutes showed a representation that could give rise to an estoppel – subsequent conduct and events demonstrated that such an agreement or representation had been varied. In their letter dated 26 June 2006, the Vendors' solicitors wrote to all the subsidiary proprietors to indicate that the completion of the sale and purchase was scheduled for 21 September 2006 and that vacant possession should be delivered six months from then (*ie* 21 March 2007). When completion was delayed in the respondents' case, another letter dated 3 October 2006 was sent informing them that completion was scheduled for 10 October 2006. By necessary implication, vacant possession was to be delivered by 10 April 2007. Subsequently, numerous reminders were sent after 10 April 2007 inviting the respondents to vacate their unit (see [10] above).

84 The circumstances speak for themselves; and I am not persuaded that there is a triable issue in respect of the date that vacant possession should be delivered to Sim Lian. The application is not premature.

Whether there is a triable issue in relation to the respondents' assertion that its ownership of a fee simple in unit #01-02 insulates them from the present court proceedings or the applicant's claim

85 The exclamation point of the respondents' case is that as owners in fee simple in unit #01-02 of LincoInsvale, they should be immune against proceedings against their property. This argument displays a lack of appreciation of the concept of property.

86 There is no doubt that there can be property in a three-dimensional quantum of airspace, which is basically what all high-rise apartments are. This is familiar to Singaporeans. Accordingly, such airspace can be conveyed in fee simple (see, *Reilly v Booth* (1890) 44 Ch D 12), and that is what the

respondents claim they have. The estate in fee simple is simply legal-speak for freehold property. An owner of an estate in fee simple "has a time in the land without end, or the land for time without end": *Walsingham's Case* (1573) 2 Plowd 547 at 555. If property is a bundle of rights in land, the owner of a fee simple estate has the "largest possible bundle": see, *Minister of State for the Army v Dalziel* (1944) 68 CLR 261 at 285. This does not, however, imply that an owner of a fee simple estate has no obligations or that he is insulated from the law.

87 In their seminal work, *Elements of Land Law* (London: Butterworths, 3rd ed, 2001), Professors Kevin Gray and Susan Francis Gray submit that "the law of property is not really about *things* but about *people*, and that the study of land law is ultimately an inquiry into an important range of socially defined relationships and morally conditioned obligations": *ibid* at 4 [emphasis in original]. Property is therefore "a power-relationship – a relationship of social and legal legitimacy existing between a person and a valued resource": *ibid* at 95. In easier terms, what this means is that in as much as owners of land possess *rights* over the land, those rights are and may be circumscribed over time and *obligations* may be imposed. Think about how human rights and environmentalism have shaped property law. Even private owners of land may not exclude classes of individuals; and control over emission standards is commonplace. As Professors Gray and Gray put it, this "testifies to the constant engagement of the modern state in the constraint of land use for purposes of public amenity and welfare": *ibid* at 116.

88 It should come as no surprise, then, that the state also regulates "property in thin air", to use a phrase coined by Professor Kevin Gray in his article by the same title (see (1991) 50 CLJ 252). The LTSA was introduced for precisely this purpose (see *Singapore Parliamentary Debates, Official Report* (22 February 1967) vol 25 at cols 1113–1114):

> The freehold title in the land above which the flat is built is either retained by the vendor who imposes on each of his lessees a service charge for the maintenance of common parts and property or is conveyed in proportionate shares to the purchasers of all flats built on the land as tenants in common. Experience has shown that it is difficult for tenants to get together and problems arise when lifts break down or pipes burst. This rather unsatisfactory state of affairs has impeded the development and sale of flats in the Republic and the Bill now before the House, which is based on Australian legislation, takes account of the comments of the former Bar Committee and seeks to remove these difficulties…
>
> The Bill also spells out the *rights and obligations* of the purchasers of flats in a subdivided building as regards assessments, easements and restrictive covenants.
>
> [emphasis added]

89 In 1998, Parliament enacted legislation to facilitate the collective sale of individual strata titles; and a conscious decision was made that unanimity was not required to sell an entire development collectively (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at cols 601–606):

> I had informed this House on 19th November last year that *Government would be amending the law to make it easier for en-bloc sales to take place*. The current position is that a single owner, for whatever reason, can oppose and thwart the sale. Government has received many appeals and feedback from frustrated owners whose desires to sell their flats or condominiums en-bloc have been so thwarted. As a result, these buildings cannot take advantage of enhanced plot ratios to realise their full development potential, which would have created many more housing units in prime 999-year leasehold or freehold areas for Singaporeans. A secondary benefit is that

these developments, especially the older ones, could have been rejuvenated through the en-bloc process.

I said that *the law would be amended to remove the need for unanimous consent*... I emphasised that in land-scarce Singapore, such an approach was even more imperative as it would make available more prime **land** for higher-intensity development to build more quality housing in Singapore.

90 These limitations on the absolute right of subsidiary proprietors of property in land to decide whom to sell to, when to sell, and to reject a sale have been imposed after Parliament's careful weighing of the various constituent interests of the nation and individual subsidiary proprietors. The rukes apply to all subsidiary proprietors regardless whether they own a fee simple or a leasehold. Mdm Ching herself admitted in the hearing before me that she was not opposed to the idea of en-bloc sales in general. On what basis do the respondents now assert that their ownership of a fee simple estate in their Lincolnsvale unit wards off Sim Lian's application? In my view, there is none.

Conclusion on the merits of OS 618 of 2007

91 It follows from the foregoing analysis that the application in OS 618 of 2007 should be allowed for the following reasons:

(a) The burden on the respondents is to show that there are triable issues – real and substantial conflicts of fact or law – present in this case such that a summary proceeding for the possession of their unit would be inappropriate;

(b) Sim Lian is the registered owner of all the units in Lincolnsvale, and its title is subject only to a showing that the respondents' case falls within one of the enumerated exceptions under ss 46(2) or 160 of the LTA. The respondents could also demonstrate that a personal equity has arisen in their favour (although this has been doubted by the Court of Appeal in *Bebe*);

(c) On the facts before me, I am not persuaded that there was any procedural error in the conduct of the collective sale of Lincolnsvale. As such, I cannot find any triable issue in respect of whether Sim Lian's title has been defeated by fraud, mistake or unconscionable conduct on its part;

(d) In addition, I am not convinced that the respondents are bound to hand over vacant possession of their unit only on 15 May 2007, as purportedly recorded in the minutes of the EOGMs. This argument was based on an erroneous reading of the minutes and there was no agreement to this effect. Even if such an agreement had been reached, this was clearly varied by subsequent events and conduct of the parties. Once more, there is no triable issue in respect of the date that vacant possession must be delivered; and

(e) Even as owner of a fee simple in their unit, the respondents are bound in law to convey their unit pursuant to a collective sale confirmed and approved by the STB. There is no triable issue in relation to whether the respondents' ownership of a fee simple estate in their unit entitles them to immunity from the present claim and attendant legal proceedings.

92 The question that I have to answer now is whether the respondents should be ordered to give possession of their unit in Lincolnsvale immediately. In other words, do I have discretion to suspend the execution of my order to give possession? In *McPhail*, the English Court of Appeal was of the view that the courts had no such discretion on the basis that any owner of property is entitled to

take possession at once, and had he used reasonable force to ensure compliance in an attempt at self-help, there would be nothing wrong in that. It would therefore result in a strange situation if, having come to the courts, an owner is placed at a less advantageous position. As Lord Denning MR observed (at 457):

> So far as I can discover, the courts of common law never suspended the order for possession. Once the order was made, the owner could straightaway get a writ of possession for the sheriff to cause the owner to be put into possession. Sometimes the owner, although he got an order, might not wish to get the sheriff to turn out the trespassers, because the sheriff was known to charge extortionate fees. In that case the owner was entitled to take possession at once by his own hand… Seeing that the owner could take possession at once without the help of the courts, it is plain that, when he does come to the courts, he should not be in any worse position. The courts should give him possession at once, else he would be tempted to do it himself. So the courts of common law never suspended the order for possession.
>
> [citations omitted]

Lord Denning MR also held that even equity could not intervene to aid a wrongdoer.

93 I agree with the reasoning in *McPhail*, and therefore I may not suspend my order.

94 Notwithstanding that a court may not suspend its order out of sympathy for a trespasser, it may nonetheless exercise its *inherent jurisdiction* to stay the execution of its order pending an appeal (since O 47 r 1 is clearly inapplicable to O 81). In *Serangoon Garden Estate v Ang Keng* [1953] 1 MLJ 116, it was held that special circumstances have to be evident in order to justify a stay. In that case, Brown J was of the view that the fact that a party might not be restored to his original position if he succeeds on appeal does not, alone, amount to a special circumstance. However, if this factor is coupled with a showing that there are merits in the appeal, it might be sufficient to move a court to grant a stay. In the High Court of Penang, it was similarly decided in *Toh Kheng Heng* that the mere fact that one may not get back his property at all or in its original state does not constitute a special circumstance. This is because in all cases involving the possession of land, that argument could always be raised. Thus, in *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd* [1989] 3 MLJ 40, the High Court of Kuala Lumpur surmised that only if it would be impossible to enforce the appeal (such as where the relevant party would be untraceable or insolvent), would that amount to a special circumstance. In *Cathay Theatres Pte Ltd v LKM Investment Holdings Pte Ltd* [2000] 1 SLR 701, Rajendran J was also of the view that that the financial situation of the respondent to an appeal is a factor to be considered. Although Rajendran J's decision was in the context of O 47 r 1 of the Rules, there is no reason why this should not apply where the court is exercising its inherent jurisdiction to grant a stay. In the end, the court must look at all the circumstances of the case, bearing in mind the following principles (see the Court of Appeal decision in *Lee Sian Hee (trading as Lee Sian Hee Pork Trader) v Oh Kheng Soon (trading as Ban Hon Trading Enterprise)*[1992] 1 SLR 77 at [5], 78):

> While the court has power to grant a stay, and this is entirely in the discretion of the court, the discretion must be exercised in accordance with well established principles (*Lee Kuan Yew v JB Jeyaretnam*). First, as a general proposition, the court does not deprive a successful litigant of the fruits of his litigation, and lock up funds to which prima facie he is entitled, pending an appeal (*The Annot Lyle'* at p 116). However, when a party is exercising his undoubted right of appeal, the court ought to see that the appeal, if successful, is not nugatory (*Wilson v Church (No 2)* at pp 458– 459). Thus, a stay will be granted if it can be shown by affidavit that, if the damages and costs are paid, there is no reasonable probability of getting them back, if the appeal

succeeds (*Atkins v Great Western Railway Co*).

95 In my judgment, it is clear that Sim Lian is neither untraceable nor impecunious. Should the respondents appeal my decision, and should they be successful, they can always claim damages. That their unit may be demolished in the meantime (I am given to understand that construction is in progress) is not, as the cases have held, a sufficiently special reason to grant a stay. Moreover, this is not a close case and an appeal would, in my view, be unmeritorious.

96 Accordingly, Sim Lian is entitled to recover the property known as 22 Surrey Road, # 01-02, Singapore, comprised in Land Lot No. TS28-U652W and I order that the respondents do give possession of this property over immediately. This order is made without prejudice to Sim Lian's rights to bring further and separate action against the respondents for damages for trespass to the said property.

Costs

97 Mr Goh submitted that should Sim Lian succeed in its application, it should be awarded costs on an *indemnity* basis because of the manner in which the matter has progressed. The respondents, he argued, had no regard for formalities. Instead of availing themselves of the proper procedures, they have wilfully and purposefully tried their case in the media.

98 The usual cost order for a successful litigant is calculated on a *party-to-party* basis. Costs on an indemnity basis are rarely awarded, and usually only because there has been a contract or statutory provision (O 22A of the Rules comes to mind) stipulating that costs be on an indemnity basis. If the mere fact that a litigant loses his case is not an adequate reason to order costs on an indemnity basis, it should follow that an insistence on one's position prior to litigation and final judgment cannot also be a reason to award costs on an indemnity basis. Otherwise, weak parties will simply acquiesce to a strong demand for fear of being penalised in costs.

99 It is incontrovertible that the respondents have created unnecessary litigation; however, the same is true for any litigant who loses. The respondents may have been deliberate in their ignorance and lack of cooperation but this was the result of their belief that the collective sale was flawed. This turned out not to be the case but, as stated, this is not an adequate reason to award costs on an indemnity basis. Significantly, the respondents' conduct of the present proceedings was neither dilatory nor contumelious. They were ready to present their submissions at the first hearing and have not sought to delay the progress of the litigation.

100 For these reasons, I award costs on a party-to-party basis, which are to be agreed, if not taxed.

Conclusion

101 It is no secret that collective sales of developments continue to strike raw nerves, especially from those who do not view their property as investments but as homes to be kept regardless of price. In this regard, the palpable frustration of the respondents was not solely self-induced. It reveals that the current legislation safeguarding the interests of minority owners may have be strengthened; indeed, Parliament is in the process of doing exactly that. One might ask: if Parliament is already amending the relevant legislation, which implicitly acknowledges that the present regime anaemic in some way, does this not mean that my decision, based on the present state of the law, is unfair? Such a view would be deeply mistaken. Fairness is contextual; not one-sided. If I hold in favour of the respondents, this would undeniably prejudice Sim Lian, who, having faithfully adhered to

all the regulations that Parliament has enacted to date, quite rightly and legitimately expects to be rewarded with its registered title. While the respondents have repeatedly beseeched this court to exercise mercy and sympathy in their favour, this can only be done within the framework of the law. Rule is by law, not man. Having scrutinised parties' cases and the relevant statutory and case law, Sim Lian's application must be allowed, with costs to follow.

Postscript

102 I also certify that I do not wish to hear further arguments. The respondents are therefore free to lodge an appeal against my decision forthwith.

Application allowed; costs on a party-to-party basis to be agreed, if not taxed.