Tsai Jean v Har Mee Lee and Others
[2008] SGHC 210

Case Number : OS 464/2008

Decision Date : 18 November 2008

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Vinodh S Coomaraswamy SC (Shook Lin & Bok LLP) and Yong Shu Wei Christopher (Legal21 LLC) for the plaintiff/appellant; Lim Chen Thor Jason and De Souza Kevin (De Souza Lim & Goh LLP), and Foo Yew Heng and Foo En Luen Clarence (Foo & Partners) for the defendants/respondents

Parties : Tsai Jean — Har Mee Lee; Angela Linda Goutama alias Angela Linda Goutama Goh; Atama Singh s/o Ganga Singh alias Atma Singh

Land – Strata Titles – Collective sales – Application for collective sale order – Appeal against decision of the Strata Titles Board – Question of law – Whether Board made an error of law ex facie – Whether the view of the Board was one that no person acting judicially and properly instructed as to the relevant law could have come to – Section 98(1) Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed)

Land – Strata Titles – Collective sales – Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) – Application for collective sale order – Board not satisfied that the transaction was not in good faith – Whether Board made an error of law ex facie – Whether the view of the Board was one that no person acting judicially and properly instructed as to the relevant law could have come to – Sections 84A(9) and 84A(9)(a)(i) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Words and Phrases – "Good faith" – Section 84A(9) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

18 November 2008 Judgment reserved

Andrew Ang J:

1 This is an appeal by the plaintiff ("the appellant") under s 98(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA") against the decision of the Strata Titles Board ("the Board") in STB No 79 of 2007, *viz*, *Har Mee Lee v Sin Fook Seng* [2008] SGSTB 4. In that decision, the collective sale of the subsidiary strata lots and common property in Strata Title Plan No 1041 ("the Development") to Jewel 1 Pte Ltd ("Jewel") was ordered at a sale price of $44m pursuant to s 84A(7) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"). The overarching issue on appeal is whether the Board was wrong to have rejected the appellant's objection to the application by the defendants ("the respondents") for the collective sale order, *viz*, that the application should be dismissed for a lack of good faith having regard to the sale price. Section 84A(9) of the LTSA states that the Board shall not approve an application for a collective sale order if it "is satisfied" that "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.

Facts of the case

2 The Development, which is otherwise known as Cairnhill Heights, is a relatively small development comprising only 19 subsidiary strata units with 19 subsidiary proprietors ("the Subsidiary Proprietors"). On 19 October 2006, 17 of the Subsidiary Proprietors ("the Majority") signed a collective sale agreement ("the Collective Sale Agreement") for the purposes of instituting a collective sale of the Development. The appellant was not a signatory to the Collective Sale Agreement.

3 The signing of the Collective Sale Agreement led to the formation of a sale committee ("the Sale Committee") which was empowered to institute the collective sale of the Development "by way of tender or private treaty or other means … at the best possible price, but not less than the minimum sum of Singapore Dollars Thirty-eight Million (S$38,000,000.00)" (cl 2(2)(a) of the Collective Sale Agreement). To assist the Sale Committee, HSR International Realtor Pte Ltd ("HSR") and M/s Foo & Partners were appointed as marketing agent and vendors' solicitors respectively. Where an offer exceeding the reserved price (*ie*, the minimum sum of $38m) was received, cl 4(1) of the Collective Sale Agreement provided:

> [T]he Sale Committee shall have … *irrevocable authority* to conclude a contract with that purchaser whose offer price they consider reasonable (*although not necessarily the highest offer*) after considering that purchaser's offer terms and conditions as against those offer terms and conditions of the other prospective purchasers *without having to convene a meeting of the Proprietors*. [emphasis added]

4 The first offer to purchase received by the Sale Committee was from Orchard-Cairnhill Developments Pte Ltd ("Orchard-Cairnhill") on 29 January 2007 for $38m. This offer was rejected. On 13 February 2007, the Sale Committee advertised the Development for sale by public tender. The tender closed on 26 February 2007 without any offer or bid having been received. The Sale Committee then made a counter-offer on 27 February 2007 to sell the Development to Orchard-Cairnhill for $38.5m. Orchard-Cairnhill replied through their solicitors the following day that they were no longer interested in the purchase of the Development.

5 One month later, on 28 March 2007, the Sale Committee received an offer from Novelty SEA Pte Ltd ("Novelty") to purchase the development for $38.25m. Novelty, at that time, already owned four units in the Development constituting (approximately 21.21% of the total share values). The Sale Committee discovered later that Orchard-Cairnhill and Novelty were related companies and they both belonged to the same person, *viz*, one Bharat Dhaimadas Kalwani (*alias* Mike Kalwani).

6 On 3 April 2007, the Sale Committee received an offer from the Oxley Group to purchase the Development for $38.5m. Shortly after this offer was received, on 14 April 2007, the Sale Committee convened an extraordinary general meeting ("the EGM") to update the Subsidiary Proprietors on the progress of the collective sale. At the EGM, the Sale Committee informed the Subsidiary Proprietors of the offer from Orchard-Cairnhill and the subsequent counter-offer, the offer from Novelty, and the offer from the Oxley Group. The Subsidiary Proprietors were also informed that no bids or offers had been received when the public tender invitation closed on 26 February 2007.

7 About mid-way through the EGM, an increased offer of $38.6 m was tabled by Orchard-Cairnhill (the relationship between Orchard-Cairnhill and Novelty was at that time still unknown to the Sale Committee) and an offer of $38.8m was made by another party known as the Land Resources Group. Thus, the highest offer received by the Sale Committee as at 14 April 2007 was $38.8m from the Land Resources Group. The Sale Committee, on the advice of M/s Foo & Partners, did not accept any of the offers which had been made. The Sale Committee then decided to instruct HSR to call for another public tender and to provide the Sale Committee with a comparative market analysis to aid in the determination of the open market value of the Development.

8 After the EGM, the Sale Committee met again on 20 April 2007, where it was decided that counter-offers of $50m would be made to the existing bidders. On 21 April 2007, the Sale Committee sent an e-mail to HSR instructing them to proceed with the second public tender and to provide them with the comparative market analysis. However, despite the Sale Committee's instructions and reminders, HSR did not proceed with the second public tender. The Sale Committee subsequently learned that HSR did not do so because they had received three notices from the solicitors for Novelty, Legal 21 LLC, which, in essence, instructed HSR to refrain from proceeding with the second public tender. HSR acquiesced to those instructions as Novelty was an important client. In addition to this failure to comply with the Sale Committee's instructions, HSR also did not provide the Sale Committee with any comparative market analysis. Instead, on 7 May 2007, HSR provided the Sale Committee with a brief update of the property market, which stated as follows:

> In the EGM you have requested HSR to provide you with an update of the property market in relation to the en bloc sale. This is our observations and conclusions:
>
> 1. The property market has been bullish in the past six months. This is underpinned by strong interest from foreign buyers and healthy take-up rate. The highest benchmark price was set by Sing Holdings which invested $361 million to acquire Hillcourt. The investment translates to S$1542 per sq ft which is substantially higher than $1107 that Capitaland paid for Silver Tower next door in year 2007.
>
> 2. The high end market has been on the rise for more than two years. Prices have increased steeply and there is growing rumor [*sic*] that the market is due for a short correction. Major concerns in the market include the ban of sand from Indonesia, and increase in development charges. Many developers have made major land acquisitions and have indicated to us their concerns about potential overheating.
>
> 3. Cairnhill Heights with its size at about 15,000 sq ft is a relatively small plot and the absence of a right turn coming from the CTE into Cairnhill Rise can be negative factors. It is likely that its small size will only attract selective buyers.
>
> 4. Notwithstanding the above, given the current buoyant market we will pitch the sale price as high as possible over the reserve price of $38 million.
>
> Recommendations and Conclusion:
>
> 1. We recommend that a public tender be conducted as soon as possible taking into consideration that the CSA expires Aug 1. We have already conducted the first public tender in Feb and have also attempted the private treaty route. As evidenced in your EGM, a public tender now is the most equitable, transparent and comprehensive method to secure the best price.
>
> 2. We will give maximum publicity via newspaper advertisement and direct callings on potential buyers during this tender process. As such the tender process should result in the best possible price.

9 The next day, on 8 May 2007, M/s Foo & Partners received an offer from M/s Chua Hay & Partners, the solicitors for Jewel, to purchase the Development at $44m. The deadline given for a response was 15 May 2007. The offer from Jewel was the highest offer received up to that time. The previous highest offer was $38.8m from the Land Resources Group (see [7] above). The offer from Jewel exceeded that offer by $5.2m.

10 The Sale Committee met on 10 May 2007 to consider the offer from Jewel, as well as whether the second public tender should be conducted, whether a counter-offer of $50m should be made to the existing bidders, and whether a valuation of the Development should be requisitioned. After deliberations, the Sale Committee resolved unanimously to accept the offer from Jewel. The following conclusions were also reached:

(a) the second public tender should not be conducted as it was doubtful that good results would be achieved;

(b) there was no use in making the counter-offer as none of the existing bidders was likely to come up with the money; and

(c) a valuation of the Development was not necessary at that time and it would be sufficient to commission a valuation only for the purposes of the application to the Board for a collective sale order.

11 The Option to Purchase ("the Option") was then granted to Jewel on 17 May 2007 at the sale price of $44m and it was accepted by Jewel on 23 May 2007. A day after the Option was granted, HSR suddenly did a *volte-face* on the views it had expressed in its update of the property market (see [8] above) and opined that the Development was worth $55m. According to Mdm Har Mee Lee ("Har"), the first defendant and chairperson of the Sale Committee, this ostensibly might have been because HSR had not introduced Jewel and therefore would not have been entitled to any commission from the sale (affidavit filed 24 June 2008 at para 45). The Sale Committee had not consulted HSR about the offer from Jewel as by that time the Sale Committee had already lost confidence in HSR. No alternative source of professional advice, however, was sought by the Sale Committee in regard to Jewel's offer. On 25 May 2007, the Sale Committee eventually terminated HSR's appointment as marketing agent on the ground that it had lost confidence in HSR as HSR had failed/refused to carry out its instructions to hold the second public tender, and, in its view, HSR was unacceptably "defiant" by not providing the comparative market analysis.

12 Approximately two weeks later, the Sale Committee received a proposal from the Hutton Group to purchase the Development for $50m. No response was made by the Sale Committee. According to Har, this proposal could not, on any reasonable view, be considered to be a firm offer or a serious offer (affidavit filed 24 June 2008 at para 45). Furthermore, it had been made more than three weeks after it became public knowledge that the Option had been granted to Jewel. Accordingly, counsel for the respondents submitted that the proposal should be construed as a mere "enquiry".

13 The Sale Committee subsequently appointed Premas Valuers and Property Consultants Pte Ltd ("Premas") to provide a valuation report for the purposes of the application for a collective sale order, pursuant to para 1(e)(vi) of the Fourth Schedule to the LTSA (as it was). The valuation report from Mr Liaw Hin Sai ("Liaw"), the valuer from Premas, ascertained the market value of the Development to be $42,565,726 based on the Direct Comparison Method and $43,757,120.58 based on the Residual Valuation Method. Liaw later conceded, before the Board, that there were errors in the computation of the development charge in the preparation of the valuation and, that after allowing for those errors, the true open market value of the Development as at 10 May 2007 was $47m. The appellant also commissioned two valuers, *viz*, Allied Appraisal Consultants Pte Ltd ("Allied Appraisal ") and Colliers International Consultancy and Valuation (Singapore) Pte Ltd ("Colliers"), to express an opinion on the open market value of the Development. The two valuers, *viz*, Mr Gregory Teo ("Teo") from Allied Appraisal and Mr Kelvin Ng ("Ng") from Colliers, valued the Development at $63m and $60m respectively. During the Board proceedings, the Board came to the view that the wide disparity between the valuations was due to the different comparables and factors used by the valuers, and

asked each of the valuers to re-work their valuations with consideration given to the evidence used by their counterparts (*Har Mee Lee v Sin Fook Seng* ([1] *supra*) at [13]–[14]). The revised valuations from Liaw, Teo and Ng were $48m, $55m, and between $58m and $59m respectively (*id* at [14]).

14 On 6 July 2007, the respondents, on the behalf of the Majority, applied to the Board for a collective sale order under s 84A(1)(b) of the LTSA. The appellant was the sole objector to the application by the time the hearing began on 11 February 2008. The main contention of the appellant was that the sale transaction was carried out with a lack of good faith having regard to the purchase price involved. On 10 March 2008, the Board gave its decision to dismiss the appellant's objection and to allow the application for the collective sale order. In arriving at its decision, the Board held as follows:

(a) It cannot be said that the Sale Committee's acts were not in good faith since the Jewel offer was the highest at the material time and was higher than the reserve price (*Har Mee Lee v Sin Fook Seng* ([1] *supra*) at [11]).

(b) The approach of Liaw in valuing the Development was more consistent (*id* at [15]). Taking into account Liaw's adjusted valuation of $47m and revised valuation of $48m, the sale price of $44m was not to be considered unreasonable but to be within the acceptable range (*id*).

(c) The Jewel offer provided the best indication of the market value of the Development (*id*).

The appeal

15 In this appeal to the High Court against the decision of the Board, the appellant submitted that the Board erred in law in granting the application for the collective sale order as the transaction was not in good faith having regard to the sale price, this being contrary to s 84A(9)(a)(i) of the LTSA. The grounds of appeal are as follows:

(a) the Sale Committee refused to seek the advice of HSR when deciding on the merits of the offer made by Jewel to purchase the Development;

(b) despite refusing to seek the advice of HSR and not knowing what the open market value of the Development was, the Sale Committee (having applied their minds to the need for a valuation report) proceeded to accept the offer from Jewel without the benefit of any valuation report;

(c) the Sale Committee rushed to sell the Development to Jewel even though there were still more than five months before the expiration of the Collective Sale Agreement;

(d) one of the main reasons for accepting the Jewel offer was the concern expressed by the Sale Committee that one of signatories to the Collective Sale Agreement, *viz*, Novelty, held more than 20% of the share values in the Development and failure to accept the Jewel offer would leave the Majority, including the members of the Sale Committee, at the mercy of Novelty;

(e) having agreed to make counter-offers of $50m for the Development to the previous bidders, the Sale Committee refused to do so on the basis that it felt that no higher bid would be received for the Development when, in fact, a higher bid was received shortly after the acceptance of the Jewel offer;

(f) notwithstanding the express mandate given to the Sale Committee at the EGM that they proceed to take steps to secure the highest possible price for the Development, the Sale

Committee failed to do so, resulting in the Development being sold at a price substantially below its open market value; and

(g) the valuation report prepared by Premas to support the sale price contained numerous fundamentally incorrect information, wholly unsubstantiated and inconsistent valuation principles, and wrong comparables to arrive at the valuation of the Development.

Issues before this court

16 Whether a transaction is "not in good faith" can be described as a question of mixed fact and law. It is a question of fact where one has to make relevant findings of fact (*vis-à-vis* good faith) and it is a question of law where one has to decide whether the findings of fact would constitute a lack of good faith in law.

1 7 Pursuant to s 98(1) of the BMSMA, the High Court can only entertain an appeal against a decision of the Board if the appeal is on a "point of law". In *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 1 SLR 522 ("*Ng Swee Lang*") and *Dynamic Investments Pte Ltd v Lee Chee Kian Silas* [2008] 1 SLR 729 ("*Dynamic Investments*"), it was concluded that for the purposes of s 98(1) of the BMSMA, guidance as to the meaning of "point of law" may be derived from two sources. The first is *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) which states (at pp 121–122, para 70):

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.

This passage was referred to with approval by Selvam JC in *MC Strata Title No 958 v Tay Soo Seng* [1993] 1 SLR 870 (at [22]). The second is *Edwards v Bairstow* [1956] AC 14 where Lord Radcliffe stated (at 35–36):

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.

18 Put simply, therefore, the Board's not being satisfied that the transaction was not in good faith (regard being given to the purchase price of the Development) cannot be challenged unless the Board

made an error of law either *ex facie* ("the first issue") or had made a determination that no person acting judicially and properly instructed as to the relevant law could have come to ("the second issue").

The first issue

19 In *Secretary, Department of Education, Employment, Training and Youth Affairs v Prince* (1998) 152 ALR 127, Finn J observed that the term "good faith" has been characterised as a "protean one having longstanding usage in a variety of statutory and, for that matter, common law contexts" (at p 130). Roger Brownsword *et al* similarly describe good faith in "*Good Faith in Contract: Concept and Context*", which is found in Brownsword *et al* (ed), "*Good Faith in Contract*" (Brookfield, 1999), as such (at p 3):

> [G]ood faith is an elusive idea, taking on different meanings and emphases as we move from one context to another – whether the particular context is supplied by the type of legal system (eg, common law, civilian, or hybrid), the type of contract (eg, commercial or consumer), or the nature of the subject matter of the contract (eg, insurance, employment, sale of goods, financial services, and so on).

Nevertheless, as noted in *Dynamic Investments* ([17] *supra*), while good faith takes different forms in various legal contexts, whichever form it takes, there appears to be a core meaning to the expression involving honesty or absence of bad faith (at [17]). This would be evident in the following cases.

20 In *Central Estates (Belgravia) Ltd v Woolgar* [1972] 1 QB 48 ("*Central Estates*"), the meaning of the words "in good faith" was considered by Lord Denning MR, in the context of para 4(1) of Sched 3 to the Leasehold Reform Act 1967 (UK), to require the presence of dishonesty or an ulterior motive. The Master of the Roll's remarks were as follows (at 55):

> How then are we to decide whether the tenant's claim to buy the freehold is made in good faith, or not? The words "in good faith" are often used in statutes but rarely defined. A good instance is the Larceny Act 1916, which speaks of "a claim of right made in good faith", but does not tell us what "good faith" means. Other instances come readily to mind. The Limitation Act 1939, section 26, speaks of cases when a right of action is concealed by "fraud", but does not define what is meant by "fraud" in this context. It is left to the courts to work it out from case to case: see *Applegate v. Moss* [1971] 1 Q.B. 406. In all such cases, when a word or phrase goes undefined, the judges have to work out for themselves the meaning of it, doing the best they can to interpret the will of the legislature in regard to it. That is the principle I stated in *Seaford Court Estates v. Asher* [1949] 2 K.B. 481, 499. *To my mind, under this statute a claim is made "in good faith" when it is made honestly and with no ulterior motive.* It must be made by the tenant honestly in the belief that he has a lawful right to acquire the freehold or an extended lease, and it must be made without any ulterior motive, such as to avoid the just consequences of his own misdeeds or failures. *If the landlord asserts that the tenant's claim is not made in good faith, the burden is on the landlord to satisfy the court that the tenant, in making the claim, was acting dishonestly or with an ulterior motive*. [emphasis added]

In *Smith v Morrison* [1974] 1 WLR 659, the court had to consider the meaning of "good faith" in the context of r 2(2) of the Land Registration (Official Searches) Rules 1969 (UK), which defined the word "purchaser" to denote "any person who in good faith and for valuable consideration acquires or intends to acquire a legal estate in land". Plowman J referred, with approval, to Lord Denning's remarks in *Central Estates*, observing that they were in general terms. He then continued on the topic, stating the following (at 676):

> The question of good faith then is partly one of law and partly one of fact. So far as law is concerned, in my judgment, *if a purchaser acts honestly he is acting "in good faith"* within the meaning of rule 2 of the rules of 1969, and I so hold. [emphasis added]

Finally, in *Mogridge v Clapp* [1892] 3 Ch 382, Kekewich J described good faith as the absence of bad faith or *mala fides*. He stated (at 391):

> Now, what does "good faith" mean? What is meant by those two English words which are the exact equivalent in every sense of the expression which is perhaps more commonly used, though not more correctly or properly, *bona fides*? *I think that the best way of defining the expression, so far as it is necessary or safe to define it, is by saying that it is the absence of bad faith* – of *mala fides*. [emphasis added]

21 Thus, it would appear that a lack of good faith connotes the presence of dishonesty or bad faith. The appellant submits that it is not necessary to show outright dishonesty or bad faith as this would set Parliament's safeguard for the rights of minority owners too high. At its widest, a lack of good faith could possibly include an egregious form of recklessness bordering on intent. In *Medforth v Blake* [1999] 3 WLR 922, which was quoted with approval in *Roberto Building Material Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2003] 2 SLR 237, Sir Richard Scott stated (at 937–938):

> I do not think that the concept of good faith should be diluted by treating it as capable of being breached by conduct that is not dishonest or otherwise tainted by bad faith. It is sometimes said that recklessness is equivalent to intent. Shutting one's eyes deliberately to the consequences of what one is doing may make it impossible to deny an intention to bring about those consequences. Thereapart, however, the concepts of negligence on the one hand and fraud or bad faith on the other ought, in my view, to be kept strictly apart. … In my judgment, the breach of a duty of good faith should, in this area as in all others, require some dishonesty or improper motive, some element of bad faith, to be established.

I would add that it has been established by the Court of Appeal in *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR 597, that the Legislative intent underlying collective sale legislation is towards the facilitation of collective sales. To construe good faith in any other manner would tend to undermine the Legislative intent as it would lower the threshold for objectors to cross.

22 On a separate point, the appellant's submission that the court should be guided by the principles underlying a mortgagee's duties in exercising his power of sale, *viz*, to act in good faith and also to take reasonable care to obtain the true market value or the proper price of the mortgaged property (see *Lee Nyet Khiong v Lee Nyet Yun Janet* [1997] 2 SLR 713 at [34]), is misconceived. As stated by the Board in STB No 43 of 2007, *viz Mamata Kapildev Dave v Lo Pui Sang/Kuah Kim Choo* [2008] SGSTB 7 (at [58]):

> In the Board's view, the [Sale Committee's] position is not like that of the mortgagee though superficially there may be some similarity. Members of the [Sale Committee] are not just selling property of the minority owners, or of the other consenting subsidiary proprietors, they are also selling their own property. They are not merely interested in the property being sold as creditors. They have an interest as owners as much as the other subsidiary proprietors. Thus unlike the mortgagee who is interested as a creditor to recoup the sum owing to him under the mortgage, the members of the [Sale Committee] are also selling their own units. Their interest as owners would mean that they would be inclined to try to obtain the best price available. Thus under the LTSA the [Sale Committee's] express duty is to see that the sale transaction goes through for a price that is obtained otherwise than 'not in good faith'. As counsel for the 10th Respondent has

noted in his closing submissions, there is no express statutory duty on the [Sale Committee] other than this: they need only ensure that the sale transaction is in good faith.

The second issue

23 Section 84A(9)(a)(i) of the LTSA requires the Board to dismiss an application for a collective sale order if it is "satisfied that the transaction is not in good faith". Therefore, the issue before this court is whether the view that the Board reached (*ie*, that it was not satisfied that the transaction was not in good faith) was one that no person acting judicially and properly instructed as to the relevant law could have come to.

24 Parenthetically, I would observe that the factors which the Board is permitted to take into account in deciding whether it is satisfied that a decision is not in good faith are expressly limited by s 84A(9)(a)(i) of the LTSA to the sale price for the lots and the common property in the strata title plan, the method of distributing the proceeds of sale and the relationship of the purchaser to any of the subsidiary proprietors. As such, it would appear at first blush that *nothing else* should be taken into account where the issue of good faith in a transaction is being considered. I am of the view, however, that to give the sub-section such a strict and literal interpretation would be to render it unworkable. It would be impossible to be satisfied, one way or the other, whether a transaction was in good faith if only the sale price (*ie*, a dollar amount) is to be taken into account. Limiting the Board's scope of consideration in such a manner cannot have been the intention of the Legislature as other facts relevant to the sale price, such as the valuation of the property in question and, possibly, the background to the acceptance of the sale price, would be material to the Board's finding. In particular, if the valuation could not be taken into account, there would be no point in the Fourth Schedule to the LTSA requiring a valuation to be produced before the Board and s 84A(5) empowering the Board to call for a valuation report.

Decision of the court

The first issue

25 There does not appear to be any error of law *ex facie* on the part of the Board. While the Board did not spell out its interpretation of the meaning of good faith, it can be assumed, from a holistic reading of the reasons for its decision, that the Board had approached the appellant's objection from the viewpoint that a lack of good faith connotes the presence of dishonesty or bad faith. The remaining issue would therefore be whether the Board's determination that it was not satisfied that the transaction was not in good faith was one that no person acting judicially and properly instructed as to the relevant law could have come to.

The second issue

26 The grounds of appeal raised by the appellant can be divided into three main contentions. The first would be that the Sale Committee failed to proceed to take steps to secure the highest possible price for the Development. In support thereof, it is argued that the Sale Committee refused to seek the advice of HSR when deciding on the merits of the offer made by Jewel and, without the benefit of any valuation report nor knowledge as to what the open market value of the Development was, proceeded to accept the offer from Jewel. This contention, however, does not take into account the fact that just prior to receiving the offer from Jewel, the Sale Committee had received a market update prepared by HSR which expressed pessimism and uncertainty in regard to the marketability of the Development. While the Sale Committee had reason to distrust HSR's advice at that stage, nevertheless, in light of the low offers it had received prior to the offer from Jewel, it had reason to

believe the pessimism and uncertainty. In the circumstances, the offer from Jewel, which was $5.2m higher than the next highest offer (see [9] above), must have appeared to be a very attractive offer and one which would be in the best interests of all of the Subsidiary Proprietors to accept.

27 Another supporting argument advanced for the first contention is that the Sale Committee decided to sell the Development to Jewel even though there was still more than five months before the expiration of the Collective Sale Agreement. This argument ignores the obvious – that delaying the acceptance of the offer from Jewel would not ensure that a better offer would come along but could result in loss of the offer should Jewel decide to withdraw the same. There was, of course, an opinion from HSR (for what it was worth) given a day after the Option was granted that the Development could fetch $55m (see [11] above) and a proposal from the Hutton Group three weeks after it became public knowledge that the Option had been given to Jewel to purchase the Development for $50m (see [12] above). However, leaving aside doubts as to the genuineness of HSR's opinion and the Hutton Group's proposal, they were not known to the Sale Committee at the time it made the decision to grant the Option to Jewel and should therefore be of no consequence in any analysis as to whether the Sale Committee acted in good faith. It would, put simply, not be appropriate for the court or Board to assess good faith on the basis of hindsight (see, also, *Chang Mei Wah Selena v Wiener Robert Lorenz* [2008] SGHC 97 (at [33]).

28 A further supporting argument for the first contention is that the Sale Committee changed its mind about making counter-offers of $50m to the previous bidders for the Development. The earlier decision to make the counter-offers was reached prior to receipt of the offer from Jewel and, quite obviously, was made more in the hope than in any expectation that a higher offer would eventuate. As Har deposed in her affidavit filed on 24 June 2000 at para 45, there was no obligation to make a counter-offer and the making of a counter-offer was to be at the discretion of the Sale Committee. Furthermore, it does not appear that it was unreasonable for the Sale Committee to have decided against making the counter-offers. As noted in the minutes of the meeting on 10 May 2007 in reference to several of the previous bidders, apart from the unlikelihood of their outbidding Jewel (given their much lower offers earlier), they were, to begin with, "probably not particularly enthusiastic purchasers, since they had not followed up on their bids either".

29 The second main contention is that the deliberations by the Sale Committee before it accepted the offer from Jewel were inadequate and lacking in maturity. In support, the minutes of the meeting of the Sale Committee on 10 May 2007 are referred to and, in particular, the observations from some members of the Sale Committee that by not accepting the Jewel Offer they would become the "laughing stock of Singapore" and that they would "fall at the mercy of Novelty" (see Appellant's Written Submissions at para 5.10.3). The minutes, in truth, however, do not indicate a lack of proper deliberations by the Sale Committee. This would be clear from the pertinent parts which are set out verbatim as follows:

Christine: According to the [EGM], the tender was to start the following week. Starting the tender now, three weeks after the [EGM] is hardly abiding by the wishes of the [EGM]. And what confidence do we have that HSR will carry out the tender? … For as long as we are stuck with HSR, I don't think a tender will ever happen.

…

Atama: We are not ignoring our duty to the proprietors by not having the tender now. The first priority is selling the property. It now seems that the tender will take too long.

Chirstine: This is the best offer we ever had. And don't forget, there was not a single expression of

interest at the previous tender. The whole of Singapore will laugh at us. This is Cairnhill – hottest area in the property market today and no offer. Something stinks.

Atama: Problem is that most developers know the reserve price and that Sale Committee is not cooperating with each other to tackle Novelty. They also know that one person is holding on to 4 units. If we hold out for $50m, we may have to wait for next year, and there's no guarantee that we will get it.

Christine: I am in favour of accepting this offer unless some better offer appears on Monday prior to our deadline. Given the obstacles we have faced and are facing, this is the best price we can possibly get. I am prepared to tell the [EGM] of all the problems we have encountered and I hope at that time, every member of the Sale Committee will stand together and back one another up.

…

Mrs Kwek: What if there are dissenting parties questioning why there was no tender.

Mr Foo: Sale Committee can explain that the objective of going for a tender was to get the best price. But given the obstacles faced by the Sale Committee, and the experience of the first tender, there is the possibility of no interest, compared to something hot on the table right now. A new tender is not likely to bring good results.

Christine: I don't see a tender likely in the foreseeable future. I do not believe HSR will go for tender and do not believe we will necessarily get a better price if we go for tender based on previous tender experience.

…

Christine: I'm in favour of accepting this offer unless we receive a better offer by close of business on Monday. Did you check to see if the offeror is a bona fide company?

Mr Foo: Yes, but we cannot check the financial strength of the company. But to be able to commit 5% shows some strength.

30 The final main contention is that Liaw's valuation report in support of the sale price contained numerous errors. The Board, however, did not accept Liaw's original valuation of the Development and only accepted Liaw's adjusted valuation of $47m and revised valuation of $48m. The valuations given by Liaw were preferred over the valuations given by Teo and Ng, as Liaw had been more consistent in his approach (see *Har Mee Lee v Sin Fook Seng* ([1] *supra*) at [15]). Other than bare assertions, there is nothing offered by the appellant to impugn this view of the Board which was, in any case, a finding of fact not open to appeal under s 98(1) of the BMSMA. That having been said, the offer from Jewel, *viz*, $44m, was not too far off Liaw's adjusted valuation of $47m and revised valuation of $48m. Furthermore, the offer from Jewel was $6m higher than the reserve price of $38m. As such, the sale price *per se* should not give rise to any inference of dishonesty or bad faith.

31 The appellant submitted that, by holding that the sale price of $44m was within the "acceptable range" (*Har Mee Lee v Sin Fook Seng* ([1] *supra*) at [15]), the Board had exercised its discretion on the basis of an incorrect legal principle. It was stated that there was "no warrant for the [Board's] application of the novel concept of 'acceptable range' in construing section 84A(9)(a)(i)" (Appellant's Written Submissions at para 1.3.1). In my view, in elevating the Board's statement to one of principle, the appellant was merely putting up a straw man to knock down. It seems to me that

the Board was merely implying that it was easier to conclude that there was no lack of good faith as the sale price was not far off the valuation.

32 From the above, it is clear that the Sale Committee had not acted with dishonesty or bad faith, nor even recklessness. In totality, it cannot be said that the Board, in not being satisfied that there was a lack of good faith in the transaction, had made a determination that no person acting judicially and properly instructed as to the relevant law could come to.

Conclusion

33 For the foregoing reasons, I dismiss the appeal with costs to be taxed unless agreed.