Lo Pui Sang and Others v Mamata Kapildev Dave and Others (Horizon Partners Pte Ltd, intervener) and Other Appeals
[2008] SGHC 116

Case Number	: OS 5/2008, 10/2008, 11/2008
Decision Date	: 17 July 2008
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Second applicant in person in OS 5/2008; K S Rajah SC, Harry Elias SC, Philip Fong, Justin Chia and Evangeline Poh (Harry Elias Partnership) for the applicants in OS 10/2008; First and fifth applicants in person in OS 11/2008; C R Rajah SC, Anand Karthigesu, Burton Chen and Lalitha Rajah (Tan, Rajah & Cheah) for the respondents; K Shanmugam SC, Ang Cheng Hock, Corina Song, William Ong and Sybil Rocha (Allen & Gledhill LLP) for the intervene
Parties	: Lo Pui Sang; Quek Keng Seng; Canterford Limited — Mamata Kapildev Dave and Others (Horizon Partners Pte Ltd, intervener)

Constitutional Law – Fundamental liberties – Personal liberty – Equality before the law – En bloc sale of condominium – Appeal to High Court against Strata Titles Board's approval of en bloc sale – Whether ss 84A(1) and 84B(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) violated Arts 9(1) and 12(1) Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) – Sections 84A(1) and 84B(1)(b) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Land – Strata titles – Collective sales – Appeal to High Court against Strata Titles Board's approval of en bloc sale – Higher offer not accepted by sales committee – Only one method of distribution of sales proceeds considered – Whether ss 84A(1) and 84B(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) violated Arts 9(1) and 12(1) Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) – Whether Board acting functus officio when delivered grounds of decision after giving oral decision – Whether Board breached rules of natural justice – Whether transaction made in good faith – Sections 84A(1), 84A(9) and 84B(1)(b) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

17 July 2008 Judgment reserved.

Choo Han Teck J:

1 The three applications under Originating Summons ("OS") Nos 5, 10 and 11 of 2008 were appeals against the decision of the Strata Titles Board ("STB"), approving the sale of a condominium under Strata Title Plan No 993, known as the Horizon Towers, a 99-year leasehold condominium which has about 70 more years left on the lease. The appeals were brought by the minority subsidiary proprietors ("the appellants"). The majority subsidiary proprietors (referred to as the consenting subsidiary proprietors ("the CSPs")) had signed a collective sale agreement ("the CSA") on 11 May 2006. On 22 January 2007, the CSPs granted Horizon Partners Pte Ltd ("HPPL") an option to purchase Horizon Towers en bloc with a reserve price of $500m. HPPL signed the option on 12 February 2007, thus converting the option into the sale and purchase agreement ("SPA"). Having achieved an 80% majority as required by law, the CSPs applied to the STB on 13 April 2007 for its approval of the sale of Horizon Towers en bloc to the purchasers, HPPL. The appellants did not sign the CSA and the SPA. The STB delivered its decision orally on 7 December 2007, approving the sale. Its grounds of decision (STB No 43 of 2007) ("GD") were issued on 21 January 2008. In the interim, the appellants filed these three OS, praying for the decision of the STB to be set aside. HPPL was granted leave to address this court as interveners in respect of all three applications. I will revert to other details of this case at the appropriate junctures of this judgment.

2 Mr KS Rajah SC ("Mr Rajah") and Mr Harry Elias SC ("Mr Elias") appeared on behalf of the minority in OS No 10 of 2008. The minority in OS No 5 and 11 of 2008 were unrepresented by counsel. Mr Rudy Darmawan ("Mr Darmawan") and Ms Jasmine Tan Kim Lian ("Ms Jasmine Tan") filed written submissions and addressed the court personally (as minority owners acting in person) in OS No 11 of 2008 and Mr Quek Keng Seng appeared in person in OS No 5 of 2008. Mr K Shanmugam SC appeared on behalf of the interveners, and Mr Chelva Rajah SC ("Mr Chelva Rajah") appeared on behalf of the CSPs.

3 The main submissions on behalf of the appellants were made by Mr Rajah and Mr Elias. Mr Rajah submitted that ss 84A(1) and 84B(1)(b) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA") were unconstitutional and that the orders of the STB made pursuant to these sections infringed Art 9(1) and Art 12(1) of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"). He further submitted that the STB refused to let the appellants make a full submission on the constitutional points. Counsel also submitted that the STB had no jurisdiction to exercise judicial powers, and further, that it did so in breach of the rules of natural justice. Finally, Mr Rajah submitted that the STB was acting *functus officio* when it delivered its GD in January 2008 since it had discharged its duties and functions when it delivered its oral decision on 7 December 2007.

4 Mr Elias submitted that the STB failed to consider the issue of bad faith on the part of the Sales Committee ("SC") in the way the SC handled the alternative offer of $510m from a company known as Vineyard Holdings (HK) Ltd ("Vineyard") for the purchase of the Horizon Towers. Secondly, Mr Elias submitted that the SC also failed to act in good faith in its choice of the method of distribution of the sale proceeds. Mr Darmawan and Miss Jasmine Tan, who were the appellants in OS No 11 of 2008, presented their own submissions, expanding on, and supporting the submissions made by counsel. I will consider the points in their submissions that were not covered in the submissions of counsel after I have dealt with the latter.

5 I shall consider first the constitutional law arguments of Mr Rajah. Mr Chelva Rajah is correct in reminding the court that s 98 of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004) ("BMSMA") provides that there can be no appeal to the High Court against an order of the STB "except on a point of law". He also correctly pointed out that there are only four grounds in which the STB may refuse to approve an application for a collective sale, namely (see ss 84A(7) and 84A(9) of LTSA):

(a) where a subsidiary proprietor who objects to the sale will suffer financial loss;

(b) where such a subsidiary proprietor is unable to redeem his mortgage or charge on his property;

(c) where the transaction was not made in good faith; and

(d) where the CSP agreement would require a subsidiary proprietor who had not agreed in writing to the sale to be a party to an arrangement for the development of the lots and the common property in the strata title plan.

Mr Chelva Rajah further submitted that (a), (b), and (d) were not relevant in the present appeals. It seems to me that the clear and specific provision in s 98 and the scheme of the LTSA do not empower the STB to decide on constitutional issues such as those raised by Mr Rajah before me, and in that regard, it seems that the STB cannot be faulted for not dealing with them. If ss 84A(1) and 84B(1) were unconstitutional, it must mean that the LTSA was *ultra vires* the Constitution so far as those sections were concerned, and the proper forum to determine if that were indeed so is the High

Court. The constitutional law arguments of Mr Rajah do not just concern the correctness of the STB decision in the en bloc sale of the Horizon Towers. It affects every en bloc sale under the LTSA. Counsel is entitled to raise those arguments because the Constitution is the supreme law of the land. The relevant version of s 84A(1) of the LTSA that applies in the present case is the version prior to the amendments to the LTSA in 2007, and the applicable sub-section is s 84A(1)(b), which reads as follows:

> 84A. —(1) An application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by —
>
> > …
> >
> > (b) the subsidiary proprietors of the lots with not less than 80% of the share values where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the strata title plan, whichever is the later,
>
> who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

Section 84B(1)(b), the other relevant provision, provides that:

> Where a Board has made an order under section 84 (6), (7) or (11) – the subsidiary proprietors of the lots shall sell the lots and common property in accordance with the sale and purchase agreement.

6 Mr Rajah's arguments based on the breach of the appellants' constitutional rights may be summarised as follows. Article 9(1) of the Constitution provides that no person shall be deprived of his life or personal liberty save in accordance with law. Counsel submitted that ss 84A(1) and 84B(1) have the effect of depriving the appellants of their personal liberty to contract. I do not think that the phrase "personal liberty" in Art 9 was a reference to a right of personal liberty to contract. It has always been understood to refer only to the personal liberty of the person against unlawful incarceration or detention. Counsel drew on decisions from the American Supreme Court in support of his arguments. Furthermore, it appears to me that if any fundamental right is violated here, it is not one's personal liberty to contract, but one's right to property (which is not a fundamental right entrenched in our Constitution (see [7] below)). In any event, I do not see how the decisions of the American Supreme Court cited by counsel can assist him given that the constitutional provisions of the United States are different from our constitutional provisions. Where the American Constitution declared, for example, by their 14th Amendment, that:

> No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property or due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,

our Constitution specifically provides that there shall be no such deprivation of such liberties "save in accordance with law". The difference is that in America, the State may not make any law depriving a

person of his personal liberty "without due process of law", but in Singapore, our Constitution, while prohibiting the deprivation of personal liberty, expressly permits such deprivation if the deprivation "was in accordance with law". "In accordance with law" must mean law passed by Parliament. The LTSA provisions in question are clearly "law" within the meaning of the Constitution. The words "save in accordance with law" in Art 9(1) of our Constitution may incline liberally in favour of legislative power, but the clear words cannot be altered by the court. That is what constitutional supremacy means. If the Legislature and the Executive must follow what it says, so must the Court. Everyone obeys it.

7 The second constitutional challenge from Mr Rajah comes in the form of Art 12(1) which provides that "[a]ll persons are equal before the law and are entitled to the equal protection of the law". Mr Rajah argued that ss 84A and 84B(1)(b) were in breach of Art 12(1) because Art 12(1) is presumed to lay down a prohibition against unreasonableness and arbitrariness. He submitted that the 80% rule discriminated against the appellants as the minority because the majority thus has a choice as to where they wished to live while the appellants would be deprived of that choice. Counsel is not wrong insofar as the final consequence of achieving a majority was concerned, but the circumstances and the law in this regard are more complex than that. Firstly, the right to equal protection under Art 12(1) must be determined from the outset, that is to say that when a law is passed, it must apply to everyone equally. Hence, until the subsidiary proprietors decide who wishes to sell, there is no majority nor minority. The opportunity of selling a condominium en bloc is an equal opportunity to all subsidiary proprietors. Neither the legislature nor the STB decides who the minority would be; the minority is decided by a vote of all the subsidiary proprietors. Secondly, the law founded upon a majority vote in such circumstances is consonant with the democratic ways of condominium living. Thirdly, unlike the constitutions of the countries referred to by Mr Rajah, the omission of a provision in our Constitution that would have ensured a fundamental right to own property was a deliberate omission given the scarcity of land in Singapore and as such, the court must recognise that there is no such fundamental right under our Constitution. The Land Acquisition Act (Cap 152, 1985 Rev Ed) in fact allows the government to acquire any land in Singapore for specific purposes so long as it provides due compensation. Considering these factors together, I am of the view that the provisions of the LTSA do not infringe Art 12(1). Mr Rajah also argued that the LTSA provisions also infringed Art 12(2) which provided protection against citizens from discrimination. His argument in this regard was founded on the same arguments relating to the liberty of contract and the discrimination against the minority subsidiary proprietors. I do not think that the STB had discriminated against the appellants in the administration of the LTSA just because it acted in accordance with the LTSA in compelling the minority subsidiary proprietors to sell their units. That was precisely the duty of the STB under the LTSA when it had satisfied itself that all the rules have been complied with.

8 I now come to the appellants' submissions in respect of the breach of the rules of natural justice. The first concerned the complaint that the STB did not allow the appellants to call Mr Arjan Samtani ("Mr Samtani"), the chairman of the SC who was described by counsel as "the leader of the mob", as well as the appellants' expert witnesses from testifying in the proceedings before the STB. From the record, it appeared that the application for Mr Samtani to take the stand was made, but was refused because the late application did not persuade the STB that the evidence would be material. The fact that Mr Samtani might have held an important position in the SC is only partially important. What he was meant to testify about was equally important, and without satisfactory details of that the STB was entitled to refuse to issue a subpoena against him. I am of the opinion that the outline of his intended evidence was far too brief. For example, it was stated that he would testify as to "the contents of his email to David Ang of Drew & Napier [HPPL's then solicitors]". The STB was entitled to know what it was about the contents that Mr Samtani wished to talk about. The STB has to decide whether the particulars given were sufficient and if not, whether the insufficiency was outweighed by other factors such as the importance of the little that had been disclosed, as well

as the circumstances at hand, such as the probability of irrelevant motives of the appellants in seeking the testimony of the witness concerned. Perusing Mr Rajah's submission on this point, I am not satisfied that the decision to refuse the application to call Mr Samtani was wrong. I would stress that at this stage before me, the burden was not on the CSPs to prove that the STB's decision in this regard was right. The burden was on the appellants to prove to me that it was wrong. I am of the view that there were insufficient grounds to find that the STB had erred in rejecting the application to call Mr Samtani as a witness. As for failing to call the appellants' expert witnesses, I note that the STB had directed that it would dispense with the appearance of *all* expert witnesses, not just the appellants' (unless there is a challenge to credibility, for which there was none) and that the experts were to file response affidavits instead in order to make optimum use of the STB's hearing time. In these circumstances, I cannot see how the appellants were denied a fair hearing for not being able to call their expert witnesses to give oral evidence.

9 Mr Rajah submitted that the STB was *functus officio* after 7 December 2007 and therefore had no right to deliver its GD on 21 January 2008. A number of cases were cited to me in argument but those, such as *Re an Arbitration between Stringer and Riley Brothers* [1901] 1 QB 105, involved the tribunal making or amending the award or an operative part of its decision. Setting out its grounds subsequently, in my view, was not an act *functus officio*. In any event, no prejudice had occasioned by reason of the grounds being delivered after 7 December 2007 and counsel had been permitted to deal with all the points of law in full before me. For the avoidance of doubt, I would hold that s 92(9) of the BMSMA, read with r 22(2) of the Building Maintenance (Strata Titles Board) Regulations 2005 (S 195/2005), requires the STB to deliver its decision with grounds within six months from the date it is constituted or within such extension of time as may be granted by the Minister, and it must deliver its grounds at the time it makes its order. However, the failure to provide its grounds at the same time does not invalidate the order. It only meant that the appellants were entitled to persuade the court to disregard the grounds or give it less weight than it deserved had the reasons been given promptly.

10 The appellants submitted that the SPA was invalid because it had been deemed cancelled by 11 August 2007. This argument was based on the terms of the sale, namely, that under cl 4(b), if the STB did not order the sale within six months from the date of the agreement, that is, 11 August 2007, then as Miss Jasmine Tan argued, "the agreement will come to an end". She also argued that the extension of the deadline by the CSPs (on 24 September 2007) to 11 December 2007 was invalid because the agreement had already lapsed by 11 August 2007. Clause 4(b) provides as follows:

> In the event that the First Condition is not fulfilled by the Vendors within a period of six (6) months from the date of the Agreement, the Vendors shall have the option of extending the deadline herein provided for the fulfilment of the First Condition for a further period of up to four (4) months. If the First Condition is not fulfilled by the Vendors within the said extended deadline, then unless otherwise mutually agreed between the parties, either the Vendors or the Purchaser shall be entitled to rescind the sale and purchase herein by way of written notice to the other party in respect thereof. Upon such rescission, all monies paid hereunder shall be refunded to the Purchaser free of interest and the sale and purchase herein shall be null and void. Each party shall bear its own costs and expenses and neither party shall have any claim against the other for damages costs compensation or otherwise.

I am of the view that the SPA did not come to an end since there was no express rescission by any party. Clause 4(b) was not a clause providing for an automatic or default termination of the agreement. On the contrary, the clause provided for the opportunity of an extension of the deadline with no express condition that required the deadline to be extended before it expired. Furthermore, if the SPA had indeed lapsed, the proceedings before this court in the first round, the proceedings

before the STB in the second round, and the present appeals before this court would all have been futile exercises. If the SPA had lapsed, that argument should have been made and taken to finality before the proceedings resumed before the STB. This was not so. I hold that the SPA had not lapsed, and that the extension of the deadline was a valid extension.

11 I now come to the next main ground of the appeals, namely that the transaction was not made in good faith. This was the ground elaborated by Mr Elias as well as Miss Jasmine Tan and Mr Darmawan. It is necessary to set out the facts in some detail because the question of good faith has to be answered only in the context of the facts of each case. The ones here begin in April 2006 when nine subsidiary proprietors of the Horizon Towers were appointed as the SC with the view of getting Horizon Towers sold en bloc. A reserve price of $500m was also decided at the same meeting. On 22 January 2007, the SC gave an option to HPPL to purchase the condominium for $500m. HPPL exercised the option in February 2007. The CSPs then applied to the STB for approval of the sale. The STB heard the application in July 2007 and rejected it on the ground that it was not a valid application. The CSPs appealed before this court to set aside the STB's decision. In the interim, the CSPs extended the SPA to 11 December 2007. On 11 October 2007, this court set aside the STB's decision and remitted the matter to the STB. Proceedings before the STB then continued and the STB made its order on 7 December 2007, granting approval for the sale. Mr Elias raised two main issues under this ground of appeal. First, he submitted that the SC deliberately did not disclose the higher offer of $510m from Vineyard ("the Vineyard offer"). The Vineyard offer was made through a Malaysian law firm, Shan & Su, and communicated to the chairman of the SC by that firm's letters of 28 December 2006 and 3 January 2007. Only the latter was adduced in evidence although there was no dispute that the former had been received. The contents were similar. I set out the second letter in full:

> We act for Vineyard Holdings (H.K.) Ltd with respect to the above matter, wherein our client instructs us that it is desirous of purchasing Horizon Towers ("the Property") for the sum of S$510 million only, free of all liens and encumbrances, subject to terms and conditions to be agreed between the parties.
>
> Kindly let us have the principle terms and conditions of the above sale for our clients due consideration.
>
> We look forward to hearing from you the soonest.

Counsel submitted that a few days later, on 6 January 2007, there was an SC meeting, but the details of Shan & Su's letters were not discussed. Instead, what transpired, according to Mr Elias, was that Mr Henry Lim ("Mr Lim"), the agent from First Tree Properties ("First Tree") (the agent appointed by the SC to act on behalf of the CSPs), failed to disclose the Vineyard offer. Mr Darmawan and Miss Jasmine Tan added further arguments to this issue. The facts become more complicated because the appellants also submitted that First Tree acted in conflict of interest. The appellants alleged that First Tree did not motivate itself to secure the highest bidder for the condominium. It was also alleged that First Tree, as the agent for the vendor, inexplicably, was paid its commission by the purchaser instead of the vendor. The allegations against First Tree were made out in the detailed submissions of Mr Darmawan.

12 The appellants' submissions relating to First Tree contained three related aspects. The first concerned First Tree's failure to find the highest bidder; the second concerned First Tree's own interests in securing the best commission for itself and; the third concerned its failure to pursue the Vineyard offer. Mr Darmawan made the point that an agreement that required First Tree to get its commission from the purchaser meant that the agent's preoccupation would be in fixing its own

income instead of securing the highest bidder for the vendor. In support of this argument, Mr Darmawan referred to evidence of First Tree's communications with potential buyers, much of which he said showed that the focus had been on the commission payment. Mr Darmawan believed that the prospect of losing the sale of the Horizon Towers after spending a large sum of its own funds on advertising and promotion had compromised First Tree's moral standing and its obligation to secure the best deal for the CSPs because the purchaser who might give the agent a higher commission may do so by offering a lower purchase price. He also pointed out that First Tree had secured a commission of 1% which was three times higher than the market rate at the time. This was based on another agent's proposal of 0.35%. All of Mr Darmawan's submission on this point led back to First Tree's failure to pursue the Vineyard offer.

13 Miss Jasmine Tan made a submission similar to Mr Darmawan's. She said that the STB was wrong to rule that legal advice to the SC was privileged. She made the point that the privilege was waived in respect of portions of Drew & Napier's letter of 16 January 2008. She argued that without the details of the legal advice, the STB was wrong in holding that the SC did not act in bad faith. Drew & Napier's letter had made it reasonably clear that the letter was written without waiver of privilege of matters outside what had been stated. Miss Tan further argued that the refusal by STB to subpoena Mr Samtani, "the prime mover of the en bloc", was because it "attempted to avoid the airing and inclusion of relevant facts through a technicality".

14 One of the grounds (under s 84A(9) of the LTSA) on which the STB may withhold its approval for sale is that "the transaction is not in good faith". It is provided also that a decision, as to whether there was a lack of good faith, can be reached by taking into account only the three factors stated in s 84A(9)(a)(i):

> The Board shall not approve an application under subsection (1) –
>
> (a) if the Board is satisfied that –
>
> (i) the transaction is not in good faith after taking into account only the following factors:
>
> (A) the sale price for the lots and the common property in the strata title plan;
>
> (B) the method of distributing the proceeds of sale; and
>
> (C) the relationship of the purchaser to any of the subsidiary proprietors; …

What constitutes good faith in a transaction under the LTSA are set out in items (A) to (C) above. In the present case, the allegations and arguments in relation to the Vineyard offer as well as First Tree were made in support of the appellants' case that the transaction was not in good faith pursuant to s 84A(9)(a)(i)(A). I note first that most of these related to questions of fact as to which there is no right of appeal (see s 98(1) of BMSMA). Further, the onus was on the appellants to show that the transaction was not in good faith as required by s 84A(9)(a)(i)(A), *ie*, that the alleged dismissal or concealment of the Vineyard offer by the SC and/or First Tree was actuated by dishonesty or bad faith. Below, the STB had found that the SC had made a "judgment call" to proceed with HPPL's offer, having taken advice from its lawyers (see GD at [65]). The STB was of the opinion that First Tree was not in a position of conflict, but, more importantly, the STB had made a finding of fact that "the SC had acted on its own initiative in deciding to pursue [HPPL]'s proposal after receiving and relying on legal advice" (GD at [71]). In these circumstances, I do not think that the appellants had discharged the burden of proving bad faith. It appears to me also that the appellants' case insofar as the Vineyard offer was concerned, was essentially concerned with price; that is to say whether the

purchase price was fair. That is also a question of fact which was in the purview of the STB, and this court cannot and will not interfere; it was not a question of law.

15 The appellants, relying on s 84A(9)(a)(i)(B), submitted that there was a lack of good faith in the choice of the method of distribution of the sales proceeds that is based on the 50% SA - 50% SV method in that this was the only method considered "from start to finish" (neither First Tree nor the SC considered other methods) and the method was unfair as it resulted in penthouse owners getting about 16% less on a per square metre basis compared to non-penthouse owners. In my view, it cannot be said that there is a lack of good faith in the selection of the method of distribution or that the method was wrong just because it was the only method considered or that the method provided for some subsidiary proprietors getting more sale proceeds than others. The obligation of the STB was to determine that the minority owners were not treated less favourably than the majority. The STB had considered the evidence of seven experts and evaluated the advantages and disadvantages, generally, as well as specifically in respect of the Horizon Towers. It seemed that no one method may satisfy every single proprietor. The choice was not between making the majority happy or giving the minority a bigger share of the proceeds, the test was to determine whether the method chosen would have treated the minority owners as a whole unfavourably. I note that the complaint against the method used received objections from only three out of eleven owners of the penthouses. More importantly, even if the STB were wrong in concluding that the chosen method was appropriate, it would be an error of fact and not an error of law that can be taken on appeal.

16 Laws, such as that in the LTSA and BMSMA, enacted to facilitate the process of land redevelopment, are laws in the realm of distributive justice and are matters within the province of parliament. The appellants' case in respect of the administrative law issues and the allegations of bad faith in the general sense are matters in the province of what is known in jurisprudence as "corrective justice". The form and means of redress lie outside the scope of an appeal from the STB's decision under the LTSA. From the submissions and supporting documents, it appears that there may have been intrigue in the course of the en bloc sale from the day the SC was created to the proceedings before the STB. It is questionable, however, whether the STB was the forum to resolve all questions arising from secret manoeuvres of the different factions among the subsidiary proprietors. It is questionable because the STB is not a court. It is a statutory tribunal created to deal with specific matters and it is constrained by the terms of reference imposed on it by statute. This is important because the tribunal cannot therefore deal with allegations and counter allegations against parties especially those who are not given the full recourse of trial to defend themselves. It will have to allow such evidence as it thinks are sufficient for it to perform the duties required of it. It was the STB's duty to focus its attention on the question whether the purchase price was fair, and it was for the STB to decide on the facts of each case whether the contract was done in good faith in the sense set out in the LTSA. It was entitled to approve the sale even though there might have been, as in this case, another potential purchaser who had offered a higher price if it thinks that HPPL's price was fair and the circumstances justified it. I am of the opinion that there is no basis to hold that the STB was wrong in finding that the purchase price of $500m was fair. All the matters raised by the appellants in regard to the determination of the price were matters of fact. The STB was not bound to examine the rights and preferences of each individual subsidiary proprietor and it was not the forum to inquire into the conduct of individual members of the SC, or even the SC as a whole, in the manner complained of here. Whether it was the right time to sell, or that the SC ought to have made a little more effort to persuade the purchaser to offer more are not crucial matters that obliges the STB to withhold approval. Nor would it be the concern of the STB that some, or all, of the appellants might have consented had the Vineyard offer been made known to all of them. It was not the function of the STB to enquire which objectors were conscientious objectors in the sense that they were not actuated by a desire to sell whatever the price, and which of them were objecting only because the price was too low. If the STB were to embark on the kind of inquiry and make the findings the

appellants say it ought to have done, the STB would never get its job done within the time limited. It is possible that the subsidiary proprietors might benefit from protracted litigation if, say the prices of property fall. It could, however, also be detrimental to some, if not all the subsidiary proprietors, if the prices of property increase. These are all propitious matters that are beyond the jurisdiction or control of the STB. Fairness requires only that the rules and regulations are properly and duly administered. I am of the opinion that they had been properly and duly administered.

17 If the appellants aver that the SC and others had deliberately or negligently not pursue the Vineyard offer, thereby causing financial loss to them, the recourse is through litigation in the courts. It is necessary for this point to be made, not to encourage further litigation, but to emphasize that a subsidiary proprietor who does not wish to sell his unit can only object to the en bloc sale on such grounds as the relevant statutes allow. He is not excluded from making a claim for financial loss that has arisen by reason of the sale. To mix up the different rights will lead to unjust results. In claims such as those made here, the STB cannot (and neither can this court) just consider the minority subsidiary proprietors' allegations against the majority and persons who are not parties to the action. Those persons also have rights. There had been strenuous effort made here and before the STB to prevent some of these persons, for example, HPPL, from even addressing the STB and the court. The proceedings before the STB is not the method or procedure to seek the redress of the rights in contract and tort of the nature sought because the rules and procedure under the LTSA are designed only for the specific function of determining whether the application for sale complied with the requirements under LTSA and BMSMA only. Some of the matters that I say belong to a separate litigation may overlap with the provisions under the LTSA and BMSMA, for example, on the question as to whether the SC was justified in the way it dealt with the Vineyard offer. The appellants were entitled to raise these matters and make their submission before the STB, but that must be done in the context of the LTSA and BMSMA. Any remedy or relief that is wider than that allowed under those statutes would have to be pursued through the civil trial, where the representatives of Vineyard could be compelled to testify and be cross-examined; indeed, Vineyard could have a claim as well if it thought that its genuine offer was wrongfully withheld from the subsidiary proprietors. An appellant cannot overcome the strictness of pleadings and proof that proceedings in a civil court require, by making his claims in the STB proceedings instead.

18 For the reasons above, I am of the view that there was no error of law that would have vitiated the decision of the STB. Accordingly, the appeals are dismissed. I will hear the question of costs at a later date if parties are unable to agree costs.

Copyright © Government of Singapore.