Yeo Loo Keng and Another v Tan Yew Lee Kevin and Others
[2007] SGHC 92

Case Number : OS 317/2007

Decision Date : 25 June 2007

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Leong Yung Chang and V Subramaniam (Veritas Law Corporation) for the plaintiffs; Michael Kuah Kim Huat and Saw Seang Kuan (Lee & Lee) for the defendants

Parties : Yeo Loo Keng; Lim Pui Yew Cheryl — Tan Yew Lee Kevin; Yu Mang Hsia; Wang Tong Wee

Land – Strata titles – Collective sales – Whether resulting shortfall in CPF accounts constituting "allowable deduction" – Section 84A(8)(a) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Land – Strata titles – Collective sales – Whether collective sale proceeds sufficient to redeem CPF charge on property – Section 84A(8)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Land – Strata titles – Strata titles board – Appeal to High Court on Board's decision – Whether Board in error of law – Section 98 Building Maintenance and Strata Management Act 2004 (Act 47 of 2004)

25 June 2007

Belinda Ang Saw Ean J

1 This was an appeal brought by way of Originating Summons No 317 of 2007 ("OS 317") to set aside the order of the Strata Titles Board ("the Board") made in STB No 68 of 2006 on 5 February 2007 whereby the Board approved the collective sale of the development known as Waterfront View to FCL Peak Pte Ltd at the price of $385m: see *Tan Yew Lee Kevin v Wee Beng* [2007] SGSTB 1. In this appeal, the court is asked for the first time to decide on the statutory provisions governing approvals of collective sales and, in particular, objections thereto pursuant to s 84A(7)(*a*) read with s 84A(8)(*a*) and pursuant to s 84A(7)(*b*) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act"). The questions for determination under the aforementioned statutory provisions in the main centred on the treatment of moneys previously withdrawn from a subsidiary proprietor's account in the Central Provident Fund ("CPF") to finance the purchase of the subject lot in the strata title plan.

2 On 27 April 2007, I delivered oral judgment covering the main grounds of my decision for dismissing the plaintiffs' appeal. I now publish in detail the reasons for dismissing the appeal with costs.

Background to the dispute

3 Waterfront View is a 99-year leasehold development situated at Bedok Reservoir Road. It was built in 1984 by the Housing and Development Board ("HDB") as a HUDC (Housing and Urban Development Co (Pte) Ltd) estate. The estate was privatised in 2002. There are 13 blocks with a total of 583 flats in the estate, each flat having the same share value as determined by the valuer for the *en bloc* sale. In dollar terms, it translated to a collective sale price of $660,377.35 per flat.

4 Initially, there were 17 objections to the collective sale. However, by the time the application made under s 84A(1) of the Act was listed for hearing before the Board on 14 November 2006, the plaintiffs were the only ones actively opposing the collective sale. The plaintiffs were the subsidiary proprietors of one of the lots in the strata title plan. The defendants were the members of the sale committee appointed by the subsidiary proprietors for the collective sale of the development. This appeal was brought pursuant to s 98 of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004) ("BMSM Act"). Section 98 reads:

> (1) No appeal shall lie to the High Court against an order made by a Board under this Part or the Land Titles (Strata) Act (Cap. 158) except on a point of law.
>
> (2) Where an appeal is made to the High Court, the Court may confirm, vary or set aside the order or remit the order to the Board for reconsideration together with such directions as the Court thinks fit.
>
> …

5 Section 98 of the BMSM Act confers on the High Court jurisdiction to entertain these proceedings. It is enough for present purposes to say that this case came before the High Court as an appeal confined to points of law.

6 This appeal was first listed for hearing on 30 March 2007. It was part heard and re-listed for hearing on 27 April 2007. Mr Leong Yung Chang, assisted by Mr V Subramaniam, appeared on behalf of the plaintiffs. Mr Michael Kuah, assisted by Mr Saw Seang Kuan, represented the defendants.

The legislation on collective sale of property

7 The provisions of s 84A of the Act which are relevant for this appeal are:

> (3) No application may be made under subsection (1) by the subsidiary proprietors referred to in that subsection unless they have complied with the requirements specified in the Schedule and provided an undertaking to pay the costs of the Board under subsection (5).
>
> …
>
> (7) Where one or more objections have been filed under subsection (4), the Board shall, … after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that —
>
> > (*a*) any objector, being a subsidiary proprietor, will incur a financial loss; or
> >
> > (*b*) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.
>
> (8) For the purposes of subsection (7)(*a*), a subsidiary proprietor —
>
> > (*a*) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot;

…

8 The Schedule referred to in sub-s (3) provides, so far as material to this appeal, as follows:

THE SCHEDULE

REQUIREMENTS UNDER SECTION 84A, 84D OR 84E

1. Before making an application to a Board, the subsidiary proprietors … shall —

…

(*e*) serve notice of the proposed application on all the subsidiary proprietors …, by registered post and by placing a copy of the proposed application under the main door of every lot or flat, together with a copy each of the following:

…

(vi) a valuation report that is not more than 3 months old; and

(vii) a report by a valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement; …

The plaintiffs' stance

9 It was common ground that the Act was amended in 1999 to, *inter alia*, introduce in law a threshold percentage of 80%, for privately-owned residential buildings more than ten years old from the date of issuance of the temporary occupation licence, as representing the statutory consensus to carry through the motion for an *en bloc* sale. In the case of privately-owned residential buildings less than ten years old, a threshold percentage of 90% was introduced. The mischief the amendments sought to address was the recognition that the resistance of an individual avariciously holding out for more money was adverse to the overall economic benefits and public interests engendered by *en bloc* sales of aging privately-owned housing estates. The amendments, however, recognised that an objector may stop the collective sale if, for instance, he has a genuine financial loss. The plaintiffs had on that very footing opposed the collective sale of Waterfront View.

10 The plaintiffs' complaint was that the collective sale would cause them to suffer a financial loss as the collective sale price of their flat would not be enough to fully refund to their respective CPF accounts all of the moneys withdrawn together with interest that would have accrued thereto if the withdrawal had not been made. This resulting shortfall, so the argument ran, represented the plaintiffs' combined financial loss to their CPF accounts in the total sum of $88,340.37 ("the CPF shortfall"), a breakdown of which was said to be as follows. There was a sum of $11,740.10, being the outstanding principal withdrawn from the CPF accounts ("the outstanding CPF withdrawal"). The remaining $76,600.27 constituted the interest that would have accrued if the principal was not withdrawn from the CPF accounts ("the CPF imputed interest").

11 The plaintiffs advanced their case based on the CPF shortfall on two alternative fronts. First, the plaintiffs argued that the Board should have included the CPF shortfall as an "allowable deduction" under s 84A(8)(*a*) read with s 84A(7)(*a*) and with that deduction aggregated in the computation, the

proceeds of the collective sale for their flat would be less than the original price of $515,000 paid for the flat. Second, the sale proceeds would be insufficient to redeem their bank mortgage and the charge in favour of the Central Provident Fund Board ("the CPF Board") as prescribed by s 84A(7)(*b*). It was argued that the CPF shortfall was a factor to be considered in determining the question of sufficiency of the sale proceeds to redeem the property. The plaintiffs raised a third reason grounded on non-compliance with the statutory requirements mandated by s 84A(3) of the Act. I do not propose to repeat the defendants' counter-arguments here at the outset as it is more expedient to refer to them in the course of this judgment. Suffice it to say that having opposed the collective sale application on these three grounds, the opposition correspondingly must be sustained, if at all, on these bases as well.

12 For the sake of completeness, I should mention Mr Leong's submissions made on 30 March 2007, which was on the basis that the mortgagee, the Development Bank of Singapore ("the Bank"), had the first legal mortgage over the property only as a result of the 1 September 2002 amendments ("the 2002 amendments") to the Central Provident Fund Act (Cap 36, 2001 Rev Ed) ("the CPF Act"). Mr Leong pointed out that prior to the 2002 amendments, when home owners utilised CPF funds and a bank loan for the purchase of private property, the CPF Board had a charge ("the CPF charge") on the property in priority to the bank. He claimed that if the CPF Board had the first charge on the plaintiffs' property, this case would fall squarely within s 84A(7)(*b*) of the Act as the collective sale proceeds would have been insufficient to redeem the CPF charge as well as the bank mortgage on the property. Consequently, he submitted that the CPF charge on the plaintiffs' property should thus be governed by the legal regime prior to the 2002 amendments since the plaintiffs had purchased their flat on or about 14 April 1994 before s 84A of the Act was introduced in 1999. His short point was that when s 84A(7)(*b*) was introduced in 1999, Parliament could not have foreseen the 2002 amendments. Ultimately, it was unnecessary to consider the correctness of Mr Leong's submissions as he could no longer make them because the factual matrices that had earlier underpinned his submissions had changed by the time the hearing resumed on 27 April 2007 following clarification of the facts by this court during the adjournment. It transpired that the Bank had from the outset a first legal mortgage on the HUDC property, as the CPF charge was not required to be registered. After privatisation, the CPF charge was registered in favour of the CPF Board on 28 January 2002. Since the legal position on priority had always been the same, the plaintiffs were never affected by the 2002 amendments.

The decision of the Board

13 The substance of the Board's decision on the three main contentions mentioned in [11] above, but now placed in the sequence presented to the Board, was expressed in these terms:

> **Valuation Report**
>
> …
>
> 17. The only issue before the Board is whether the Applicants complied with the Schedule and provided a report by a valuer on the proposed method of distributing the proceeds of sale due.
>
> 18. The complaint by the [plaintiffs] is that Annex 8 of the Application contained only a Valuation Report prepared by JLL [Jones Lang LaSalle] with a paragraph entitled "COMMENTS". …
>
> 19. The [plaintiffs] argued that the Valuation Report is at best merely an opinion expressed by JLL that the distribution by share value is not unreasonable given the composition of the units. The [plaintiffs] also argued that the Valuation Report did not comply with the Valuation Standards

and Guidelines prepared by the Singapore Institute of Surveyors and Valuers.

20. The Board examined the Valuation Report that was prepared by JLL and concluded that the objections raised by the [plaintiffs] were without merit. Although the relevant portion of the Valuation Report on the distribution was titled as "COMMENTS", it was nevertheless in substance a report containing the valuer's opinion on the method of distribution adopted by the majority of the subsidiary proprietors. The fact that the Valuation Report did not conform squarely to the recommendation issued by the Singapore Institute of Surveyors and Valuers does not detract that it was nevertheless a report.

…

Financial Loss

22. The [plaintiffs] submitted that they had suffered financial losses and enumerated the loss as follows:

S/n	Description	Amount
01.	Gross proceeds of sale (taking the Purchase Price of the development at $385 million) pursuant to clause 2 of the Sale and Purchase Agreement ("S&P")	$660,377.35
02.	Less: The Ex-Gratia payment of $3 million pursuant to clause 3(1) of the S&P	$5,145.80
03.	Less: Clients' contribution to the Compensation Sum pursuant to clause 8.4 of the Collective Sale Agreement	$0
04.	Less: DTZ's fees	$5,547.17
05.	Less: Lee & Lee's fees	$2,054.93
	Nett proceeds	**$647,629.45**
06.	Less: Outstanding mortgage loan as at 11.10.06	$341,118.90
07.	Less: Legal and stamp fees at purchase	$18,683.07
08.	Less: Privatisation cost	$19,535.43
09.	Less: Outstanding CPF principal amount and accrued interest	$407,598.82
		-$139,306.77

23 The [plaintiffs] argued that there would be a financial loss to their CPF accounts because

the net proceeds are insufficient to fully repay the outstanding bank loan and fully refund the CPF monies withdrawn for the purchase of the property.

24 The main thrust of their argument is that outstanding CPF amounts should be an allowable deduction by the Board under Section 84A(8)(a) of the Act. ... The CPF Board treated the shortfall between the total CPF used plus the accrued interest and the net sale proceeds as a financial loss to their CPF accounts.

…

27 From the [plaintiffs'] own calculations, it is clear that there was no financial loss as the proceeds of sale less allowable deductions are not less than the price they had paid for their lot.

28 The Board also found that there is no basis to agree with their view that the "net proceeds of the sale are insufficient to redeem our mortgage and CPF charge" and this amounted to a financial loss. This objection can only be properly made under Section 84(A)(7)(b) of the Act. Applying this Section and in view of the CPF Board's letter that they will allow the redemption, the [plaintiffs] could with the proceeds of sale redeem the mortgage and discharge the charge. The Board is satisfied that the [plaintiffs'] objection does not come within the ambit of Section 84(A)(7)(b).

29 The [plaintiffs'] claim that they suffered financial losses does not fall within the ambit of Section 84A of the Act and the Board therefore dismissed their objection.

30 The Board also re-examined the issue of what should constitute a deduction allowable under Section 84(A)(8)(a). Of particular concern to us is the issue of the sum of $19,535.43 being the costs of conversion paid by the [plaintiffs] for the privatisation of Waterfront View. Although the [plaintiffs] in their written submission did not argue this, the Board is of the view that the costs of the privatisation fee, being an expense, should be an allowable deduction. This is a cost that has to be paid to convert the lease under the Land Titles Act to the Land Titles (Strata) Act. This process of converting the title is a necessary expense without which the Waterfront View will not be eligible for a collective sale.

31 The [plaintiffs] also claimed that the penalty they paid to the bank should also be a deduction. The Board's view is that this should not be an allowable deduction as it is a private contractual matter between the bank and the [plaintiffs]. It is also totally unrelated with the price they had paid for their lot.

32 Other deductibles concerning issues on interests and renovation costs have been dealt with by previous decisions of the Boards and they have been disallowed. The costs of the legal fee and stamp duty at the time of the purchase of the property have always been allowed as a deduction. This Board adopts the decisions of previous Boards.

33 The [plaintiffs] do not suffer a financial loss based on the net proceeds of sale less the allowable deductions – legal costs and stamp duty at the time of purchase and the costs of privatisation. The [plaintiffs] purchased the lot in 1977 [*sic*] for the price of $573,000 [*sic*] and will receive a gross sum of $660,377.35 from the collective sale. They had not suffered any financial loss even if deductions allowable are taken into account.

14 The Board had also cited in its decision the CPF Board's letter of 13 November 2006 ("the CPF letter") whereby the CPF Board wrote:

> If the sale proceeds after deducting the outstanding housing loan owing to the mortgagee, M/s DBS Bank Ltd is insufficient to fully refund the principal amount withdrawn and accrued interest to both your CPF accounts, the Board does not require both of you to make good the shortfall to your CPF accounts in cash. Instead, only the net sale proceeds (ie selling price less outstanding housing loan) is required to be refunded to your CPF accounts upon the completion of sale of the flat. The net sale proceeds would be apportioned to your CPF accounts based on the CPF used for the Flat and accrued interest. The shortfall between the total CPF used plus the accrued interest and the net sale proceeds would be considered a financial loss to your CPF accounts.

15 Notably, there was no specific finding by the Board that there was a financial loss to the CPF accounts, and rightly so, given the way the plaintiffs had formulated and presented their case before the Board and in this appeal (see [11] above). The Board approached the objections on the basis that there was no financial loss within the meaning of s 84A(7)(*a*) as the collective sale price less allowable deductions – legal costs and stamp duty at the time of purchase and the cost of privatisation – was still more than the original price paid for the flat and, furthermore, the net sale proceeds were sufficient to redeem the mortgage and CPF charge. The so-called CPF shortfall did not impede the redemption of the CPF charge as confirmed in the CPF letter.

Issues on section 84A of the Act

16 Before I discuss the three main issues in this appeal, I must comment on the plaintiffs' application to amend OS 317 as it had a bearing on the exact scope of the appeal. I do not intend to go into this at any great length except to highlight the limited scope of the appeal before me as opposed to an expanded one. The provisions of O 55 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) require an appeal from a decision of a tribunal to be brought by originating summons, and the grounds of the appeal must be stated in the originating summons (see O 55 r 2(2)). Order 55 r 5(3) mandates that except with the leave of the court hearing the appeal, no grounds other than those stated in the originating summons by which the appeal is brought may be relied upon by the appellant (in this case, the plaintiffs) at the hearing; but the court may amend the grounds so stated on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties. The plaintiffs had omitted to state the grounds of the appeal in OS 317. At the hearing to amend OS 317, Mr Leong attempted to widen the scope of the appeal beyond the grounds stated in the plaintiffs' joint affidavit filed in support of OS 317 by formulating the proposed second ground of appeal in a manner different from that worded in the plaintiffs' joint affidavit, *viz*, that the Board erred in failing to treat the CPF shortfall as a financial loss for the purposes of s 84A(7)(*a*) of the Act. That expanded application was objected to by Mr Kuah. Not only was the proposed amendment new as it was not one of the grounds mentioned in the supporting affidavit, it was not a point specifically decided by the Board and could not be put forward in any case in an appeal confined to points of law. Nevertheless, Mr Kuah was mindful that he could not seriously object to an amendment that corresponded with the ground as stated in para 9 of the plaintiffs' joint affidavit. In response, Mr Leong chose and adopted the amendment attracting the least resistance. On that basis, I granted leave to the plaintiffs to amend OS 317 in the manner shown in the draft presented to me, save that para 1(*b*) of the draft was to follow exactly the wording of para 9 of the plaintiffs' joint affidavit. The grounds of OS 317 as amended are set out below in the form of Issues 1 to 3 and in the order of the arguments canvassed before me.

Issue 1: "[T]he Strata Titles Board erred in law in concluding that the one-paragraph "COMMENTS" at paragraph 13.00 of the Valuation Report dated 18 July 2006 found at Annex 8 of the Application is a 'report' on the proposed method of distributing the proceeds of sale as required by Paragraph 1(e)(vii) and Section 84A(3) of the Land Titles (Strata) Act (Cap. 158),

even though holding that the 'report' did not conform squarely to the Valuation Guidelines 5 – Valuation Guidelines for Collective Sales issued by the Singapore Institute of Surveyors and Valuers"

17 Paragraph 13.00 of the valuation report prepared by Jones Lang LaSalle ("the Valuation Report") read:

> We have been informed that the distribution of the sales proceed[s] is by way of share value only ie each unit is entitled to 1/583 of the sales proceed [s]. We are of the opinion that the method as recommended by DTZ Debenham Tie Leung (SEA) Pte Ltd is not unreasonable taking into consideration the composition of the units within the development.

18 The plaintiffs argued that para 13.00 of the Valuation Report was, at best, an opinion expressed by Jones Lang LaSalle ("JLL") that the distribution by share value was not unreasonable given the composition of the units. Therefore, no report on the method of distribution of the sale proceeds was ever furnished to the subsidiary proprietors before the making of the application contrary to the Schedule and s 84A(3) of the Act. It was also pointed out that the Valuation Report did not comply with the Valuation Standards and Guidelines prepared by the Singapore Institute of Surveyors and Valuers which recommended a separate report on the method of distribution of the sale proceeds. Mr Kuah maintained that the Board was correct in its decision. I have already set out in [13] above the Board's decision on this point (see [20] of the Board's decision).

19 In my judgment, Issue 1 was not an appealable error. I accepted Mr Kuah's assessment that this issue did not involve any question of law. Any appeal which is limited to a point of law requires counsel to identify it by formulating the point of law which arises for decision. Mr Leong did not actually identify any point of law upon which the Board allegedly erred. The true question before the Board was whether the requirements of the Schedule were fulfilled in this particular case. That was not itself an issue of statutory construction contrary to Mr Leong's attempt to make it one. In this case, there was no dispute or difficulty as to the meaning of the requirements. The Board had to decide whether there was conformity with the requirements of para 1(*e*)(vii) of the Schedule. The Board made a finding of fact that the paragraph entitled "COMMENTS" in the Valuation Report was a "report by a valuer on the proposed method of distributing the proceeds of the sale due under the sale and purchase agreement" as required under para 1(*e*)(vii) of the Schedule. Paragraphs 1(*e*)(vi) and 1(*e*)(vii) speak of two different reports, and, as an illustration, two separate reports are certainly necessary if the valuation report in para 1(*e*)(vi) was first commissioned and issued not more than three months earlier, unlike the case here, as Mr Kuah explained that the terms of reference given at the same time to the valuer was for a valuation and a method of distributing the sales proceeds. Paragraph 12.00 of the Valuation Report discussed JLL's valuation and para 13.00 dealt with the method of distribution of the sale proceeds.

20 More to the point, the Board's finding of facts was based on direct evidence. As such, it would be an appeal against the facts which this court was not entitled to entertain, and consequently the first ground of appeal failed for that reason. Having reached the conclusions stated, it was unnecessary for me to discuss the two previous decisions of the Board brought up by Mr Leong which Mr Kuah sought to distinguish. As an aside, I would have held the Board's decision to be right even if the court were the judge of the factual merits of the matter.

Issue 2: "[The Strata Titles] Board erred in law in failing to treat outstanding CPF amounts as an 'allowable deduction' pursuant to Section 84A(7)(a) and [Section 84A(8)(a)] of the Land Titles (Strata) Act (Cap. 158), even though finding that the CPF Board treated the shortfall between the total CPF used plus accrued interest and the net sale proceeds as a 'financial

loss' to [the plaintiffs'] CPF accounts"

21 The plaintiffs had relied upon the CPF letter as the basis of their contention that they had suffered a financial loss to their CPF accounts and with that, Mr Leong had argued that the CPF shortfall should be an "allowable deduction" for the determination of "financial loss" in s 84A(7)(*a)* read with subls (8)(*a*) of the Act. As to why the CPF shortfall should be so treated, Mr Leong did not explain in detail save to say that as it represented a financial loss to the plaintiffs' CPF account, it fell under s 84A(7)(*a*). He further submitted that s 84A(8)(*a*) should not be taken as an exhaustive definition of what was a "financial loss". Mr Leong, however, did not properly develop this point in a real way, but nonetheless concluded that in ignoring the CPF shortfall, the Board erred in law in finding that the plaintiffs did not suffer a "financial loss".

22 Mr Kuah took the opposite view. His general submission was that sub-s (8)(*a*) must be construed to have effect only for the purposes for which it was enacted to determine "financial loss". That, he argued, came from the opening words of sub-s (8), "For the purposes of subsection (7)(*a*)". By that, I took him as saying that the words "for the purposes of" in the opening sentence were simply the basis for a restrictive interpretation of s 84A(7)(*a*). At any rate, Mr Kuah submitted that there was no finding by the Board that it agreed with the CPF letter that the CPF shortfall was a "financial loss" within the meaning of s 84A(7)(*a*). Of relevance to Mr Leong's argument was the source of the funds used to finance the purchase of the property and on a collective sale, there was now an ostensible shortfall to that source. None of that had any significant effect, as far as the Board was concerned, on the interpretation, application or operation of s 84A(7)(*a*) read with s 84A(8)(*a*), and of s 84A(7)(*b*) of the Act.

23 On the arguments I have heard, the decision of the Board on Issue 2 was not wrong. The starting point for my analysis is that s 84A(7)(*a*) is one of the two prescribed reasons disallowing an application for a collective sale. Subsection (7)(*a*) of s 84A introduced the notion of a "financial loss" as a statutory ground for not approving the application made under s 84A(1) of the Act. Subsection (8)(*a*) is, in my view, a computational provision concerned with the computation of "financial loss" which is expressly tied to sub-s (7)(*a*). This can be seen from the words "For the purposes of [financial loss in] subsection (7)(*a*)" in the opening sentence of subls (8). The clear effect of this provision is reinforced by the insertion of subls (7)(*a*) in sub-s (8). From this perspective, sub-s (8) is part of sub-s (7)(*a*). This appeal concerns only subls (8)(*a*); sub-s (8)(b) is not relevant.

24 Subsection (8)(*a*) contains a mechanism for the Board to determine a gain or loss situation for the objector from the collective sale. It is a simple exercise of a direct comparison between the collective sale price and the original individual price after taking into consideration allowable deductions to see whether there is a "financial loss". The existence of such a provision means that the same method of computation should be adopted in every case. The Board has no power to void, supplant or vary the formula, but in interpreting the provisions of the law under which it acts, it will inevitably have to decide on what item of expenditure constitutes an "allowable deduction". The Board in previous cases have ruled on what are the items of expenditure that are properly deductible.

25 The wording of sub-s (8)(*a*), "shall be taken to have incurred", may suggest that it is a "deeming" provision, but I do not believe that to be the case for the reasons explained above. Even if sub-s (8)(*a*) can be regarded in some way as a deeming provision, any deeming is solely for the purpose of computing the gain or loss on the collective sale based on a prescribed price comparison.

26 What then are allowable deductions within the meaning of s 84A(8)(*a*)? Should the CPF shortfall be taken as an allowable deduction as argued for by Mr Leong? I now turn to discuss these questions.

For their contention to take flight, the plaintiffs would have to show how CPF moneys used to finance the purchase of the property could in principle be recognised as an allowable deductible for the purposes of determining the plaintiffs' financial loss within the meaning and scope of s 84A(7)(*a*) read with s 84A(8)(*a*).

27 As can be seen from the table in the Board's decision (see [13] above), the amount of CPF moneys withdrawn and the CPF imputed interest added up to $407,598.82. Of this global sum, $330,998.55 constituted CPF moneys withdrawn from the plaintiffs' CPF accounts. The remaining sum of $76,600.27 was the CPF imputed interest. After paying off the bank mortgage, $319,258.45 of the net sale proceeds was refunded into the CPF accounts. The CPF shortfall of $88,340.37 comprised firstly, the sum of $11,740.10 being the outstanding CPF withdrawal and secondly, CPF imputed interest in the sum of $76,600.27. I shall now explain the fallacy of Mr Leong's contention that the CPF shortfall should be considered as an allowable deduction. Mr Kuah had pointed out that even on Mr Leong's contention, the CPF shortfall together with other allowable deductions do not in aggregate exceed the gains from the collective sale over the original purchase price.

28 CPF moneys are a source of financing used by many CPF members to acquire residential property. Ordinarily, CPF moneys are applied towards any or all of the following purposes:

(a) the payment of the original purchase price of the property;

(b) the repayment of mortgage principal; and/or

(c) the repayment of mortgage interest.

Being so represented in the aforesaid form or forms and having regard to the computational provision based on a prescribed price-to-price comparison explained in [24] above, it will therefore result in double counting if CPF moneys then (and any part thereof) were brought in to the equation as an allowable deduction. The validity of this reasoning may be tested by using the bank loan as an illustration. This bank loan is the mortgage principal which is by design and definition utilised towards the payment of the original individual price. By parity of reasoning, the mortgage principal cannot be considered an allowable deduction. It follows that CPF moneys used for the payment of the mortgage principal also cannot be considered as an allowable deduction. The inevitable result is that the outstanding CPF withdrawal in the sum of $11,740.10 cannot be considered as an allowable deduction.

29 Likewise, CPF moneys used to finance the repayment of bank interest are not an allowable deduction. The Board held in *Gong Ing San v Questvest (S) Pte Ltd* [2005] SGSTB 4, that "holding costs and/or the interest on bank charges should not be considered as a deduction". The Board at pp 5–6 of its grounds of decision reasoned:

> It is the decision of this Board that the holding costs and/or the interest on bank charges should not be considered as a deduction. …
>
> If [interest] on bank charges or holding costs were to be allowed, it would not be unreasonable to foresee that virtually no en bloc sale would ever succeed in Singapore. The sum total of all the [interest] paid by the subsidiary proprietors would be so substantial that it would be virtually impossible to sell the development at a price that would cater to all the bank interest and holding costs and the purchase price of the various subsidiary proprietors. This would defeat the very purpose of the Act which is to facilitate en bloc sale[s].

30 The reasoning of the Board accords with the construction of the statutory text and structure. All the more, as the CPF interest was imputed, it would be absurd or an anomaly to consider it as an item of deduction. In the context of sub-s (8)(*a*), it is implicit from the word "deduction" that some form of expenditure must have first been incurred before a deduction can be allowed to be made.

31 For the foregoing reasons, I agreed with Mr Kuah that the CPF moneys and any part thereof (the outstanding CPF withdrawal) and the CPF imputed interest were not an allowable deduction within the meaning of s 84A(8)(*a*) of the Act. The plaintiffs' second ground of appeal (*ie*, Issue 2) was clearly not sustainable and must fail.

Issue 3: "[T]he Strata Titles Board erred in law in concluding that the Plaintiffs' objections do not come within the ambit of Section 84A(7)(b), even though finding that the CPF Board treated the shortfall between the total CPF used plus accrued interest and the net sale proceeds as a "financial loss" to the Plaintiffs' CPF accounts"

32 Section 84A(7)(*b*) is the second stand-alone statutory ground for disallowing the collective sale. Mr Leong urged me to read s 84A(7)(*b*) purposively, to protect the shortfall to the plaintiffs' CPF accounts. He submitted that in a collective sale such as the present, Parliament could not have intended for the majority to be able to force the plaintiffs to "absorb" the "financial loss" to their CPF accounts so that the collective sale could go through given the position expressed in the CPF letter (see [14] above) whereby the CPF charge would be discharged upon refund of the net sale proceeds to the CPF accounts. This argument is untenable for two reasons.

33 First, the argument conflates the provisions of ss 84A(7)(*a*) and 84A(7)(*b*) which are distinct grounds. Section 84A(7)(*b*) does not make reference to "financial loss" which is only found in s 84A(7)(*a*). The effect of s 84A(7)(*b*) is essentially that the Board will not order a collective sale of a property if "the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot". Reference to "any mortgage or charge in respect of the lot" directs attention to the essential features of the provision in question. Section 84A(7)(*b*) is precisely drafted and focuses on the redemption of "any mortgage" and "charge" and the sufficiency of the sale proceeds to redeem the property. The legislation uses the terms "mortgagee" and "charge" to label two different legal concepts. The latter concept includes a charge in favour of the CPF Board and this form of securitisation occurs frequently since CPF savings are withdrawn by most home owners to finance the purchase of their residential property. This aspect of the case requires an examination of the inter-relationship between s 84A(7)(*b*) and the CPF Act and the CPF housing scheme regulations. I will elaborate on this later on. Suffice it to say that the question whether the collective sale proceeds were "insufficient" to redeem the CPF charge must be answered in the light of the relevant circumstances bearing on the objector by the operation of the CPF housing regime. In enacting s 84A(7)(*b*), the legislative draftsman would have had the operation of the CPF housing regime in his mind.

34 The plaintiffs had relied upon the CPF letter to show an apparent accommodation of sorts but that was inaccurate and misplaced as the CPF Board in its letter was doing no more than stating the legal position on redemption of the CPF charge at the time s 84A of the Act was enacted and the law remained unchanged at the time of the collective sale. That is significant and it brings me to the second reason in the analysis as to why Mr Leong had not made good the plaintiffs' core argument that the CPF shortfall should be taken into account under s 84A(7)(*b*) of the Act.

35 It bears repeating that the court has to take into account the state of the CPF regime at the time s 84A of the Act was enacted. That is important in order to judge what mischief an enactment is

intended to redress (see *Halsbury's Laws of England* vol 44(1) (Butterworths, 4th Ed Reissue, 1995) at para 1415). The legal and factual matrices available to Parliament as at the date when s 84A(7) was inserted and added to the Act make clear Parliament's intention regarding how CPF moneys and CPF imputed interest are to be treated. Section 84(A)(7)(*b*) ought, for the most part, to have a tidy and harmonious working relationship with the CPF housing scheme regulations.

36 The relevant CPF housing scheme regulations embody the general system of law in place (see [39] to [42] below). Generally, CPF moneys withdrawn for the purchase of residential property and the subsequent refund of the CPF moneys to a member's CPF account on a sale of the property is governed by the CPF Act and the housing scheme regulations made pursuant to the CPF Act. Whether the property in question is HDB-HUDC or privately-owned residential property, the CPF Act and regulations made pursuant thereto only require either the CPF moneys withdrawn and the interest that would have accrued thereto if the withdrawal had not been made, or the net proceeds of sale, whichever is the lesser amount, to be refunded into the CPF account. The CPF Act states in no uncertain terms that when this is done, the charge held by the CPF Board in respect of the property will be redeemed: see ss 21(1) and 21(10) of the CPF Act. Any shortfall that is not required to be repaid to discharge the CPF charge is inferentially, in the context of the CPF housing regulations, deemed withdrawn before the qualifying age of 55 years old. Inexorably, such a shortfall, as I see it, has no place in the interpretation, application or operation of s 84A(7)(*b*) of the Act. I now turn to s 84A(7)(*b*).

37 The meaning of "insufficient" in s 84A(7)(*b*) is not difficult given its plain and ordinary meaning. The question of the insufficiency of the sale proceeds to discharge the CPF charge under s 84A(7)(*b*) of the Act is tied to the CPF housing scheme regulations. Significantly, the language of s 84A(7)(*b*) on redemption of the CPF charge permits the effect of the CPF housing regime to operate within its terms. This invariably goes to explain the very circumstances in which s 84A(7)(*b*) will be given effect. Thus, if the legislative draftsman had intended that the CPF shortfall be considered under s 84A(7)(*b*) of the Act, he would certainly have provided for this. I need only point to statutory rules of construction which require clear and ambiguous words if Parliament's intention is to change either common law or statute law. This presumption is concisely stated in *Halsbury's Laws of England* ([35] *supra*) at para 1436:

> It is a principle of legal policy that law should be altered deliberately rather than casually, and that Parliament should not be taken as intending to change either common law or statute law otherwise than by measured and considered provisions.

38 Mr Leong had contended that Parliament could not have intended for HUDC properties to be involved in, and the corresponding CPF housing scheme regulations (as set out below) to have any application to, a collective sale of property. That assertion is factually incomplete as it disregarded privatisation of the property in 2002. It had also sought to make a distinction that was fanciful. This is because the CPF housing scheme regulations applicable to privately-owned properties in relation to this issue have a similar structure and framework as those that govern HUDC properties.

39 The plaintiffs bought their HUDC property in 1994 with the assistance of a bank loan and CPF moneys. Regulation 10 of the Central Provident Fund (Approved HDB-HUDC Housing Scheme) Regulations (Cap 36, Rg 14, 1990 Rev Ed), effective from 1 December 1987, reads as follows:

> **Member may sell, transfer, assign, etc., property subject to Board's approval.**
>
> 10.—(1) The Board may, in its discretion and subject to such terms and conditions as it may impose, permit a member who has withdrawn money under these Regulations to sell, transfer,

assign or otherwise dispose of the property or any of his estate or interest therein in respect of which the withdrawal has been made to any person, if the Board is satisfied that adequate arrangements have been made to secure the repayment of money into the member's account in the Fund in the manner provided in paragraph (2) or (3).

(2) Where the net proceeds arising from such sale, transfer, assignment or disposition exceed the purchase price of the property —

(*a*) the net proceeds of the sale, transfer, assignment or disposition; or

(*b*) all moneys withdrawn by him together with any interest that would have accrued thereto if the withdrawal has not been made,

whichever is the less, shall be repaid to his account in the Fund.

(3) Where the net proceeds arising from such sale, transfer, assignment or disposition do not exceed the purchase price of the property —

(*a*) the net proceeds of the sale, transfer, assignment or disposition; or

(*b*) all moneys withdrawn by him excluding accrued interest,

whichever is the less, shall be repaid to his account in the Fund.

40 These Regulations were revised in 1998 and the revision was effective from 1 January 1998. Regulation 10 of the earlier edition was only renumbered as reg 11 with no other changes. That was the state of the law at the time s 84A of the Act was enacted. The Regulations were again amended in 2001 and revised in 2006 with no change to the basic feature of the scheme that the lesser amount of the two stipulated sums is to be repaid to the member's CPF account to redeem the property.

41 I now turn to the housing scheme regulations on privately-owned residential properties. Of relevance is the 1990 revised edition of the Central Provident Fund (Residential Properties Scheme) Regulations (Cap 36, Rg 6, 1990 Rev Ed). Regulation 19 reads as follows:

Sale with Board's permission.

19. The Board may subject to such terms and conditions as it may impose, permit a member who has withdrawn money under these Regulations to sell, transfer, assign or otherwise dispose of the residential property or any of his interests therein in respect of which such withdrawal has been made to any person, if the Board is satisfied that adequate arrangements have been made to secure the repayment into the member's account in the Fund of —

(*a*) all moneys withdrawn by him, and of such interest as would have accrued thereto if the withdrawal had been made; or

(*b*) the net proceeds of the sale, transfer, assignment or disposition, as the case may be,

whichever is less.

42 Regulation 19 was renumbered reg 24 with no other changes when these Regulations were revised in 1998 and the revision came into effect on 1 January 1998. The Regulations were again

revised in 2006 with no change to the basic feature of the scheme that the lesser amount of the two stipulated sums is to be repaid to the member's CPF account to redeem the property.

43 In this present case, the proceeds of the collective sale were sufficient to redeem both the bank mortgage and the CPF charge on the property. My decision turned not on any injustice, anomaly or absurdity which would have flowed from the contrary view, but on a construction of the enactment as a whole. As stated, if Parliament had intended to depart from this general system of law governing CPF funds in place at that time, clear and unambiguous words would have to be used. No intention as such was expressed. From this perspective, any CPF moneys not refunded to the CPF account would be treated as already taken by the member before the qualifying age of 55 years old and for this reason is outside the scope of s 84A(7)(*b*). It must be well understood that this state of affairs came about because of the inter-relationship between s 84A(7)(*b*) and the existing CPF housing regime. I did not observe anything in the provision itself requiring the extended effect as contended for by Mr Leong.

44 For these reasons, this final ground of the plaintiffs' case also failed.

"Alternative" ground?

45 In oral submissions made on 27 April 2007, a different focus emerged in that Mr Leong propounded a broader jurisdictional basis in this court. The plaintiffs tried once again to argue that the CPF shortfall was a "financial loss" within the ambit of s 84A(7)(*a*) of the Act despite the scope of OS 317 as amended. At the risk of repetition, Mr Leong had suggested that the definition of "financial loss" in sub-s (7)(*a*) was not constrained or limited by sub-s (8). He did not explain how this was so nor did he cite any specific rule of construction to support his argument. In fact, having ring-fenced his argument on financial loss as an allowable deduction within the confines of sub-s (8)(*a*), Mr Leong was apparently not convinced by his own case. Apart from Mr Leong's submissions being inconsistent with the plaintiffs' grounds of appeal (this was Mr Kuah's preliminary objection), Mr Kuah's point was that the CPF shortfall was not relevant to the determination of financial loss under s 84A(7)(*a*) of the Act. He maintained that since sub-s (8) specifically detailed the situations in which a financial loss could be said to have occurred, these must necessarily be the limited situations contemplated by the Act.

46 Mr Leong appreciated the force of Mr Kuah's preliminary objection and accepted that it was an objection he had to overcome. Mr Leong, relying on O 55 r 5(3) of the Rules of Court, urged the court, as it retained an overall discretion, to allow the "alternative" argument to be made so as to ensure the determination on the merits of the real question in controversy between the parties. He contended that the defendants would not be prejudiced as they had already seen and were able to address the submissions of the plaintiffs. Mr Leong had missed Mr Kuah's point.

47 This "alternative" argument was earlier abandoned by Mr Leong at the hearing of the application to amend OS 317 on 30 March 2007. He was hoping to revisit the very same issue whether in the same or in a different form. The resurrection of the same argument in this manner was wholly untenable for an overriding reason. The plaintiffs' case was not presented to the Board on the footing that there was an alternative or additional formulation other than the ones already put forward. Order 55 r 5(3) being a subsidiary legislation is subordinate to s 98 of the BMSM Act. Besides, the factual foundation of the relief sought in this court was not based on any finding of fact by the Board. If anything, as I have already mentioned, Mr Leong had his chance to make the amendments he wanted on 30 March 2007. It was far too late in the day for the plaintiffs to attempt to re-characterise their case on 27 April 2007, let alone ask for it to be remitted to the Board. Section 98(2) of the BMSM Act only applies if s 98(1) is satisfied in the first place. So the argument

was ill-founded. In any case, I did not think that a re-characterisation of the plaintiffs' case would have made a material difference. I have already explained that the CPF shortfall was outside the scope of s 84A(7)(*a*) read with s 84A(8)(*a*), and of s 84A(7)(*b*) of the Act. It would be repugnant to the operative provision in s 84A(7)(*b*) if the CPF shortfall were independently treated as a "financial loss" under s 84A(7)(*a*) (see [36], [37] and [43] above).

Result

48 In the circumstances, there was no error of statutory construction; quite the contrary. For all these reasons I dismissed the application with costs.