Tan Siew Tian and Others v Lee Khek Ern Ken
[2008] SGHC 41

Case Number : OS 1748/2007

Decision Date : 19 March 2008

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Harry Elias SC, Foo Soon Yien and Toh Wei Yi (Harry Elias Partnership) and Michael S Chia and Justin Wee (Sankar Ow & Partners) for the plaintiff; The defendant in person

Parties : Tan Siew Tian; Colin Yeo Teck Lee; Ong Wen Hui — Lee Khek Ern Ken

Land – Strata titles – Collective sales – Subsidiary proprietors selling lots after signing collective sale agreement – Purchasers of lots not signing collective sale agreement within permitted time – Whether para 1 of the Schedule of Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) complied with – Whether compliance mandatory – Sections 3, 84A and the Schedule of Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

19 March 2008

Lee Seiu Kin J:

1 The plaintiffs are three of the subsidiary proprietors ("SPs") of Strata Title Plan 1844, a condominium known as Airview Towers ("the Development"). On 13 June 2007, SPs claiming to hold at least 80% of the share values in the Development submitted an application to the Strata Titles Board ("STB") under s 84A of the Land Titles (Strata) Act (Cap. 158, 1999 Rev Ed)("the Act") for an order for the sale of all the lots in the Development. The plaintiffs are the authorised representatives under s 84A(2) of the Act. On 31 October 2007 the STB dismissed the application. In this Originating Summons, the Plaintiffs appeal under s 98 of the Building Maintenance and Strata Management Act 2004 (No 47 of 2004) against that dismissal by the STB. The defendant is one of the SPs of the Development and he opposes the collective sale.

2 The relevant law in this matter is the Act immediately prior to the amendments of 4 October 2007 and all references to the Act shall be to those provisions unless otherwise stated.

Background facts

3 The facts of the matter relevant to the issues before me are as follows. The collective sale process for the Development was initiated by some of the SPs in early 2006, resulting in the formation of a Sales Committee ("SC"). The SC invited a property consultant, DTZ Debenham Tie Leung (SEA) Pte Ltd ("DTZ"), to make a presentation of the intended sale of the Development and a firm of solicitors, M/s Sankar Ow & Partners ("SOP"), to present the intended collective sale agreement ("CSA") to all the SPs. This was done on 1 April 2006, when the SPs met with DTZ, SOP and the SC. DTZ representatives explained to the SPs the aspects of the proposed collective sale and SOP explained the terms and conditions of the proposed CSA. Copies of the CSA and an explanatory note to it were circulated. Thereafter some of the SPs present signed the CSA. As 1 April 2006 was the date that the CSA was first signed, pursuant to paragraph 1A of the Schedule to the Act ("the Schedule") this marked the commencement of the permitted time for the purposes of paragraph 1(a) of the Schedule, which period would end on 31 March 2007.

4 Thereafter other SPs signed the CSA and on 22 February 2007, DTZ informed the SC that SPs holding 80.9% of the share value in the Development had signed the CSA. A letter dated 22 February 2007 was sent by the SC to all SPs of the Development wherein it was stated that the requisite 80% consensus had been obtained and the SC would launch the Development for sale by tender. On 26 February 2007, DTZ issued a tender and on 30 March 2007, the tender was awarded to the sole tenderer, Bukit Sembawang View Pte Ltd ("the Purchaser"), at the price of $202,168,000. The tender document which constitutes the sale and purchase agreement was dated 30 March 2007. About two and a half months later, on 13 June 2007, the plaintiffs, on behalf of the consenting SPs, applied to the STB in STB No 65 of 2007 for an order under s 84A.

5 It should be noted that between 31 March 2007 (the last day of the permitted time) and the day the application was made to the STB on 13 June 2007, the SPs of another six units signed the CSA. The application of 13 June 2007 was actually made on the basis of the consensus of SPs representing 84.9% of the share values, including the SPs of these six units who had signed outside the permitted time, but excluding two units #12-10 and #04-06, the importance of which will be apparent shortly. Immediately prior to 31 October 2007, the date the STB dismissed the application, the SPs of the remaining units that had held out earlier - save one - changed their minds and consented to the sale. Therefore the consent owners on 31 October 2007 totaled 99% by share value. The last SP who did not consent to the collective sale was the defendant.

6 Before the STB, the defendant raised the question whether as at 1 April 2007 the number of SPs who had signed the CSA had reached the requisite 80% threshold. The plaintiffs' case was that as at 30 March 2007, 80.96% had signed the CSA. It would appear that the plaintiffs had accepted that the six units in respect of which the SPs had signed the CSA after the expiry of the permitted time could not be counted. However this would have reduced the percentage to 78.96%. The plaintiff took the position that the two units described in the previous paragraph, unit #12-10 and unit #04-06, could be included as part of the consenting owners and therefore counted as among those who were making the application to the STB. With these two units, the percentage rose above the threshold, to 80.96%.

7 The facts with respect to the aforesaid two units are as follows. At the start of the permitted time on 1 April 2006, the SPs of unit #12-10 were Tan Soon Lai and Shirely Wee ("the Tans") and the SPs of unit #04-06 were Nio Toh Nee and Lam Yee Ling ("the Nios"). The four of them signed the CSA between 1 and 4 April 2006. However, unknown to the SC, on 2 October 2006 the Tans transferred unit #12-10 to a company, Stream Peak International Pte Ltd ("Stream Peak"), of which Tan Soon Lai is a director and a substantial shareholder. The Tans did not inform the SC of this because they had regarded the transaction as an internal transfer. As a result the CSA was not executed by any agent of Stream Peak. In the case of unit #04-06, the Nios sold it to a couple ("the Sharmas") and completed the sale on 27 December 2006. The Nios notified the SC of the sale in November 2006 and the SC had instructed DTZ to arrange for the Sharmas to sign the CSA pursuant to Clause 6.1.3 thereof. However, due to an inadvertence, this was not done. Upon discovering these omissions, DTZ procured the signatures of Stream Peak and the Sharmas to the CSA on 18 June 2007, i.e. after the permitted time.

8 The appeal turns entirely on the question whether these two units could be counted for the purpose of ascertaining the percentage in s 84A(1). It is not disputed that without these two units, the threshold requirement of 80% would not be met. Since the application to the STB was, in the end, made by the SPs of these units representing 80.96% (which includes the aforesaid two units, but excludes the six units in which the SPs had signed out of time), I shall hereafter refer to these

SPs as "the Applicants".

The issue

9 The starting point is s 84A(1) of the Act, the relevant part of which provides 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 —
>
> (a) … ; or
>
> (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).

As the Development is more than 10 years old, the matter falls under paragraph (b) of s 84A(1), in which the threshold is 80%.

10 However under s 84A(3), the Applicants are precluded from making an application under s 84A(1) unless they have complied with the requirements in the Schedule to the Act. Section 84A(3) provides as follows:

> (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).

The relevant portions of the Schedule are as follows in paragraphs 1 and 1A:

> **1.** Before making an application to a Board, the subsidiary proprietors referred to in section 84A(1) … shall —
>
> (a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —
>
> (i) in the case of an application under section 84A , all the lots and common property in a strata title plan; or
>
> …
>
> **1A.** For the purposes of this Schedule —
>
> (a) the permitted time in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in section 84A (1), 84D(2) or 84E (3), means a period —

(i) starting from the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and

(ii) ending not more than 12 months after the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and

(b) the collective sale agreement shall be regarded as executed notwithstanding that it is executed on separate copies thereof and at different times.

[emphasis added]

11 Paragraph 1 of the Schedule states that before making an application to the STB, the SPs referred to in s 84A(1) (*viz* the Applicants) shall execute a CSA within the permitted time. From the definition in paragraph 1A(a), the "permitted time" in this case is the period from 1 April 2006 (being the date of the first signature on the CSA) to 31 March 2007 (being 12 months after the date of the first signature).

12 Under s 3 of the Act, "subsidiary proprietor" is defined as "the registered subsidiary proprietor for the time being" of the relevant unit. Thus, the problem in this case is that, by the date of application, the SPs of unit #12-10 and unit #04-06 were Stream Peak and the Sharmas but they had not signed the CSA within the permitted time, i.e. between 1 April 2006 and 31 March 2007. It would therefore appear that the requirement in paragraph 1 of the Schedule has not been complied with. As mentioned above, without the share values associated with these two units the combined share values would fall below the 80% threshold.

13 The issue before me essentially is whether, pursuant to s 84A(3), such non-compliance precluded the Applicants from making the application under s 84A(1) and therefore the STB was correct in dismissing it.

Plaintiffs' first submission

14 The plaintiffs' first submission was that the omission of the execution of the CSA by Stream Peak and the Sharmas is irrelevant as the previous SPs, namely the Tans and the Nios, had executed the CSA within the permitted time. Counsel for the plaintiffs pointed out that s 84A(15) provides that "subsidiary proprietor" includes a successor in title and therefore there was compliance with paragraph 1 of the Schedule.

15 The reference point in s 84A is the making of the application to the STB in subsection (1). All references to subsidiary proprietors are based on this event. Thus subsection (1)(b) refers to "subsidiary proprietors of the lots with not less than 80% of the share values" and subsection (3) speaks of "the subsidiary proprietors referred to in [subsection (1)]". Read with the definition of subsidiary proprietor in s 3 as being "the subsidiary proprietor for the time being", there is no question that the references to subsidiary proprietor in s 84A are to the SP at the time of the application to the STB and not a predecessor SP. The same reference obtains in paragraph 1 of the Schedule, i.e. "the subsidiary proprietors referred to in section 84A(1) … shall (a) execute within the permitted time … a collective sale agreement ...". Therefore the requirement in paragraph 1 to execute the CSA within the permitted time does not pertain to the Tans and the Nios who were not SPs by the time the application to the STB was made on 13 June 2007. In relation to the two units that we are concerned with, it is Stream Peak and the Sharmas who are the SPs and who have to comply with paragraph 1.

16 The second argument concerning s 84A(15) can be very simply disposed of. This subsection provides as follows:

> For the purposes of this section, "subsidiary proprietor" includes a successor in title.

Stream Peak and the Sharmas are the SPs who are required to execute the CSA. The Tans and the Nios are not their successors in title but are in fact their predecessors in title. Hence they are not, for the purposes of s 84A, "subsidiary proprietors".

Plaintiffs' second submission

17 The plaintiffs' second submission was that the court should take a purposive approach to the matter rather than a technical one. Therefore although Stream Peak and the Sharmas had not executed the CSA within the permitted time, the following facts should compel the court to hold that there was substantial compliance:

> (i) at all material times, more than 80% of the SPs by share value wanted the collective sale as the transfers by the Tans to Stream Peak and by the Nios to the Sharmas were done on the basis that the transferees consented to the collective sale;
>
> (ii) by the time the STB decided on the matter, the SPs of all the units save one, comprising 99% of the total share values, were agreeable to the collective sale;
>
> (iii) as there were contractual provisions in the CSA obliging a party selling his unit during the permitted time to procure the agreement of the purchaser to execute the CSA, and the sale and purchase agreements in relation to the two units required the purchasers to execute the CSA, equity would bind Stream Peak and the Sharmas to the provisions of the CSA. The court would issue an order for specific performance if they should refuse to transfer their property to the Purchaser pursuant to the sale and purchase agreement and CSA.

18 In relation to point (iii), the plaintiffs point to the following provisions in clause 6.1 of the CSA:

> 6.1 Each of the Sellers hereby represents, warrants, covenants and/or irrevocably agrees (as the case may be) as follows :-
>
> …
>
> 6.1.2 that as at the date of execution of this Agreement by Each of the Sellers, His Unit is not the subject of any option to purchase, sale, agreement or contract to sell or any assignment or transfer by whatever means;
>
> 6.1.3 not to do any of the following from the date of execution of this Agreement by Each of the Sellers in respect of His Unit :-
>
> (a) grant an option to purchase
>
> (b) sell
>
> (c) agree or contract to sell
>
> (d) assign or transfer by whatever means;

unless third party/parties having such benefit thereof shall also, subject to the Sale Committee's Approval, join as a party to this Agreement by signing the same forthwith (notwithstanding that the Agreement shall only bind such person(s) after completion thereof); Provided that that particular Seller shall indemnify the other Sellers for any claims, losses, damages and/or otherwise arising therefrom; …

19 There is no question that the word "execute" in paragraph 1(a) of the Schedule, with reference to the CSA, means the signing of that agreement by a party with intent to give it legal effect *vis-à-vis* all parties to it. The plaintiffs submit that in the circumstances of the case, the court should adopt a purposive approach and interpret that condition as being satisfied in relation to the two units under consideration.

Part VA of the Act

20 In order to determine this question, it is necessary to consider the objective behind Part VA of the Act. This was enacted in 1999 to facilitate collective sale of a development under a Strata Plan notwithstanding that there is no unanimity for the sale by all SPs. In *Ng Swee Lang v Samuel Bernard Sassoon* [2008] SGCA 7 (*Ng Swee Lang*), the Court of Appeal elaborated on this policy in the following manner at [5] - [7]:

> 5 Before we deal with these grounds of appeal, we should understand the policy considerations applicable to the collective sale of condominiums and flats in Singapore. The collective sale, under which all the units and the common property in a condominium development or a block of flats ("subject property") may be sold if a sufficient number of subsidiary proprietors agree to it …, is a peculiar feature of the property market in Singapore. It is a statutory construct to give effect to the Government's policy to facilitate urban renewal by enabling old apartment blocks to be redeveloped by the private sector. Initially, a collective sale could take place only if the subsidiary proprietors of all the lots in the subject property consented to the sale. However, due to rapid changes in the economic and environmental landscape of Singapore, the Government decided to modify its policy on collective sales by relaxing the strict statutory conditions applicable to such sales. At the second reading of the Land Titles (Strata) (Amendment) Bill (Bill 28 of 1998) ("the Bill") to enact these changes ("the Second Reading"), the Minister of State for Law said (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 ("*Singapore Parliamentary Debates*") at col 601):
>
> > I had informed this House on 19th November last year [*ie*, 1997] that [the] Government would be amending the law to make it easier for en-bloc sales to take place. The current position is that a single owner, for whatever reason, can oppose and thwart a sale. [The] Government has received many appeals and feedback from frustrated owners whose desires to sell their flats or condominiums en-bloc have been so thwarted. As a result, these buildings cannot take advantage of enhanced plot ratios to realise their full development potential, which would have created many more housing units in prime 999-year leasehold or freehold areas for Singaporeans. A secondary benefit is that these developments, especially in the older ones, could have been rejuvenated through the en-bloc process.
> >
> > I said that the law would be amended to remove the need for unanimous consent. … [I]n land-scarce Singapore, such an approach was even more imperative as it would make available more prime land for higher-intensity development to build more quality housing in Singapore. … I highlighted the fact that safeguards would be put in place to protect the interests of the minority owners.

6 The new scheme outlined above was enacted by the Land Titles (Strata) (Amendment) Act 1999 (Act 21 of 1999) ("the 1999 Amendment Act"). It modified two main qualifying conditions for a collective sale. The first concerns the age of the subject property; the second concerns the proportion of the subject property's share value and the total area of the lots held by majority owners. These two conditions are reflected in s 84A(1) of the Act as follows:

(a) if the subject property is less than ten years old, the majority owners must hold not less than 90% of the share values and not less than 90% of the total area of all the lots in the subject property;

(b) if the subject property is ten years old or more, the majority owners need only hold not less than 80% of the share values and not less than 80% of the total area of the lots in the subject property.

7 The 1999 Amendment Act also introduced a large number of procedural steps and substantive safeguards to protect the interests of minority owners, such as ensuring that they are kept fully informed by the subject property's collective sale committee of the progress of the sale and any developments in relation thereto. … The basic idea of the collective sale scheme is to enable majority owners to sell the subject property to a purchaser without the consent of the minority owners, subject to the approval of the Board. Once the Board has approved the collective sale application, the Board's order binds all the minority owners and they, together with the majority owners, are under an obligation to transfer their respective lots and the common property to the purchaser in accordance with the terms of the sale and purchase agreement …

21 To this I should add that the legal regime brought into force by the enactment of Part VA of the Act is a derogation of an individual's right over any property that is held by way of a Strata Title issued under the Act or in some form of common ownership. If the conditions set out in Part VA are met, then a SP can, in effect, be compelled to transfer his property to another person notwithstanding that he does not consent to it. From the Parliamentary debates during the passage of the Bill, it can be seen that the legislature had weighed the cost of deprivation of the rights of the individual against the public interest in facilitating urban renewal in land scarce Singapore. It is also clear that safeguards were built into the Part VA regime in order to ensure that the interests of the minority would be preserved. During the second reading debate of the Land Titles (Strata) (Amendment) Bill, the Minister of State for Law said (see Singapore Parliamentary Debates, Official Report (31 July 1998) vol 69 ("Singapore Parliamentary Debates") at col 635):

So the corollary to that is that we should not characterise majority owners … that they are greedy, they are avaricious, all they want is to make money. I think it is not fair on majority owners, if it is what they are waiting for. But it does happen that Government's actions result in certain people getting richer, getting a windfall. So shall we begrudge that? I would say no. Shall we facilitate it? Well, if it results in a public interest being met, which is the creation of more homes for Singaporeans, a lot of them in prime freehold areas, then I will say yes, provided, of course, there are sufficient safeguards, and the interests of all parties are taken into account. And this indeed is the approach we take in the Bill, if you look at the specific criteria in the Bill taking into account all the objections of the minority, all the circumstances of the case, all the interests of the parties. [emphasis added]

22 At the beginning of the debate the Minister of State for Law had said that the safeguards are in the procedures as well as the substantive powers of the STB. He elaborated at col 603 (Singapore Parliamentary Debates):

… there will be adequate safeguards to protect the interests of minority owners. These safeguards are found in the procedures as well as in the substantive powers of the Strata Titles Board.

Let me first touch on the procedures. The majority owners will first enter into a conditional sale and purchase agreement to sell to a purchaser, subject to their obtaining an order from the Strata Titles Board. Thereafter, they must give notice of the proposed en-bloc sale in the newspapers. They must also separately serve notice of the proposed en-bloc sale on all interested parties, including the owners, mortgagees and chargees of the minority owners as well as on the management corporation. This notice must be accompanied by a copy of the advertisement published in the newspapers, the conditional sale and purchase agreement, the valuation report and the buyer's statutory declaration stating his relationship, if any, to the owners. The conditional sale and purchase agreement must state the price and method of distributing the sale proceeds. The majority owners must then apply to the Strata Titles Board for an order of sale, enclosing the documents mentioned earlier. The minority owners and their mortgagees or chargee would then have 21 days to file their objections, if any, with the Board.

These procedures will ensure that all relevant parties will have adequate notice of the sale and its terms, in order to decide whether or not to lodge objections with the Strata Titles Board. I should add that no application needs to be made to the Strata Titles Board if all the owners agree to the sale. In other words, application to the Board is not a pre-requisite to all en-bloc sales but only when there is no unanimous consent.

23 The Minister of State for Law described the position at the time, in which unanimous consent would be required for a collective sale to go through. He highlighted the case of Kim Lin Mansions and the unsatisfactory state of affairs it had engendered at col 602 (Singapore Parliamentary Debates):

The current requirement of unanimous consent is untenable. The case of Kim Lin Mansions which was recently highlighted in the press brings this out clearly. Community living, which is the heart of living in a condominium, all but disappears when owners have to drag out their disagreement in court, incurring huge financial outlays in the process. There is uncertainty; there is delay; there is acrimony. Also, as more developments age and incur large upgrading and repair bills, opting for en-bloc sale will increasingly become a viable option. But the existing law which requires unanimous consent makes it extremely difficult, if not impossible, to realise en-bloc sales. [emphasis added]

24 This is an important statement for it shows that it must be a primary objective of the Bill to avoid owners dragging their disagreement to court with the attendant uncertainty, delay, acrimony and huge costs in terms not only of legal fees but also of human misery. Indeed that would have been a major reason why the Bill intended for a procedure that would vest finality in a decision of the STB and for an appeal to be permitted only on a point of law. As the Minister of State said at col 604 (Singapore Parliamentary Debates):

Let me now elaborate on the role of the Board, in particular, how it acts as a safeguard. The Board will first satisfy itself that the required consent has been obtained and that prescribed procedures have been complied with. It will not review or intervene to determine the terms of sale. Essentially, its role is to determine that the proposed sale is bona fide and an arm's length transaction so that the proposed sale can proceed. It will do this by considering the minority's objections, the interests of all the owners, all the circumstances of the case and the scheme and intent of the en-bloc provisions in the Bill. The Board will look at the sale price, method of distributing the sale proceeds to ensure that the minority owners are treated no less favourably

than the majority, and the relationship of the purchaser to the owners, to ensure that there is no collusion. If the Board decides that the transaction is bona fide and an arm's length transaction, the sale will proceed. Otherwise, the sale cannot proceed and the majority owners would have to rework their proposal if they still wish to sell en-bloc. The Board will not rewrite the agreement for the parties.

The Board will consider, as I have said, all the objections filed by the minority owners, their mortgagees and chargees. Some minority owners may raise objections which are personal in nature or peculiar to their own circumstances, eg, he has bought his unit recently at a much higher price than that paid for by the other owners, or he has spent a large amount on renovations. Others may raise objections based on sentimental reasons, eg, he has lived in the development for a long time and does not wish to move out. The Board will mediate in these situations. It is expected that skilful mediation will overcome many of these objections. If mediation fails, the sale will nevertheless proceed as long as the transaction is bona fide and at arm's length, unless there are exceptional circumstances to warrant the Board assuming a more pro-active role; for example, the sale proceeds are lower than the purchase price he had paid for the unit or are insufficient to redeem the outstanding mortgage or charge on the unit. This is based on the underlying assumption that none of the owners in an en-bloc sale should lose out financially.

Sir, the Board's decision will be final. An appeal can be made to the High Court only on a point of law, or where there is alleged irregularity in the process. Owners will be precluded from applying to the court under section 78 of the Act to terminate a strata development if they are not granted an order from the Board for an en-bloc sale or are unable to secure the required majority consent, unless there are exceptional extenuating circumstances such as the majority owners refusing to pay for repairs to prevent a building from being unsafe. In other words, section 78 will remain in the Act but is used for very specific circumstances. There will therefore be finality.

[emphasis added]

25 For this to be achieved it must be the intention of the legislature that where a condition is expressed in clear terms, there can be no scope for the argument that the STB must look beyond the express provision and undertake the onerous task of considering all sorts of submissions of fact and law in order to divine the true intention of Parliament. It cannot be the intention of the legislature that, in respect of any provision that is expressed in clear terms, the STB would be asked to interpret it in any other manner. The STB is not a court of law and certainly not equipped to make a determination on subtle questions of law. The effect of permitting any derogation from provisions that are clear on their terms – and I should add, so clear in the present case that the professionals who advise the sales committee omit mention of them at their professional peril – would be to engender appeals to court from the decision of the STB no matter what decision it makes. It bears emphasising that this would result in owners dragging their disagreement to court with the attendant uncertainty, delay, acrimony and huge costs in terms not only of legal fees but also of human misery. Indeed, this is exactly what has happened in more than a few cases involving such collective sales. Subsidiary proprietors, especially if they reside in the properties proposed for sale, are understandably concerned and can be expected to go to any lengths to preserve their rights. Some stand to make enormous monetary gains; for others, the issue is not purely monetary but emotional as well. Therefore in relation to provisions that are clear on their terms, the approach should be to give full effect to those terms. As it is there is enough ambiguity in the legislation - see *Ng Swee Lang* at [9]:

9 Although the collective sale scheme is relatively straightforward, unfortunately, the legislation

giving effect to it – *viz*, Pt VA of the Act – is not free from difficulty. The provisions of Pt VA have given rise to much litigation between minority owners and majority owners, and even among majority owners themselves. In this appeal, the meaning and effect of s 84A of the Act is contested by both parties. …

26 As the Court of Appeal remarked, Part VA has spawned much litigation, no doubt at great cost to all concerned. Indeed, beyond mere pecuniary cost lies the strain of the uncertainty to every family entangled in proposed collective sales. In the face of a proposal for collective sale, an SP must decide on the course of action. Is the property market likely to rise, stay level or fall within the time frame of the sale? Depending on his outlook, he has to decide whether to buy now in replacement or later or not to replace at all. If he resides in the property, the decision is all the more pressing. This decision process is made more difficult if there is greater uncertainty as to whether the collective sale will go through. A regime that promotes greater certainty would go a long way towards alleviating the pecuniary and human cost of the exercise.

Is compliance mandatory?

27 I turn then to examine whether the non-compliance in question precludes the Applicants from making the application to the STB under s 84A. In Ng Swee Lang's case, the Court of Appeal held that the failure to specify the proposed method of distributing the sale proceeds in the sale and purchase agreement was not fatal to the application. The decision concerned the interpretation of s 84A(1) of the Act which, in that case, provided as follows:

(1) An application to [the] 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 and not less than 80% of the total area of all the lots (excluding the area of any accessory lot) where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building (not being common property) comprised in the strata title plan …

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).

[emphasis added]

28 The question was whether, on a proper construction of s 84A(1), the omission of the method of distribution of sale proceeds in the sale and purchase agreement would require the STB to dismiss the application. It bears noting that the distribution method was set out in the CSA and was known to all parties including the minority owners. The Court of Appeal upheld the adoption by the judge below of the modern approach towards statutory interpretation, which was to consider the scheme and purpose of the Act, weighing the importance of the particular requirement in the context of the purpose and considering whether the legislature would have intended the consequences of a strict construction, having regard to the prejudice to private rights and the claims of the public interest. The Court of Appeal said at [23]:

23 … All [the Judge] meant to say was that the modern approach is to consider whether it is the

intention of Parliament to invalidate any act done in breach of a statutory provision. Applying this approach to the facts of the present appeal, we should ask whether Parliament intended the non-stipulation of the distribution method in the S&P Agreement to deprive the respondents of the capacity to make the Application. We agree fully with the Judge's approach.

29 The Court of Appeal proceeded to analyse the language of s 84A(1), and said at [32]:

> 32 A close examination of s 84A(1), read in its proper context, makes it clear that the jurisdictional or precedent facts in this subsection (the absence of which would lead the Board to disapprove a collective sale application) are referable only to the age of the subject property as well as the share values and the total area of the lots held by the majority owners. The reference in the same subsection to specification of the distribution method, which is the nub of the appellants' argument, is redundant and unnecessary as it has already been provided for in s 84A(3) read with the First, Second and Third Schedules to the Act, the effect of which will be considered later. In our view, the reference was included *ex abundanti cautela.*

30 The Court of Appeal also said at [35] that this was a truly technical objection that had not caused any prejudice to the minority owners. However the situation was different as regards compliance with the provisions in the Schedule which is governed by the express provision in s 84A(3). The court said at [34]:

> 34 The language of s 84A(1) may be compared with that of s 84A(3), which provides expressly that "no application may be made" under s 84A(1) by the subsidiary proprietors referred to in that subsection (*ie*, the majority owners) unless they have complied with the requirements specified in the First, Second and Third Schedules to the Act and have provided an undertaking to pay the costs of the Board under s 84A(5). In the case of s 84A(3), the converse proposition is true as a matter of logic – *ie*, a collective sale application may be made only if the majority owners have complied with all the requirements of s 84A(3). This point is crucial as, in the present case, the Application complied fully with the requirements of s 84A(3) read with the First, Second and Third Schedules to the Act. Section 84A(3) covers all the requirements in s 84A(1), other than the specification of the distribution method. If, therefore, majority owners may (in the sense of being entitled to) make a collective sale application to the Board under s 84A(3) where all the requirements of that subsection have been complied with, there would be no reason for Parliament to deprive them of the same right under s 84A(1) merely because of a failure to comply with the provision in that subsection (*ie*, s 84A(1)) that the sale and purchase agreement must set out the distribution method. In this respect, s 84A(3) is consistent with the legislative intent that the sale and purchase agreement is to be made between the majority owners and the purchaser and that the minority owners do not have to be party to the said agreement. As far as the purchaser is concerned, he is only obliged to pay the vendors (*ie*, the subsidiary proprietors of all the units in the subject property) a collective price for the entire subject property to complete the purchase thereof. The specification of the distribution method is not a relevant term of the sale and purchase agreement. It may well be that, in some collective sales, the purchaser might be prepared to pay the owners who consent to the sale their share of the sale price separately, especially where there are no minority owners. But that is not a requirement prescribed in the First Schedule. [emphasis added]

31 The Court of Appeal was dealing with the version of the Act after the amendments of 4 October 2007, which has four schedules, whereas the version prior to that had only one schedule. However the substantive provisions are the same as well as the principle. Section 84A(3) of the version of the Act under consideration before me (also set out above at [10]) provides as follows:

(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). [emphasis added]

32 As held by the Court of Appeal, an application under s 84A(1) for collective sale may only be made if the majority owners (meaning the Applicants) have complied with the requirements of the Schedule. The Schedule itself contains a large number of provisions and bears reproduction in full:

REQUIREMENTS UNDER SECTION 84A, 84D OR 84E

1. Before making an application to a Board, the subsidiary proprietors referred to in section 84A (1) or the proprietors of flats referred to in section 84D (2) or 84E (3), as the case may be, shall —

(a) execute within the permitted time but in no case more than 12 months before the date the application is made, a collective sale agreement in writing among themselves (whether or not with other subsidiary proprietors or proprietors) agreeing to agree to collectively sell —

(i) in the case of an application under section 84A , all the lots and common property in a strata title plan; or

(ii) in the case of an application under section 84D or 84E, all the flats and the land in a development to which section 84D or 84E, as the case may be, applies;

(b) once every 8 weeks after the start of the permitted time, affix to a conspicuous part of each building comprised in the strata title plan or the development to which section 84D or 84E applies, as the case may be, a notice in the 4 official languages specifying —

(i) the number of subsidiary proprietors or proprietors who, immediately before the date of the notice, have signed the collective sale agreement; and

(ii) the proportion (in percentage) that the total share value of such subsidiary proprietors' lots bear to the total share value of all lots comprised in that strata title plan, or that such proprietors' total share or total notional share of the land bears to the total share or notional share of all proprietors in that land, as the case may be;

(c) consider the collective sale either —

(i) at an extraordinary general meeting of the management corporation held in accordance with Part IV of the Act or any other corresponding written law; or

(ii) in the case of land in a development to which section 84D or 84E applies, at a meeting held after sending a notice of the meeting by registered post to all the proprietors to their last recorded addresses at the Registry of Titles or the Registry of Deeds and placing a copy of the notice under the main door of every flat in the development;

(d) advertise in the 4 official languages the particulars of the application in such local newspapers as approved by the Board;

(e) serve notice of the proposed application on all the subsidiary proprietors of all the lots and common property in the strata title plan concerned or on all proprietors of all flats in the

development concerned, as the case may be, 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:

(i) the collective sale agreement referred to in sub-paragraph (*a*);

(ii) the sale and purchase agreement which is to be the subject of the application to the Board;

(iii) a statutory declaration made by the purchaser under the sale and purchase agreement on the nature of his relationship (if any) or, if the purchaser is a body corporate, the nature of the relationship of every one of its directors (if any), to any subsidiary proprietor of any lot comprised in that strata title plan or any proprietor of any flat in the development, as the case may be;

(iv) the minutes of the extraordinary general meeting or meeting referred to in sub-paragraph (*c*);

(v) the advertisement referred to in sub-paragraph (*d*);

(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; and

(f) affix a copy of the notice referred to in sub-paragraph (*e*) in the 4 official languages to a conspicuous part of each building comprised in the strata title plan or the development, as the case may be.

1A. For the purposes of this Schedule —

(a) the permitted time in relation to a collective sale agreement executed or to be executed by subsidiary proprietors or proprietors referred to in section 84A (1), 84D (2)or 84E (3), means a period —

(i) starting from the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and

(ii) ending not more than 12 months after the date the first subsidiary proprietor or proprietor, or his duly appointed attorney, as the case may be, signs the collective sale agreement; and

(b) the collective sale agreement shall be regarded as executed notwithstanding that it is executed on separate copies thereof and at different times.

2. The notice referred to in paragraph 1(*e*) to be served by registered post shall be served on an affected party —

(a) where the party is a subsidiary proprietor of a lot in the strata title plan, at the address as shown on the strata roll;

(b) where the party is a proprietor of a flat or land, at the last recorded address at the Registry

of Titles or Registry of Deeds;

(c) where the party is a mortgagee, chargee or other person with an estate and interest in the lot or flat whose interest is notified on the land-register, at the address on the strata roll or last recorded address at the Registry of Titles or Registry of Deeds; and

(d) where the party is a management corporation, at its address recorded on the folio of the land-register comprising the common property.

3. The advertisement referred to in paragraph 1(*d*) shall include —

(a) information on the development;

(b) the names of the subsidiary proprietors or proprietors, addresses, unit numbers and strata lot numbers, if any, of their flats;

(c) the names of mortgagees, chargees and other persons with an estate and interest in the lots, flats and land;

(d) brief details of the sale proposal; and

(e) the place at which the affected parties can inspect documents for the collective sale.

4. An application to a Board shall be made by the subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) within 14 days of the publication of the advertisement referred to in paragraph 1 (*d*), enclosing —

(a) the documents specified in paragraph 1(*e*);

(b) a statutory declaration made by the representatives appointed under section 84A (2) or their solicitors stating —

(i) the date the permitted time for the collective sale agreement started;

(ii) the date on which collective sale agreement referred to in paragraph 1 (*a*) was last executed by any subsidiary proprietor or proprietor referred to in section 84A (1), 84D (2)or 84E (3), as the case may be;

(iii) the date or dates on which the notice or notices referred to in paragraph 1(*b*) were affixed; and

(iv) that sub-paragraphs (*c*), (*d*), (*e*) and (*f*) of paragraph 1 have been complied with;

(c) a list of the names of the subsidiary proprietors who have not agreed in writing to the sale, their mortgagees, chargees and other persons (other than lessees) with an estate or interest in the lots or flats whose interests are notified on the land-register; and

(d) such other document as the Board may require.

5. The Board shall, within 5 days of the filing of an objection, serve a copy of it by registered post on the representatives appointed under section 84A (2) and their solicitors, if any.

6. The subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3) shall, after making an application to the Board, cause a copy of the application to be registered under the Act, the Land Titles Act (Cap. 157) or the Registration of Deeds Act (Cap. 269), as the case may be.

7. The subsidiary proprietors referred to in paragraph 6 shall, if an order for sale is granted by the Board under section 84A, 84Dor 84E, register the order of the Board in accordance with the Act, the Land Titles Act or the Registration of Deeds Act (Cap. 269), as the case may be, or if the order for sale is not granted by the Board, apply to cancel the application registered under paragraph 6.

8. For the purposes of this Schedule, "affected parties" means —

(a) the subsidiary proprietors referred to in section 84A (1) or the proprietors referred to in section 84D (2) or 84E (3);

(b) the subsidiary proprietors of the lots or the proprietors of the flats who have not agreed in writing to the sale, and any mortgagee, chargee and other person (other than a lessee) with an estate or interest in the lot or flat whose interest is notified on the land-register;

(c) the proprietor of the land under section 84E, his mortgagee, chargee or other person with an estate or interest in the land whose interest is notified on the land register; and

(d) the management corporation, where applicable.

33 It can be seen that the requirements in the Schedule fall into two categories. The first category comprises those requirements that, if not complied with before the application is made, may easily be cured by subsequent compliance and a refiling of the application. For example, under paragraph 1(d), if the sales committee had not advertised the particulars of the application in approved newspapers at the time the application was filed, this may be cured by causing the advertisements to be duly published and making a fresh application. Into this category fits most of the requirements in the Schedule. The second category pertains to those requirements which cannot be cured by mere refiling because the time for compliance has lapsed. The primary example of this category is paragraph 1(a) which requires the Applicants to:

> execute within the permitted time … a collective sale agreement in writing among themselves … agreeing to agree to collectively sell … all the lots and common property … [emphasis added]

The reason that this omission cannot be cured by a simple refiling is due to the definition of "permitted time". Paragraph 1A of the Schedule provides that this is a period that commences from the date that the first SP signs the CSA and ends not more than 12 months after that. The period is fixed with reference to date of the first signature (which in the present case is 1 April 2006). Any signature after the 12 month period, i.e. after 31 March 2007, would not be in compliance with this requirement. The only way to cure this is to start the process all over again with a new CSA. There is only one other requirement in the Schedule that belongs to the second category, that is contained in paragraph 1(b). Again this is due to the reference there to the start of the permitted time.

34 The question I have to decide is whether, on the modern approach to statutory interpretation endorsed by the Court of Appeal in *Ng Swee Lang*, it was the intention of Parliament for s 84A(3) to operate to invalidate the application if there was no compliance with the requirement in paragraph 1(a) of the Schedule.

35 The plaintiffs have submitted that the SPs of the two units had agreed all along to the CSA and the failure to actually put their signatures on it was due to mistake or inadvertence and is therefore a mere technicality. The plaintiffs also point out that as at the date of the hearing by the STB, the SPs of 99% share value wanted the sale to proceed and only the SP of one unit, representing less than 1% share value, refused to sell. These are compelling arguments indeed but to succumb to such arguments would, in my view, defeat the safeguards put in place by the legislature to protect the minority. I have set out above the gist of the Parliamentary debate on the matter. The scheme of Part VA was laid out before Parliament and there was considerable debate by members particularly concerning how this was a derogation of property rights of the individual. In the end Parliament passed the Bill in its present form. The legislature had considered that the protection enshrined in the legislation constitutes an appropriate balance between the individual rights it has taken away and communal interests it has promoted. It is therefore not for the court to water down the protection afforded by the legislation in its present form in favour of the majority, vast though it may be.

36 The legislature had carefully crafted a scheme, in the form of paragraph 1(a) of the Schedule, whereby the Applicants would have up to 12 months from the date of the first signature to persuade SPs to sign up and commit themselves to the terms of the CSA. There is also a further requirement for the Applicants to apply to the STB within 12 months of the final execution (this pertains to the provision "but in no case more than 12 months before the date the application is made"). Altogether, therefore, the collective sale process is envisioned to last not longer than 24 months from the date of the first signature to the application. The legislation also required the SC to report, at eight-week intervals, in the four official languages, the number of SPs who have adhered to the CSA within that period and the new percentage of adherents.

37 Although there is nothing in the Parliamentary debates that directly explains the purpose of the requirements of paragraph 1(a) of the Schedule, it has nevertheless been expressly stated by the Minister of State for Law that the "safeguards are found in the procedures" (Singapore Parliamentary Debates col 603). Further, it is not difficult to divine the reason for these safeguards. Timing is important because the longer the process is dragged out, the greater the likelihood that market conditions will change.

38 To take the plaintiffs' position would mean that so long as 80% or more agree to sell by the time of the hearing before the STB, then the STB should make the order for sale. That would in effect cast out the scheme passed by Parliament. It would also negate the safeguards that it had enacted after much debate and deliberation. Therefore it is not possible to say that the non-compliance with paragraph 1(a) in the present case is a mere technicality.

Conclusion

39 I have established that the requirement in paragraph 1(a) of the Schedule is set out in clear terms. It expressly provides that, before making an application to the STB the SPs (defined in s 3 as SPs for the time being) of lots having at least 80% share values "shall execute within the permitted time … a collective sale agreement." The SPs in relation to the two units had not done so. It is provided in s 84A(3) that the Applicants may not make an application under s 84A(1) unless they have complied with the requirements set out in the Schedule. This was held by the Court of Appeal in *Ng Swee Lang* to be a substantive prohibition. I have considered the legislative debate during the passage of the Bill and concluded that Parliament had intended a process that is simple and expeditious, particularly in respect of any provision that is expressed in clear terms. I have considered that the requirement in paragraph 1(a) is a substantive condition put in place by the legislature to protect the legitimate rights of the minority. In view of the foregoing, I cannot say that it was not the intention of Parliament to invalidate the application upon breach of paragraph 1(a) of the

Schedule.

40 Accordingly, the plaintiffs must fail in their appeal against the dismissal by the STB of their application.