Liu Chee Ming and Others v Loo-Lim Shirley
[2008] SGHC 3

Case Number : OS 927/2007

Decision Date : 08 January 2008

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Henry Heng and Joan Sim (Tan Peng Chin LLC) for the applicants; Michael Kuah and Matthew Saw (Lee & Lee) for the respondent

Parties : Liu Chee Ming; Lung Ma Investments Pte Ltd; Chung Rosline; Wong Kun Yew; Feni Olivia; Hartati Tjakra Murdaya; Murdaya Widyawimata — Loo-Lim Shirley

Land – Strata titles – Collective sales – Agent negotiating sale on behalf of sale committee – Sale committee agreeing to lower sale price upon removal of disadvantageous conditions in sale and purchase agreement – Whether transaction in good faith

Land – Strata titles – Collective sales – Dissenting owners appealing against approval of collective sale by Strata Titles Board – Whether good faith of transaction a point of law – Section 98(1) Building Maintenance and Strata Management Act 2004 (Act 47 of 2004)

8 January 2008

Woo Bih Li J

Introduction

1 This was an appeal against the decision of the Strata Titles Board ("the Board") approving the collective sale of a condominium known as Futura ("Futura") under s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"). On 25 October 2007, I dismissed the appeal. The appellants have appealed to the Court of Appeal.

Background

2 Futura is a freehold 26-storey residential development located at Leonie Hill Road. The condominium comprises 72 units having a total share value of 75. By 12 September 2006, subsidiary proprietors with 80% or more of the share value had signed a collective sale agreement ("CSA") which, *inter alia*, appointed a sale committee to negotiate with any intending purchaser and finalise the terms of sale of all the estate, rights, title and interest of the intending vendors in Futura at a minimum price of $279,363,774.

3 On 12 September 2006, a public tender for the sale of Futura was launched. DTZ Debenham Tie Leung (SEA) Pte Ltd ("DTZ") was the marketing agent. Despite DTZ's marketing efforts, the response when the tender closed on 19 October 2006 was muted. There was only one bid at $291 million by City Sunshine Holdings Ltd, a subsidiary of City Developments Pte Limited and an expression of interest by another party, Wincheer Investment Pte Ltd. I will refer to the bidder as "CDL". Although CDL's bid was $11 million more than the minimum price, the sale committee could not accept the bid unreservedly because of two conditions.

4 The first of CDL's two conditions is found in clause 4A.1 and 4A.3 of the appendix annexed to the form of tender. These provisions stated:

4A.1 The Purchaser has offered to buy the Development at the Purchase Price on the basis that no development charge ("DC") is payable for the re-development of the Land. Upon acceptance of the Purchaser's tender, the Purchaser will apply to URA for the data on the approved plans of the Development, to enable the architect appointed by the Purchaser to ascertain the Development Baseline of the Development, and to determine, in accordance with the method and the rate prescribed under the Planning Act and the relevant rules, whether any DC will be payable for a new residential development on the Land with a plot ratio of 2.8 and a proposed gross floor area of 22,639.96 square metres.

4A.2 …

4A.3 If, in accordance with Clause 4A.1, any DC is determined by the Purchaser's architect to be payable for the re-development of the Land, the Purchase Price shall be reduced by the amount of the DC determined in that manner. The determination of the Purchaser's architect shall be final and conclusive, and shall be binding on the parties.

5 The second of the two conditions is found in clause 10.1 and 10.2 which stated:

10.1 The Owners shall allow the Purchaser and the registered surveyor appointed by the Purchaser or other persons authorised by the Purchaser access onto the Land during reasonable hours of the day to carry out a survey of the Land.

10.2 If it is ascertained from the survey that there is any encroachment onto the Land, the Purchaser shall have the following rights:

(a) the right to rescind the Contract, in which event the Deposit (without interest) shall be refunded to the Purchaser and neither party shall thereafter have any claim against the other for costs, compensation or otherwise; or

(b) the right to a reduction of the Purchase Price, the amount to be calculated in the following manner:

$$\frac{\text{Purchase Price}}{\text{Area of the Land}} \times \text{Area of Encroachment}$$

6 As can be seen, the two conditions were very disadvantageous to the vendors. The first in respect of the development charge ("DC") was that such a charge was to be determined by CDL's architect which would be final, conclusive and binding. In other words, although the DC is determined by the relevant authority, the authority's determination would be irrelevant as it would be CDL's architect's determination that would count. Ms Tang Wei Leng ("Ms Tang"), a director of DTZ elaborated on the concerns about this condition in [11] to [15] of her affidavit in support of the vendors' application to the Board for an order of sale of all the units in Futura under s 84A of the LTSA. The paragraphs stated:

11. The DC amount is the difference between the development ceiling and the development baseline. The development ceiling is computed based on the proposed development intensity. The development baseline is computed based on the existing intensity which is the higher of the 1958/1980 Master Plan or the existing paid-up gross floor area.

12. The 1958 and 1980 Master Plan's allowable intensity for Futura was based on an allowable

plot ratio of 2.072 which translated to a GFA of 16,753.57 sq m. On this basis, the DC payable would be $23,545,558.

13. DTZ had advised the sale committee that there was unlikely to be any DC payable for the increase in intensity from the existing development to the 2003 Master Plan allowable plot ratio of 2.8 or a gross floor area (GFA) of 22,639.96 sq m. This was because the total strata floor area of Futura was 20,004 sq m and this represented about 88% of the allowable GFA. The building efficiency (ratio of net floor area to gross floor area) for most of the older residential developments in Singapore (including Futura) is usually about 85%, and therefore Futura's existing gross floor area was likely to be at or above the new allowable GFA.

14. Notwithstanding that the URA was the proper authority to determine DC related issues, CDL wanted their architect to be the final determinant on the issue.

15. There was therefore a risk that CDL's architect could take a conservative view that the development baseline was in accordance with the 1958/1980 Master Plan and accordingly, the DC as determined by him would be $23,545,558. The architect could also calculate the development baseline using the total strata floor area and the DC then would work out to $10,543,840. Either way, there was a potential risk that if the conditions were accepted, it would have exposed the owners to a risk of litigation on the 2 condition and its workings, something that the sale committee wanted to avoid.

7 The second condition relating to any encroachment onto the land was to be ascertained from a survey to be carried out by a registered surveyor appointed by CDL or persons authorised by CDL. If there was any encroachment, it would entitle CDL to rescind the contract of purchase or a reduction of the purchase price. Accordingly, if the property market turned for the worse, CDL could use the encroachment, if any, to back out from the purchase. Ms Tang said in [18] of her affidavit that she had advised the sale committee that there was a great possibility there could be encroachment issues in older developments like Futura.

8 The views of the sale committee and negotiations with CDL came from the evidence of Ms Tang as well as Chan Wing Peng ("Mr Chan"), a member of the sale committee. They had both filed affidavits and given evidence before the Board.

9 The sale committee decided to reject the two conditions but realised that there was no other bidder. The sale committee instructed DTZ to discuss and negotiate with CDL to remove the two conditions. According to Ms Tang, she met two representatives of CDL on 20 October 2006 to discuss the two conditions. The next meeting was on 23 October 2006 but no agreement could be reached then. Ms Tang met the sale committee at the office of their solicitors Lee & Lee the same day and briefed them on the situation. She was then instructed to negotiate with CDL to remove the two conditions for a reduction (in the price) not exceeding $5 million. The sale committee sat in a meeting room at Lee & Lee while Ms Tang made calls to CDL on her mobile phone outside of the room. She would revert to Mr Chan whenever CDL made a proposal on the price reduction and this went on until CDL agreed to a price reduction of $3.7 million. CDL insisted, however, that the deal had to be concluded that night itself. The sale committee agreed to the reduced price of $287.3 million as it was still higher than the minimum price and there was no other bid. CDL representatives then went over to Lee & Lee's office the same night and submitted a revised bid at $287.3 million without either of the two conditions. At about 11pm, the sale agreement was concluded. The negotiations and the conclusion of the sale agreement took about three hours that night.

10 Subsequently, an application was made to the Board under s 84A of the LTSA by Shirley Loo-

Lim as the authorised representative of subsidiary proprietors who held at least 80% of the share values in Futura. The subsidiary proprietors of six units filed objections to the application. After mediation efforts failed, the Board conducted a hearing. On 23 May 2007, the Board decided to grant the application and issued an order for the sale and other related matters. Proprietors of five units decided to appeal against the Board's decision and filed this originating summons. After hearing arguments, I dismissed their appeal.

The court's reasons

11 Section 84A (9) of the LTSA provides that the Board shall not approve an application –

(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 …

12 Section 98(1) of the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004) provides that no appeal shall lie to the High Court against an order of the Board except on a point of law.

13 The plaintiffs submitted that "a point of law" includes "errors of law". They relied on *Halsbury's Laws of England*, vol 1(1) (Butterworths, 4th Ed Reissue, 1989) para 70 which states:

> Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons; and misdirecting oneself as to the burden of proof.

14 The above passage was cited with approval by Selvam JC in *MC Strata Title No. 958 v Tay Soo Seng* [1993] 1 SLR 870 ("*Tay Soo Seng"*). In *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 *("Edwards v Bairstow")*, Lord Radcliffe said at 35 and 36:

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

could have come to the determination upon appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. [emphasis added]

15 The statements in *Halsbury's* and in *Edwards v Bairstow* and *Tay Soo Seng* were cited to me in *Koh Gek Hwa v Yang Hwai Ming* [2003] 4 SLR 316 by the appellants there without objection by the respondents. Therefore, I did not decide whether the statements or a narrower meaning of a point of law should apply. However, such a contest was considered by Justice Andrew Ang in *Ng Swee Lang v Sassoon Samuel Bernard* [2007] SGHC 190 and in *Dynamic Investments Pte Ltd v Lee Chee Kian* [2007] SGHC 216 ("*Dynamic*"). After considering the wider and narrower meaning, Ang J decided that those statements, which have the wider meaning, were applicable to an appeal from a decision of the Board. It is not necessary for me to repeat what he said.

16 In the present appeal before me, the statement in *Halsbury's* was again cited by the appellants without contest by the respondents. Nevertheless, I take this opportunity to say that I agree with Ang J on the wider meaning for a point of law in an appeal from a decision of the Board but it must be remembered that the statement in *Halsbury's* should not be taken to allow an appellant to raise issues of fact. That is why Ang J held in *Dynamic* at [14] that a decision on the facts of the case could not be challenged unless there was an error of law either *ex facie* or such as was described in *Edwards v Bairstow*. Thus, Ang J said in *Dynamic* at [16] that it is for an appellant, such as those before me, to show that the finding of the Board was such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal".

17 As regards whether a transaction is "not in good faith", Ang J was of the view in *Dynamic* at [12] that this was a question of mixed law and fact. He also said at [15] that as this was a matter which the Board had to be "satisfied" on, it suggested that there was an element of subjectivity in such a decision, intended to preclude challenge to the Board's finding save where there was an error of law.

18 After referring to the definition of "good faith" in *Black's Law Dictionary* and some cases, Ang J concluded at [24] that it was for the appellant in *Dynamic* to show that the subsidiary proprietors who signed the CSA there were actuated by dishonesty or bad faith so that the Board's holding that there had been no lack of good faith could not stand. This required a consideration of the facts.

19 With respect, I adopt the views of Ang J. The appellants before me challenge the decision of the Board on two of the specified factors in s 84A(a) of the LTSA :

(a) the sale price and

(b) the relationship of the purchaser to any of the subsidiary proprietors.

(see Applicants/Appellants' Skeletal Submissions ("ASS") para 11).

However, the ASS had three sub-headings:

(i) arbitrary reduction of sale price by $3.7 million;

(ii) valuation report;

(iii) powers of the sale committee.

20 In [3] of ASS, the appellants submitted that the Board erred in its interpretation of clauses 1.1, 2.4, 5.1-5.3 and 6.1.1 of the CSA. This appeared to cover the first and third sub-headings.

Arbitrary reduction of sale price by $3.7 million

21 In [12] and [23] of ASS, the appellants submitted that the Board applied the wrong principles of law and/or erred in law by asking itself and answering the wrong question, giving reasons which disclose faulty reasoning, taking irrelevant considerations into account and failing to take into account relevant and admissible evidence and considerations.

22 The appellants submitted that the original offer price had been arbitrarily reduced by $3.7 million. There was no justifiable basis to do so because both Ms Tang and Mr Chan were of the opinion that no DC would be payable and no land survey had been conducted to ascertain if there was any real encroachment issues.

23 Secondly, the appellants submitted that there was no urgency as CDL's offer was irrevocably open for acceptance until 4pm of 18 November 2006. This would have given time for a land survey to be conducted.

24 Thirdly, the appellants submitted that the sale committee acted in bad faith in failing to convene a meeting of the vendors as stipulated in clause 6.1.1 of the CSA.

25 Fourthly, the appellants submitted that the sale committee did not directly or indirectly participate in the negotiation on 23 October 2006 as none of the committee's witnesses could provide an accurate or consistent account of the alleged negotiations and were unable to produce any minutes of the meeting that night. In addition, the sale committee had abdicated their duties to Ms Tang.

26 Fifthly, the appellants submitted that Ms Tang did not act professionally and/or acted in bad faith and/or was in a position of conflict of interest when she negotiated with CDL alone on 23 October 2006.

27 As I mentioned, under the terms of CDL's bid, the question as to whether any DC was chargeable and if so, the amount of the DC, was to be determined by CDL's architect alone. The fact that Ms Tang and Mr Chan did not think that any DC was chargeable was immaterial. They could not be certain that CDL's architect would reach a similar conclusion. The Board concluded at [23] and [24] of its grounds of decision ("GD") as follows:

> 23. Despite her own view, Ms. Tang had a problem with the DC Condition. Under the 1958/1980 Master Plan the allowable intensity for Futura was based on the plot ratio of 2.072 which translated to a GFA of only 16753.57 sq m. which was less than the GFA of 22,639.96 sq m. allowed under the 2003 Master Plan for the redevelopment. If CDL's architect chose to disregard going into the question of what was the actual, existing built up GFA of Futura was (as Ms. Tang had) and chose to take the officially allowed GFA of 16,753.57 sq m under the 1958/1980 Master Plan as the development baseline, a DC of $23,545,558 would be payable. This would be taking a conservative approach to determining the development baseline as against using the strata floor area approach but there was no gainsaying that CDL's architect would not take this conservative approach. At the least, CDL's architect could also calculate the development baseline using the total strata floor area of 20,004 sq m only and the DC would then work out to $10,543,840.

> 24. The risk of the Sale Committee in accepting the DC Condition therefore lay in the possibility that the price of $291 million payable by CDL was one which could conceivably be reduced to a price below the Minimum Selling Price by almost $12 million (if the DC was determined to be $23,545,558). Even if it was just reduced by $10,543,840, there was still the prospect of litigation as the only way to surmount the problem of CDL's architect having been accepted to be the sole arbiter of the DC issue.

28 I would add that [23] of Ms Tang's affidavit before the Board elaborated that at the earlier 20 October 2006 meeting, CDL had expressed the view that a DC was payable based on their architect's estimation.

29 Furthermore, in my view, litigation would not be likely to have assisted the vendors to displace the determination of CDL's architect in view of the contractual provisions.

30 The appellants' submission that the sale committee had not obtained a land survey to deal with the second condition was tied to their submission that there was no urgency as CDL's offer was irrevocably open for acceptance until 4pm of 18 November 2006. However, the offer that was open for acceptance until then was the offer with the two conditions which were clearly disadvantageous to the vendors. CDL was prepared to withdraw the conditions provided the deal was concluded on the very night of 23 October 2006. Therefore, contrary to the appellants' submission, there was urgency. The sale committee could not be certain whether CDL was engaged in a bluff to secure a reduction in price and the hand they were holding was not particularly strong as there was no other bidder. Also, Ms Tang herself believed that it was likely that there would be encroachment.

31 In [37] of its GD, the Board said:

> As for the Encroachment Condition, the Respondents objected that the Sale Committee and DTZ did not cause to be carried out a land survey. Ms. Tang's response was that land survey was not carried out before the sale because money to pay the licensed land surveyor would have to be raised and it would not easy to raise such money from the subsidiary proprietors. According to Mr. Chan, there was no time to commission a land survey, because by the time, i.e. on 23 October 2006 CDL made it clear that they had their genuine concerns and did not wish to withdraw the Encroachment Condition unconditionally, CDL also insisted that the transaction had to be concluded that very night.

32 I would mention two other points.

33 First, according to the submission for the respondent, a land survey was eventually carried out by a surveyor appointed by CDL and this revealed an encroachment of 53.4 sq metres which would have entitled CDL to withdraw its bid or reduce the price offered by $1,151,633. Of course, the sale committee did not know of this at the material date of 23 October 2006.

34 Secondly, a land survey would not have resolved all the problems. Even if there was time and money to get one done and it revealed no encroachment, CDL was entitled to say it wanted a survey done by its own surveyor. Also, the condition about the DC would remain. The approach of the sale committee was to get rid of both conditions at one go in exchange for a sum not exceeding $5 million which would still result in a price more than the minimum price.

35 While I accept that a land survey commissioned by the sale committee would have armed them with more information, there was the question of urgency and also whether all vendors would agree to pay for the cost of commissioning one especially if it would not resolve all problems. More importantly,

the issue is not whether criticism can be levelled at the manner in which the reduction was achieved but whether there was an absence of good faith. The former does not necessarily amount to the latter.

36 I will deal with the third submission of the appellants regarding clause 6.1.1 of the CSA later as it is appropriate to deal with their fourth submission about the alleged negotiations before dealing with clause 6.1.1. There were multiple complaints about the alleged negotiations.

37 First, it was stressed that there were no minutes of what transpired in the evening of 23 October 2006 and Ms Tang and Mr Chan could not give a step-by-step account as to how the price was revised downwards. The suggestion was that the evidence about the negotiations having taken place at the time and place in the manner described was false.

38 Aside from the evidence of Ms Tang and Mr Chan, Mr Ow Yong Thian Soo, the partner in Lee & Lee who was in charge of the collective sale for the vendors confirmed that Ms Tang had met with the sale committee at Lee & Lee's office that evening and that CDL officers had eventually gone over to Lee & Lee's office to sign the sale agreement. However, Mr Ow did not participate in the negotiations.

39 The Board found Ms Tang and Mr Chan to be honest witnesses. I conclude that the Board was entitled to take that view.

40 However, the second point raised by the appellants was that by allowing Ms Tang to speak to CDL, the sale committee were not themselves participating in the negotiations and had thus abdicated their responsibilities and were in breach of the CSA. This point was coupled with other points like how Ms Tang was allowed to leave the meeting room to speak to CDL privately (over the telephone) and how the negotiations only took over three hours to conclude from 8pm to 11pm and the fifth submission which centred on how DTZ was in a position of conflict. On this submission, Ms Tang had said that DTZ did have prior dealings with CDL before and had dealt with CDL on an en bloc basis in the past. The appellants also went further and stressed that DTZ would not earn a commission if there was no sale. I will address all these points together.

41 The fact that DTZ would only earn a commission if there was a sale is neither here nor there. There was no suggestion that such an approach was inconsistent with the terms of engagement of other marketing agents. Indeed, I think I can take judicial notice that it is common for housing agents who are marketing properties for sale, whether on an en bloc basis or not, to earn a commission only in the event of a successful sale. It was irresponsible of the appellants to raise this as an indicia of bad faith.

42 As for DTZ having had prior dealings with CDL, this is not surprising. CDL is one of the largest and one of the most well-known developers in Singapore. DTZ is also a well-known name. Again, such dealings cannot be an indicia of bad faith on the part of DTZ when negotiating with CDL. Any suggestions that DTZ was beholden to CDL would again be irresponsible without concrete evidence.

43 That the negotiations were concluded over three hours (or less) is again neither here nor there. Likewise, the fact that Ms Tang went out of the meeting room to speak to CDL over the telephone.

44 As for the responsibility of the sale committee, the appellants relied on clause 2.4.4 of the CSA which stated that the sale committee have the authority "to negotiate with any intending purchaser and to finalise the terms and conditions of the Contract of Sale". I would add that clause 2.4.2 stated that the sale committee have the authority "to instruct, confirm and/or ratify all instructions given to

the Marketing Consultants by the Sale Committee relating to the Collective Sale".

45 The submissions of the appellants meant that the sale committee must be in direct contact with CDL and not through DTZ. I did not think clause 2.4.4 dictated that procedure. In my view, the sale committee were entitled to negotiate directly with CDL or through DTZ. Ms Tang was taking instructions from the sale committee who had set the limit of a $5 million reduction. Furthermore, she continued to revert to the sale committee that evening on the process of the negotiations.

46 It was also suggested by the appellants that only Mr Chan was giving instructions and not a majority of the sale committee, as required under clause 2.3.1 of the CSA, but counsel for the appellants before me accepted that this point was not even put to Mr Chan when he was cross-examined.

47 Thus, the crux of the appellant's multiple points was that DTZ had been left to negotiate as they wished and DTZ was too quick to agree to a reduction of $3.7 million in exchange for the withdrawal of the two conditions because of its prior dealings with CDL and because DTZ wanted to ensure a sale to earn its commission.

48 However, Ms Tang had a limit of up to $5 million. She managed to obtain the withdrawal of the two conditions in exchange for $3.7 million. Furthermore, the appellants themselves did not say what quantum of reduction, if any, would be reasonable. It must be remembered that the test is one of absence of good faith and not whether one could find any fault. In my view, the Board was entitled to conclude that there was no absence of good faith in respect of the price reduction.

49 I come back to the third submission regarding clause 6.1.1 of the CSA which is set out in the Board's GD.

50 The appellants were not parties to the CSA even though eventually, by virtue of the decision of the Board, they were bound by its terms. Accordingly, their complaint about a breach of clause 6.1.1 was from the angle that such a breach established an absence of good faith. The vendors who had signed the CSA were not opposing the application to the Board.

51 The appellants contended that when CDL's bid was opened, the sale committee should have complied with clause 6.1.1, that is, to convene a meeting of the vendors to discuss the bid but the sale committee did not. The Board disagreed. Its reasons are set out in [45] to [49] of its GD:

> 45. The Respondents pointed to Clause 6.1.1 to contend that the Sale Committee should have taken the issue of the two Conditions to the subsidiary proprietors and as they did not do so, they had acted in bad faith in agreeing to the $3.7 million reduction.
>
> 46. Clause 6.1.1 has to be read in the full context of the CSA and read this way, the Board could not agree that Clause 6.1.1 was applicable in the way contended for by the Respondents.
>
> 47. Clause 6.1.1 is meant to be read together with Clause 5, 2 [*sic*] and Clause 5.3. In the exact order shown here, they read respectively:-
>
> > "5.2 The terms of the Collective Sale shall generally be on terms set out in Clauses 5.1 and 6.
> >
> > 5.3 The Contract for Sale shall be concluded with the party decided upon by the Sale Committee upon the advice of the Solicitor and/or the Marketing Consultants in cases where

the bid(s) or offer(s) are not materially less favourable than the terms hereinbefore agreed upon and in line with normal market practice. (underlining added).

6 Contingency Conditions

6.1.1 In the event of the Sale Committee receiving an offer to purchase the Strata Units at or more than the Minimum Price but with conditions attached which are materially less favourable than the terms herein agreed and not in line with normal market practice, and such offer is the best offer which the Sale Committee has managed to secure, the Sale Committee shall convene a meeting ("the Meeting") of the Vendors to be held not later than fourteen (14) days after the date of receipt of the offer ("the New Offer") for the purpose of discussing the terms thereof and to obtain the consent from the Vendors to accept the New Offer." (underlining added).

48. Of the terms which are set out in Clause 5.1, those terms which are favourable to the subsidiary proprietors are captured in the following sub-clauses:-

5.1.2 which assures the subsidiary proprietors that the sale would be at a price which is not less than the Minimum Price;

5.1.3 which provides that the Completion Date will be scheduled 3 months from the date of approval from STB;

5.1.6 which provides that the subsidiary proprietors can defer delivering vacant possession for up to 6 months from the date the sale is completed;

5.1.8 which provides that during the said 6 months they are entitled to the rent and profits derived from their unit;

5.1.9 which provides that if they choose to defer the delivery of vacant possession and a sum is required to be retained from the sale proceeds and held by stakeholders as security to the purchaser, the sum retained will not exceed 10%;

5.1.16 which provides that the amount standing to the credit of the maintenance and sinking fund established by the management corporation as at completion would be distributed to them.

49. Clause 1.1 defines the Minimum Price as "(i) the sum of …S$279,363.774 [*sic*] or (ii) such sum as the Sale Committee upon the advice of the Marketing Consultants shall deem fit, whichever is the higher." (underlining added). Very clearly, the Sale Committee have been given the full discretion and authority to decide on such sale price as they deem fit as long as (i) the sale price is not fixed at a price below $279,363,774 and (ii) they act on the advice of the Marketing Consultants. As long as these two conditions set out in (i) and (ii) are complied with, there is no requirement for the Sale Committee to convene a meeting of the other subsidiary proprietors to get their consent to the price which the Sale Committee deems fit to agree with the purchaser. It is only in the event that the best of the offers made at or above the Minimum Price which the Sale Committee "has managed to secure" come with conditions attached which are materially less favourable than any of the terms set out in the sub-clauses mentioned in paragraph 48 above, and such less favourable conditions are not in line with normal market practice, will the Sale Committee then be obliged to convene the meeting of the subsidiary proprietors. The DC Condition and the Encroachment Condition were issues which went to price

which the CSA authorised the Sale Committee, upon the advice of DTZ to decide as they deemed fit. As such the Sale Committee was not wrong in not convening any meeting of the subsidiary proprietors.

52 In my view, clause 6.1.1 would kick in if the offer with conditions was the best offer which the sale committee managed to secure. The convening of the meeting of the vendors would then be to obtain the consent of the vendors to that offer. Were the sale committee supposed to convene a meeting immediately after CDL's bid was opened without even trying to secure a better offer? The appellants did not address this point. Since the sale committee were able to obtain CDL's agreement to withdraw the two conditions in exchange for a reduction of $3.7 million, at a price about $7.9 million higher than the minimum price, was CDL's original bid still the best offer? As mentioned, the two conditions were very disadvantageous to the vendors. The reduction of $3.7 million was about 1.27% of the original bid of $291 million. In my view, the reduced price without the two conditions was the better offer and clause 6.1.1 did not kick in.

53 In any event, it appeared to me that the sale committee and its solicitors genuinely held the view that clause 6.1.1 did not apply in the circumstances. Accordingly, there was no basis for the Board to conclude that a failure to comply with clause 6.1.1 amounted to an absence of good faith.

Valuation report

54 A valuation report was eventually obtained from Knight Frank Pte Ltd ("Knight Frank") dated 4 January 2007 signed by Lydia Sng. The report stated that as at 23 October 2006, the open market value of Futura was $287 million.

55 The appellants submitted that the Board had erred in finding that the "valuation gave support to the decision of the Sale Committee at $287.1 million" as the valuation was, *inter alia*, only issued by Knight Frank on 4 January 2007 and backdated to 23 October 2006.

56 The appellants submitted that, first, the Board had erred because the sale price was $287.3 million and not $287.1 million. In my view, the latter figure was obviously a typographical mistake as other parts of the GD referred to the sale price of $287.3 million. In any event, the Board's point was that the valuation of $287 million supported the sale price.

57 The appellants' second submission on this point was that the Board seemed to imply that the sale committee knew, at the material time of 23 October 2006, that the sale price was higher than the valuation and that this could not be correct since the valuation was done later. I see no such implication in the Board's decision and need say no more on this submission.

58 There was also a suggestion before the Board that because the valuation was done after 23 October 2006, the valuation by Knight Frank was obtained with the knowledge of the actual sale price and thus obtained after the event just to support the sale price. However, as the Board rightly observed at [41] and [42] of the GD, there was nothing wrong with obtaining the valuation report after the sale in the light of the legislative requirements then, although I accept that if a valuation report had been obtained before the sale, that would have avoided this particular argument. Furthermore, the appellants did not ask to cross-examine Lydia Sng. Neither did they obtain their own valuation report. It seemed to me that such conduct of the appellants in the face of their criticism of Knight Frank's valuation report reflected the appellants' own lack of good faith.

Powers of the sale committee

59 The appellants' written submission (at [27] and [28]) was that although clause 2.3.1 (not 2.4.4) of the CSA required the sale committee to act at a meeting by a simple majority, Mr Chan had acted unilaterally when instructions were given to Ms Tang to negotiate for the removal of the two conditions subject to a maximum reduction of $5 million and not to give away too much during the negotiations. Yet, as mentioned in [46], there was no suggestion to Mr Chan when he was cross-examined, that he was acting on his own. In the light of that, this point was not pursued in oral arguments.

60 The appellants submitted at [32] of their written submission that the Board had erred in concluding that the sale committee were entitled not to open meetings at DTZ's office and at Lee & Lee's office to subsidiary proprietors outside of the sale committee. This submission was not meaningful. There was no evidence that the appellants, who did not sign the CSA, had asked to attend such meetings and there was no other objecting party before me claiming to have been refused attendance rights or that such refusal amounted to an absence of good faith.

61 The other arguments of the appellants under this sub-heading repeated the arguments about the absence of minutes and clause 6.1.1 which I have dealt with.

Summary

62 As the appellants kept harping about the reduction of $3.7 million, it is appropriate to bear in mind that the eventual sale price was $287.3 million which was still about $7.9 million above the minimum price of $279,363,724. True, the eventual sale price did not necessarily preclude some impropriety which might show that the transaction was not in good faith but it was for the appellants to establish the absence of good faith. It was clear to me that they had taken a machine-gun approach to try and find as many faults as possible instead of focussing on the absence of good faith. They seemed not to understand that even if criticism could be levelled at the way the negotiations were conducted with CDL, that is a far cry from establishing absence of good faith. They failed to show that the Board had erred in law and I dismissed their appeal with costs.

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