Lim Choo Suan Elizabeth and Others v Goh Kok Hwa Richard and Others
[2009] SGHC 114

Case Number : OS 664/2008

Decision Date : 12 May 2009

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : David Liew (DSH Law Corporation) for the plaintiffs; Gan Hiang Chye, Edwin Lee, Hazel Tang and Deborah Ho (Rajah & Tann LLP) for the defendants

Parties : Lim Choo Suan Elizabeth; Lim Poh Heng; Tan Peck Kheng; Koh Hock Chuan — Goh Kok Hwa Richard; Soh Liang Liang; Lee Choon Kum Beatrice

Administrative Law – Natural justice – Excessive interruptions during hearing – Remarks made by President of Strata Titles Board during hearing – Failure to subpoena witness – Whether President of Strata Titles Board was biased or there was reasonable suspicion of bias or he had breached rules of natural justice

Land – Strata titles – Collective sales – Failure to affix copy of notice of application on conspicuous part of each building – Failure to file Form 1A listed on Strata Titles Board website – Whether collective sale agreement was signed by requisite majority in share value – Whether transaction was in good faith – Whether valuation report flawed – Whether sales price was obtained at arm's length – Whether conflicting costs orders made – Whether all subsidiary proprietors should be ordered to be bound by collective sale agreement – Section 84A(3) and the Schedule para 1(f) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

12 May 2009

Woo Bih Li J:

Introduction

1 This was an appeal by the plaintiffs against the decision of a Strata Titles Board approving the collective sale of the development known as Rainbow Gardens under s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"). Under s 98(1) of the Building Maintenance and Strata Management Act 2004 ("the BMSMA 2004"), no appeal shall lie to the High Court against such a decision except on a point of law. After hearing arguments, I dismissed the appeal. The plaintiffs have since appealed to the Court of Appeal.

2 I set out below the following definitions for easy reference:

Definitions

"Ang"	-	Ang Chin Peng, an SP of RG
"Application"	-	The application made on or about 3 August 2007 for a collective sale order of the RG
"Conditional SPs"	-	The SPs of three units in RG who had signed the CSA with a condition that their signatures would not be valid if the MSP was lower than $76.8 million
"CSA"	-	The collective sale agreement signed by the Majority

"Ecco"	-	Ecco Venture Pte Ltd
"Ee"	-	Daniel Ee of Savills (Singapore) Pte Ltd
"EOIs"	-	Expressions of interest
"ERA"	-	ERA Realty Network Pte Ltd
"First Capital"	-	First Capital Holdings Pte Ltd
"Gan"	-	Gan Hiang Chye, a partner with R&T
"GD"	-	Grounds of Decision of the RG Board
"Goh"	-	Goh Kok Hwa Richard, Chairman of the SC
"Koh"	-	Koh Hock Chuan, an SP of RG
"the Majority"	-	The SPs who signed the CSA
"the Minority"	-	Lim Choo Suan Elizabeth, Lim Poh Heng, Tan Peck Kheng and Koh
"MSP"	-	Minimum selling price
"the Notice"	-	Notice of the Application
"Poon"	-	Dr Poon Lee Kwee, an SP of RG
"Premier"	-	Premier Land Development Pte Ltd
"RG"	-	The development known as Rainbow Gardens
"RG Board"	-	The Strata Titles Board which heard the Application
"R&T"	-	Rajah & Tann
"SC"	-	The sale committee which were appointed under the CSA to be, *inter alia*, the agents of the Majority to negotiate and finalise the collective sale of RG
"Seah"	-	Steven Seah of Seah Ong & Partners
"See"	-	See Moi Kiang @ See Beng Kiang, a senior marketing director of ERA
"Sim Lian"	-	Sim Lian Land Pte Ltd
"Soh"	-	Soh Liang Liang, an SC member

"SPs" - Subsidiary proprietors of RG and "SP" is the singular

"SPA" - The Sale and Purchase Agreement with Premier dated 12 May 2007

"STB" - A Strata Titles Board

"Tan" - Dr Tan Kok Yang, an SP who had objected to the collective sale and also filed an appeal to the High Court but decided not to pursue it.

Background

3 RG is a condominium development with a land area of about 11,094.8 square metres. It comprises four walk-up blocks of four-storey height with a total of 64 maisonette units. It is located at the junction of Toh Tuck Road and Jalan Jurong Kechil.

4 On or about 3 August 2007, the Application was made for an order for the collective sale of RG under s 84A LTSA. The applicants were three members of the SC purportedly authorised by the Majority to make the Application.

5 On 15 August 2007, the Minority filed their objections to the Application. The defendants before me were the applicants before the RG Board and the plaintiffs before me were the defendants before the RG Board. I would add that at the time of the hearings before the RG Board, there were more SPs who objected to the collective sale but they did not pursue an appeal to the High Court. For example, Tan had appealed to the High Court but eventually decided not to pursue it.

6 The RG Board held two mediation sessions on 19 and 22 September 2007 without success. The Application was then fixed for hearing on 6 and 7 December 2007. Also, at the second mediation session, the Minority applied for and were allowed an extension of time to file further objections to the Application.

7 On 10 October 2007, the Majority filed an interlocutory application. According to the GD, this application was to object to the Minority's further objections on the following grounds:

(a) The further objections submitted by the [Minority] are in contumelious delay of the statutory period provided for the submission of an objection under s 84A(4) of the LTSA;

(b) further objections are based on matters which could have been raised earlier;

(c) the further objections raise irrelevant matters with no reasonable prospect of success;

(d) the [Minority] cannot base any of their objections on the new laws and regulations which were not in effect at the material times of this application; and

(e) the allegations as contained in their further objections are frivolous, vexatious, irrelevant and inconsequential.

8 On 23 October 2007, the Minority filed an interlocutory application for the Application to be struck out. According to the GD, the main grounds were as follows:

"(a) The Applicants' application for a collective sale order under s 84A of the LTSA did not

fully comply with the statutory requirements of the Act and is therefore invalid; and

(b) the Applicants' application for a collective sale order failed to comply with the requirements of the LTSA and the Building Maintenance and Strata Management (Strata Titles Board) Regulations ("BMSMR")."

9 On 6 December 2007, the RG Board commenced hearing the two interlocutory applications simultaneously. The hearing lasted two days. Both parties were further asked to submit written submissions and the case was adjourned to 29 January 2008 for the RG Board to deliver its decision in respect of the two interlocutory applications. On 29 January 2008, the RG Board dismissed both interlocutory applications with costs.

10 Thereafter, the parties proceeded with the hearing of the Application over six days on 29 and 31 January 2008, 4 and 5 February 2008 and 17 and 18 March 2008. On 18 May 2008, the Board granted an order for the collective sale of RG.

11 As mentioned above, the Minority then appealed against the RG Board's decision, raising various issues which I will come to.

12 The first two issues raised by the Minority before me were the two grounds they had taken in their interlocutory application before the RG Board.

13 I should mention that Edwin Lee ("Mr Lee"), counsel for the Majority, took the point that as the Minority's appeal to the High Court was filed on 15 May 2008, the Minority could not rely on these two issues because the appeal was out of time as the RG Board's decision on the Minority's interlocutory application was given on 29 January 2008. Mr Lee submitted that the time to appeal against that decision was from the date of that decision and not from the date of the decision in the Application. David Liew ("Mr Liew"), counsel for the Minority, submitted that time ran from the date of the decision in the Application. Both sides referred to various parts of what the RG Board had said in respect of the time to appeal from their decision on the Minority's interlocutory application. It appeared to me that there was some confusion in the proceedings below on this point and it was arguable that the RG Board had intimated that time to appeal from that decision had not yet begun to run and the Minority were led to believe that time did not run until the RG Board's decision on the Application. In any event, in view of my decision on the substantive issues, it was unnecessary for me to decide whether the Minority were precluded from raising the first two issues before me.

First issue – failure to comply with s 84A(3) LTSA read with paragraph 1(*f*) of the schedule to the LTSA

14 The first issue was that the Majority had failed to comply with s 84A(3) LTSA read with paragraph 1(*f*) of the Schedule to the LTSA. S 84A(3) LTSA states:

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 have provided an undertaking to pay the costs of the Board under subsection (5).

15 The Schedule to the LTSA provides:

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 —

...

(*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**.

[emphasis added]

16 It was undisputed that the Notice (with the requisite documents) was served on the Minority by registered post and by placing a copy thereof under the main door of their respective units. The Notice was also affixed to the only notice board of RG. However, the Notice was not affixed to a conspicuous part or any part of each of the four residential buildings comprised in the strata title plan of the development. Therefore, there was non-compliance as asserted by Mr Liew. I would add that although Mr Liew sought to suggest that the Minority had suffered prejudice by this non-compliance, he could not really make out such a prejudice. The Minority were clearly aware of the intention to make the Application and had filed their objections. Nevertheless, Mr Liew argued that the non-compliance went to the jurisdiction of the RG Board to decide on the Application.

17 In *Siow Doreen v Lo Pui Sang* [2008] 1 SLR 213, Justice Choo Han Teck ("Choo J") was of the view that an STB has the power to allow an application made to it for a collective sale order to be amended. However, in that case, the deficiency was the omission of three pages in the collective sale

agreement which agreement was to be included with the application. The three pages contained the execution of three of the consenting SPs. It was not a case of non-compliance with a requirement of the LTSA before the application was submitted.

18 In *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 1 SLR 522 ("*Ng Swee Lang*-HC"), Justice Andrew Ang ("Ang J") was dealing with various objections to an application for a collective sale order. One of the objections was the omission to state the method of distribution in the sale and purchase agreement with the purchaser. He was of the view, at [49], that it was obvious that the main purpose of the LTSA was to make it easier for *en bloc* sales to take place. At [51], he said that the procedural requirements in the LTSA "were not built in as absolute obstacles to be surmounted on pain of the Board being precluded from exercising jurisdiction if any of the procedural requirements were not met, regardless of whether and to what extent the interests of the minority were affected". He said at [55]:

> At the end of the day, each objection must be examined on its own facts and the particular requirement breached set against the overall purpose of the legislation. One should then consider whether a strict construction and the invalidation of the Board's order was what Parliament would have intended, taking into account any prejudice to the rights of parties and the public interest (if any).

19 In [23] of *Ng Swee Lang v Sassoon Samuel Bernard* [2008] 2 SLR 597 ("*Ng Swee Lang*–CA"), Chief Justice Chan Sek Keong ("Chan CJ") said:

> We do not think that the Judge was wrong in drawing an analogy between the mandatory/directory classification and the jurisdictional/non-jurisdictional classification. All he 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.

20 At [35], Chan CJ said:

> We should further add that, having regard to the policy objectives of the collective sale scheme, there is no basis for this court to set aside the collective sale order made by the Board in the present case. Indeed, there is a very strong basis to uphold it in order to affirm the general principle that the courts should not allow what is, in the present case, a truly technical objection to frustrate the wishes of the Majority Owners when the appellants have suffered no prejudice whatsoever from the failure of the S&P Agreement to specify the distribution method.

21 Chan CJ also referred to and approved [55] of Ang J's judgment below. The High Court and the Court of Appeal decisions in that case are therefore authorities for the proposition that a technical breach of the LTSA which causes no prejudice should not be allowed to frustrate the wishes of a majority who wish to obtain a collective sale order.

22 The RG Board relying on *Ng Swee Lang*–CA was unable to conclude that any prejudice had been caused by the breach (under Issue No. 1) and therefore ruled against the Minority on this issue.

23 Before me, Mr Liew submitted that in *Tan Siew Tian v Lee Khek Ern Ken* [2008] 3 SLR 64 ("*Tan Siew Tian*-HC"), the High Court had taken a different approach. In that case, it was argued by the minority that the requirement of obtaining the consent of SPs, holding at least 80% of the share

values, to a collective sale agreement before an application to an STB could be made had not been met. The argument revolved around the subsidiary proprietors of two units which had to be included to make up the requisite 80%. Apparently, they had signed the collective sale agreement, within a certain permitted timeframe stipulated in the LTSA, but they then sold their units to third parties who did not sign the collective sale agreement before the permitted time expired. In those circumstances, Justice Lee Seiu Kin ("Lee J") decided that the requirements of the LTSA had not been met and the application to the STB for a collective sale order was invalid.

24 In reaching his decision, Lee J expressed certain observations in [21] to [26] of his judgment. They covered his concern over the uncertainty, delay, acrimony and huge costs caused by litigation over collective sales. He expressed the view that full effort should be given to provisions which were clear and said that a "regime that promotes greater certainty would go a long way towards alleviating the pecuniary and human cost of the exercise" (see [26] of his judgment).

25 Relying on the observations in [21] to [26] of Lee J's judgment, Mr Liew submitted that Lee J had taken a different approach from that in *Ng Swee Lang*-HC and *Ng Swee Lang*-CA. He also submitted that the Court of Appeal did not disagree with Lee J when the appeal against his decision was heard. Before I come to that decision of the Court of Appeal, it is important to bear in mind that while [21] to [26] of Lee J's judgment may give the impression that he favoured a stricter approach such that any non-compliance with any provision of the LTSA would render an application to an STB invalid, as this would promote more certainty, he did not actually decide that the stricter approach should prevail.

26 Indeed, in [28] of his judgment, he referred to the endorsement by the Court of Appeal of Ang J's approach and he noted at [30] the Court of Appeal's view that a truly technical objection that had not caused any prejudice to the minority owners should not prevail. At [34] of his judgment, Lee J appeared to adopt the modern approach to statutory interpretation endorsed by the Court of Appeal in *Ng Swee Lang*-CA.

27 Accordingly, contrary to Mr Liew's submission, Lee J's decision is not authority for the proposition that any and every non-compliance of any provision in the LTSA will render an application to an STB invalid. The decision he had reached was that the new subsidiary proprietors of the two units had to sign the collective sale agreement and since they had not, the consent of the requisite 80% had not been obtained. In his view, such a non-compliance made the application to the STB invalid.

28 I come now to the decision of the Court of Appeal on the appeal from Lee J's decision (see *Tan Siew Tian v Lee Khek Ern Ken* [2008] 3 SLR 941) ("*Tan Siew Tian*–CA"). The Court of Appeal decided that Lee J was wrong in concluding that the new subsidiary proprietors of the two units had to sign the collective sale agreement within the permitted time. Accordingly, the signatures by the previous owners were good enough and would be taken into account to meet the 80% requirement. In the circumstances, there was compliance and there was no need for the Court of Appeal to address the further issue as to the consequence of the particular non-compliance which Lee J had found.

29 In the circumstances, I did not agree with Mr Liew's suggestion that in not expressing its disapproval of Lee J's approach or the consequence of non-compliance, the Court of Appeal had adopted Lee J's stricter approach. Also, as I have said, I did not agree that Lee J had adopted the stricter approach although I accepted that the earlier parts of his judgment might have given that impression.

30 I come now to another decision which Mr Lee relied on. This was a decision of Choo J delivered

on 25 June 2008 which was one day after the Court of Appeal delivered its decision in *Tan Siew Tian*-CA. This was the case of *Chang Mei Wah Selena v Wiener Robert Lorenz* [2008] 4 SLR 385 ("*Chang Mei Wah*").

31 In that case, one of the complaints was identical to the one before me, *ie*, that the notice of the application to the STB was not affixed to a conspicuous part of every building in the development there, *ie*, Gillman Heights, as was required under the LTSA, and consequently, a false declaration stating that the notices were so affixed was false. The STB rejected that complaint and Choo J also rejected it. In doing so, Choo J referred at [31] to a new s 84A(3) and a new s 84A(7C) which was effective from 4 October 2007.

32 The new s 84A(3) is expressly made subject to the new s 84A(7C). The latter provision makes it clear that an STB "shall not invalidate an application to the Board for an order under subsection (1) or s 84D(2), 84E(3) or 84FA(1) by reason only of non-compliance with any requirement in the First, Second or Third Schedule if the Board is satisfied that such non-compliance does not prejudice the interest of any person …".

33 After referring to these new provisions, Choo J said, also at [31], that it was therefore open to the Board to find that the placing of the notices on various notice boards had provided adequate notice about the collective sale and that no party had been prejudiced. He also referred to *Ng Swee Lang*-HC at [31].

34 Mr Lee noted that the case before Choo J actually involved the LTSA before the amendments in October 2007. He submitted that Choo J was relying on the approach in *Ng Swee Lang*-HC and Choo J's reference to the new provisions was merely to reinforce the decision in *Ng Swee Lang*-HC.

35 It was not clear to me how much Choo J was influenced by the new provisions and whether he considered the new provisions as being merely declaratory of the existing position.

36 In *Ng Swee Lang*-HC, there was a submission that the new provisions were to amend the existing positions as they showed that prior thereto an STB did not have power to disregard any technical irregularity. Ang J said that it was not permissible to refer to the explanatory statement of the relevant Bill leading to the introduction of these, and other, provisions.

37 In any event, whether Choo J's decision in *Chang Mei Wah* can be used as authority to support the proposition that a technical breach will not invalidate an application to an STB if there is no prejudice to anyone, there are still the two decisions in *Ng Swee Lang*-HC and *Ng Swee Lang*-CA which are authorities in support of that proposition and I was bound by the decision in *Ng Swee Lang*-CA.

38 Even if I was not bound by any authority, I would have preferred the approach under such a proposition. While a strict approach may arguably lead to some certainty, I was of the view that it would be too harsh to invalidate every application for any non-compliance however slight and inconsequential. The reality is that there are many procedural requirements to be complied with before and when an application is made for a collective sale order. I am driven to conclude from the many cases that have come before the courts that, notwithstanding the assistance of marketing agents and solicitors, such requirements are observed more in the breach than in the compliance. The result then would be that it will be virtually certain that many applications will fail for technical reasons alone. I did not think that was what Parliament intended before the 2007 amendments. I am glad to note that it has since shown, going forward, that that is not its intention.

39 In the circumstances, I rejected the Minority's complaint under Issue No.1.

Issue No. 2 – Failure to comply with all the relevant regulations in the LTSA and in the Building Maintenance and Strata Management (Strata Titles Board) Regulations 2005 ("BMSMR 2005") under the BMSMA 2004, in particular the requirements relating to Form 1A

40 Paragraph 4 of the Schedule to the LTSA requires an application for a collective sale order to be made with various documents enclosed with the application. Paragraph 4(*d*) refers to the inclusion of "such other document as the Board may require".

41 Mr Liew submitted that "In the Forms for Matters under Part VA of the [LTSA], and the [BMSMR 2005], there is a requirement for Form 1A to be filed in any [a]pplication to the STB".

42 Form 1A is a template of an affidavit of service in which paragraph 3 of the affidavit states that a copy of the application has been served on each of the minority owners who have not signed the collective sale agreement:

> (i) by placing a copy of the application under the main door of each of the minority owners' units and
>
> (ii) by affixing a copy of the application to a conspicuous part of each building in the development.

43 Mr Liew stressed that in fact Form 1A, *ie*, an affidavit of service, was included with the Application. In so doing, the Majority must have recognised the need for such an affidavit and could not be heard to say otherwise. However, he submitted that the affidavit of service was defective because, apparently, it confirmed the service of the Application on the Minority (and other objectors) when in fact only the Notice and not the Application itself had been served. Even then, the Notice had not been served in strict compliance with the LTSA for the reason stated in Issue No. 1.

44 On the other hand, Mr Lee submitted that although an affidavit of service was included with the Application, the affidavit of service was not, strictly speaking, required. The affidavit of service was listed as one of the documents in a website of the STB but was not specifically required under the applicable primary or subsidiary legislation. As for the affidavit of service which had been included, he submitted that it had erroneously referred to service of the Application when the Application had admittedly not been served on the Minority. The affidavit of service should have referred to the service of the Notice instead. Even then, I reiterate that the Notice was in fact also not served in full compliance with the procedural requirements and the affidavit of service would still have been inaccurate even if it had been corrected to refer to service of the Notice and not service of the Application.

45 The RG Board's conclusion on this issue is stated in [20] of its GD as follows:

> 20. The Board is of the opinion that Form 1A is a procedural requirement but it is not a statutory requirement that parties must file it. Regulation 28 of the BMSMR empowers the Board to waive procedural requirements if there are exceptional circumstances justifying such waiver. Even assuming it is a statutory requirement to file Form 1A, the Board is of the opinion that failure to file it should not render the Applicants' application invalid as the procedural irregularity did not prejudice or significantly impair the objectors' right in filing their objections. In the Board's opinion, Parliament would not have intended that the approval of the sale by the Board should be invalidated by reason of such a procedural irregularity. For the above reasons, the Board is of the

view that the Applicants' failure to file Form 1A or to serve the application on the minority owners does not invalidate this application.

46 This led Mr Liew to submit that the RG Board was wrong in concluding that the Majority had failed to file Form 1A. As mentioned above, the Majority did file Form 1A (by including it with the Application) but the substance of Form 1A was incorrect, for the reason mentioned above.

47 Although Mr Liew's submissions gave the impression that Form 1A was a specific requirement of the primary or subsidiary legislation, the fact was that Form 1A was not a specific requirement of such legislation. Neither did either of such legislation require the Application to be served on the Minority although common sense would suggest that it should be served or, at the minimum, the Notice should stipulate that a copy of the Application would be sent to any SP requesting the same or could be inspected (and a copy taken) from a specified location.

48 As mentioned, Form 1A was one of the documents specifically listed on the STB website. What Mr Liew meant was that because Form 1A was listed on the STB website, this was a document coming within the meaning of "such other document as the Board may require" in paragraph 4(*d*) of the Schedule. It is therefore appropriate to set out paragraph 4 in its entirety:

> **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 —
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> (i) the date the permitted time for the collective sale agreement started;
>
> (ii) the date on which the 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), 84E(3) or 84FA(2), 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 or 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**.
>
> [emphasis added]

49 I did not agree with Mr Liew. It is useful to bear in mind that there is no one permanent entity known as "The Strata Titles Board". The definition of "Board" in s 3 of the LTSA is that it means "a Strata Titles Board constituted under the BMSMA 2004". Note that it refers to "a" Strata Titles Board and not "the" Strata Titles Board.

50 Sections 89 and 90 of the BMSMA 2004 states:

Strata Titles Boards

89. —(1) There shall be one or more Strata Titles Boards to be presided over by a president or deputy president.

(2) Unless otherwise provided by this Act or the Land Titles (Strata) Act (Cap. 158), a Board shall determine by mediation-arbitration every dispute of which it has cognizance and every matter with respect to which it has jurisdiction under this Act or that Act.

(3) Except where otherwise provided by this Act or the Land Titles (Strata) Act, a Board shall, in relation to a dispute of which the Board has cognizance or any other matter with respect to which the Board has jurisdiction under this Act or that Act, be constituted by —

(a) the president or a deputy president; and

(b) 2 or 4 members selected by the president for the purposes of the dispute or matter from the panel constituted under section 90(4).

(4) Any party to a dispute of which a Board has cognizance or a matter with respect to which a Board has jurisdiction under this Act or the Land Titles (Strata) Act may, within the prescribed period and for any reasonable cause, object in writing to any member of the Board selected by the president under subsection (3)(*b*).

(5) The Board shall be constituted —

(a) upon the expiration of the prescribed period if the registrar appointed under section 99(1) does not earlier receive any objection under subsection (4);

(b) if any objection received under subsection (4) is allowed by the president, upon the selection of another member by the president; or

(c) if any objection received under subsection (4) is disallowed by the president, upon the decision to disallow the objection.

President, etc., and panel

90.—(1) The Minister shall appoint a president of the Boards.

(2) The Minister may appoint such number of deputy presidents of the Boards as he may consider necessary.

(3) No person shall be appointed as the president or a deputy president of the Boards unless the person is a qualified person within the meaning of the Legal Profession Act (Cap. 161).

(4) For the purpose of enabling the Boards to be constituted under this Part, the Minister shall appoint a panel consisting of such number of persons as he may consider necessary and shall publish their names in the *Gazette*.

(5) The president, a deputy president and any person appointed as a member of the panel

constituted under subsection (4) shall, subject to subsection (6), be appointed for a term not exceeding 3 years, and shall be eligible for reappointment.

(6) The Minister may at any time terminate the appointment of the president or any deputy president or member of the panel constituted under subsection (4), and fill any vacancy in its membership.

51 Therefore, it seemed to me that each board is constituted for a specific purpose which is usually to consider an application for a collective sale order and upon being constituted, that board becomes "the" Board for the purpose of the overall scheme under the LTSA and the BMSMA 2004.

52 Likewise, paragraph 4 of the Schedule to the LTSA starts with a reference to "a" Board and paragraph 4(*d*) then refers to such other document as "the" Board may require. I was of the view that the reference to "the" Board in paragraph 4(*d*) was in turn a reference to the particular board which had been constituted to hear the Application. In other words, the reference to "such other document as the Board may require" was a reference to such *ad hoc* document as the RG Board might require and not such document as might be listed on a website even though that website was referred to as the STB website.

53 In the circumstances, I did not agree that Form 1A was a requirement of "the" Board for the purpose of paragraph 4(*d*). Indeed, from the notes of evidence of the hearing before the RG Board, it seemed that the RG Board were also attempting to find out how this Form 1A had come about. The fact that the Majority did in fact include a Form 1A did not add anything. The fact that a document is included does not mean that it is a mandatory requirement. It may be that the Majority's solicitors also thought that it was such a requirement before they were bitten by the Minority's objection but two wrongs do not make a right. In any event, it would have been safer to include a form if there was uncertainty or confusion.

54 Since Form 1A was not, strictly speaking, required, non-compliance with the content of Form 1A could not invalidate the Application.

55 I accepted that the RG Board was wrong in saying that Form 1A was not filed but that error was immaterial in the circumstances. Even if I was wrong and Form 1A was one of the required documents to be submitted, that form was submitted although the contents were inaccurate for the reason stated above.

56 I come now to Mr Liew's point that contrary to what the submitted Form 1A had stated, the Application was in fact not served at all on the Minority. Then again, there was no requirement, outside of Form 1A, for the Application to be served. Assuming that it was a requirement that the Application was to be served and this was not done, what then?

57 Mr Liew submitted that even up to the time of the hearing before me, the Minority had not been served with a copy of the Application. It was then suggested that they and he did not know what orders the Majority were seeking from the RG Board. I was surprised by such a suggestion. Mr Liew had vigorously contested the Application before the RG Board. When I asked Mr Liew whether he had asked for a copy of the Application when he appeared before the RG Board, he said he had not. Having not done so, it seemed remarkable to me that he was seeking to make the absence of service of the Application part of an issue before me. It was quite clear to me that the reason why Mr Liew had not sought a copy of the Application when he appeared before the RG Board was that he did not need it to pursue the objections of the Minority. Apparently, he had still not received a copy from the Majority's solicitors by the time the hearing before me had commenced. It was not clear to me

whether he had sought the same from the Majority's solicitors.

58 In any event, I was satisfied that there was no prejudice to the Minority and in accordance with my decision on Issue No.1, I was of the view that the absence of service of the Application did not invalidate the Application, even if there was a requirement that the Application be served.

59 I would add that as Mr Liew had mentioned before me that he still did not have a copy of the Application, I directed that this be furnished to him by the Majority's solicitors and this was promptly done.

60 I would also like to add the following. I was informed by Mr Lee that Form 1A has been removed from the website. I was also informed by him that an application was supposed to be accompanied by many documents making it (with the accompanying documents) a rather voluminous and unwieldy bundle. In any event, I understood from Mr Lee that the enclosures too are no longer required to be submitted with an application.

Issue No. 3 – The CSA was not signed by subsidiary proprietors holding at least 80% of the share value of RG

61 Section 84(1)(*b*) LTSA provides that an application to the Board for a collective sale order may be made by the subsidiary proprietors holding not less than 80% of the share value of a development. The Minority's third issue was that the CSA was not signed by subsidiary proprietors holding at least 80% of the share value for the reason stated below.

62 Clause 14(b)(i) of the CSA had stipulated that the MSP was not to be less than S$68.5 million. The close of an EOI exercise was on 18 April 2007 and it was learned then that Premier's offer of $76.8 million was the highest. The Conditional SPs then signed the CSA and inserted a condition that their signatures would not be valid if the MSP was lower than $76.8 million. Mr Liew submitted that as this was a different sum from the MSP stipulated under clause 14(b)(i), the Conditional SPs had not agreed with all the terms of the CSA.

63 Mr Liew also submitted that although clause 14(b)(ii) of the CSA had stated that the SC might raise the MSP without seeking the consent of those who had signed the CSA, the SC was required under that provision to notify the Majority of the decision to raise the MSP by a written notice. The SC did not do this until late July 2007, just before the Application was submitted.

64 Mr Lee submitted that the Conditional SPs had signed the CSA on 28 April 2007 and that the SPA with Premier Land Pte Ltd ("Premier"), the eventual purchaser, was for a sale price of $77.3 million with the possibility of an additional $10 million if two parcels of adjacent state land were granted to Premier. The condition of the Conditional SPs had been met.

65 As for any breach to notify the others who had signed the CSA about the higher revision of the MSP, Mr Lee submitted that it was for the other signatories to complain about such a breach.

66 In *Liu Chee Ming v Loo-Lim Shirley* [2008] 2 SLR 764 ("*Liu Chee Ming*"), I had said at [50]:

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

67 Understandably, none of the other signatories had objected to any breach of clause 14(b)(ii). They had obtained a price higher than the MSP stipulated in clause 14(b)(i). However, Mr Liew's argument was that there was no consensus *ad idem* among all the Majority at the relevant time. Looking at clause 14(b)(ii) in a common-sensical way, I was of the view that there would be consensus *ad idem* if the SC did not object to the condition, which was the case. The MSP had been effectively raised to $76.8 million. This condition was met.The notification to the others was an additional step that should have been taken but the omission to do so did not vitiate the CSA as between all the Majority.

68 Hence, I was of the view that by the time the Application was made (on or about 3 August 2007), the requisite percentage of share value had been obtained.

69 The Minority also sought to object on the basis that the signature of another SP on the CSA, one Mary Winifred Yii ("MWY") was not valid. She appeared to have written her name instead of signing it. The Minority maintained their objection, even though there was affidavit evidence from MWY that that was her signature, *ie*, that was the way she signed her name. They objected on the basis that MWY's affidavit should not have been admitted.

70 The short point was that even if MWY's signature was invalid, the requisite percentage of share value had been obtained, *ie*, the 80% had been achieved even without her signature.

71 In the circumstances, I ruled against the Minority on Issue No. 3.

Issue No. 4 – The transaction was not in good faith having regard to the sale price in the SPA

72 Mr Liew submitted that the sale price in the SPA was not obtained in good faith because:

(a) the valuation report obtained by the Majority to support the application to the Board was biased, inaccurate, not substantiated by concrete evidence and not representative of the true market value of the Development and

(b) the sale price was not obtained at arm's length.

Mr Liew raised many arguments in respect of each of these two sub-issues.

73 Before I deal with Mr Liew's arguments, I should mention one point. The Majority had obtained an independent valuation report dated 20 July 2007, that is, after the SPA had been entered into. The report valued the land on which RG stood at $66.65 million.

74 In the recent decision of the Court of Appeal in *Ng Eng Ghee and others v Mamata Kapildev Dave and Others (Horizon Partners Pte Ltd, intervener)* [2009] SGCA 14 ("*Horizon Towers*"), the Court of Appeal said at [160] that the sale committee there had "a duty to obtain an independent valuation prior to settling on the final sale price. Otherwise, there would have been no way to gauge whether or not it is obtaining a fair (not to mention the best) price for the property".

75 While the stated rationale for imposing such a duty is logical, the applicable provisions of the LTSA suggested that there was no requirement, as such, for the SC to obtain an independent valuation before the SPA was entered into. Under paragraph 1(*e*) of the Schedule to the LTSA, the Majority need only serve the Notice with a copy of various documents and paragraph 1(*e*)(vi) in particular requires "a valuation report that is not more than three months old" (see also *Ng Swee Lang*-HC at [115]).

76 I would add that even an amendment in October 2007 only requires the valuation report to be on the value of the development concerned as at the date of the close of the public tender or auction. This suggests that the valuation report may be obtained after that date but the point of reference must be as at the date of the close of the public tender or auction.

77 Indeed, in fairness to Mr Liew, he did not assert before me that because there was no valuation report at the time the final sale price was settled, the SC was in breach of any duty. Neither did Mr Liew raise the absence of such a valuation report as a factor in the overall assessment.

78 The first sub-issue raised by Mr Liew was a criticism of the valuation done by Ee, the Majority's valuer. As stated above, he had provided a valuation report dated 20 July 2007 valuing the land on which RG stood at $66.65 million.

79 Before me, Mr Liew pursued his arguments in the following sequence.

80 Ee had adopted the Residual Approach and Market Comparison Approach and taken the average of the values from each approach. However, his use of each approach was faulty.

81 As regards the Market Comparison Approach, Ee had used three comparable transactions: H J Heights in District 21 in August 2006 and Regent Gardens and Hong Leong Gardens condominium in District 5 in 2007 with some adjustments made for differences in location and time.

82 Ee said he had not made any adjustment on the price for HJ Heights because both HJ Heights and RG were in District 21 even though HJ Heights was nearer to Bukit Batok which Mr Liew argued was a less desirable location.

83 As for Ee's use of Regent Gardens as a comparison, Mr Liew submitted that he should not have done so because an application for a collective sale order for that development had been rejected as the sale price was below the market price.

84 There was no specific complaint about Ee's use of Hong Leong Gardens condominium as a comparison. However, Mr Liew submitted that Ee was wrong to exclude two other developments, Spottiswoode Apartments and Fairways condominium from comparison because his only reason for excluding them was a "Sentosa" factor which he did not elaborate on.

85 Mr Liew also submitted that individual units in estates near RG like Signature Park were fetching prices higher on a per square foot basis than the collective sale price for RG, that is, $687 per square foot for Signature Park as compared with about $462 per square foot for RG. He submitted that the SPs of RG would have been able to achieve higher prices selling their own units individually.

86 As for the Residual Land Valuation Approach, it was common ground that this would be based on the Gross Development Value ("GDV") which is the price at which a new unit on the same land would fetch at the material time, *ie*, May 2007. Ee had estimated the GDV for the land in RG at $850 psf. However, Mr Liew submitted that Ee did not elaborate to support his estimate of the GDV at $850 psf. He also submitted that Ee was wrong not to take Garden Vista, which was a new 99-year leasehold condominium in District 21, into account. Mr Liew said that Ee's reason that it was in a more superior location because of its Dunearn Road address was contrary to his position that there would be no adjustment for developments within the same district number when he was using the Comparison Approach. Furthermore, Garden Vista was about the same distance from RG as was HJ Heights although in opposite directions and RG was equally accessible to good schools and other amenities as was Garden Vista. Mr Liew also used the website of the Urban Redevelopment Authority

("URA") to show that new units (in three transactions) in Garden Vista (in District 21) and in One-North Residences (in District 5) were being sold in June 2007 at median prices of $1,039 psf and $1,004 psf respectively but Ee produced a list of caveats for transacted prices from March to May 2007 (instead of June 2007) for sales of units in these two developments to show that even if he had used those transactions in his GDV calculation, they would not affect his calculation. Ee also alleged that the three transactions which Mr Liew had relied upon was not a large enough sample to be used.

87 Mr Liew also submitted that Ee should have but did not take into account a possible future mass rapid transit line and the possibility of the alienation of nearby state land which would increase the value of the land at RG.

88 The RG Board rejected Mr Liew's arguments in [60] to [69] of its GD which I do not propose to repeat. However, I would make the following observations:

(a) If the SPs could have sold their units individually for a higher price than what was envisaged under the CSA, then the CSA would not have attracted so many signatories.

(b) The possibility of alienation of nearby state land had been taken into account in the SPA under which an additional $10 million was to be paid if Premier obtained alienation of two plots of state land referred to in the SPA. Indeed, one parcel of state land was eventually made available to Premier and the purchase price was increased to $81.3 million.

(c) For all of Mr Liew's arguments, Premier's EOI price was the highest at $76.8 million when the EOIs were opened. This price was improved to $77.3 million when the SPA was signed and eventually increased to $81.3 million, as stated above. I will elaborate later on the exercise involving the EOIs and disputes arising therefrom.

(d) The Minority did not obtain their own valuation report to counter the one obtained by the Majority. While this was not in itself fatal to their challenge against the valuation obtained by the Majority, it was a factor against the Minority. They said that they could not afford to pay for a five figure fee which was quoted for a valuation and no one they had approached wanted to do a desk-top valuation. The reason about not being able to afford the fee did not sound convincing to me given the amount of time and legal fees they would be incurring before the RG Board and any appeal therefrom. Mr Liew also said that the Minority was told that valuers did not like to disagree with a fellow valuer. I found that hard to believe as it is not uncommon for parties to obtain valuations which differ when there is a dispute over the value of real property or of any other asset.

89 In any event, I could not say that the Board had erred on a point of law and I did not disturb its decision on this sub-issue.

90 I come now to the second sub-issue: that the sale price was not obtained at arm's length. Mr Liew made numerous arguments under this sub-issue.

91 He submitted that the SC had arbitrarily decided on the MSP to be $68.5 million and did not take into account a rapidly rising market as evidenced by the fact that Ecco had revised its offer from $59 million in January 2007 to $61 million and then to $64 million as at 16 March 2007. The $64 million was still applicable when Ecco submitted its EOI during an exercise which invited EOIs to be submitted. The SC also did not write to the URA to consider increasing the plot ratio for redeveloping the land or to apply for alienation of state land.

92 Mr Liew submitted that there was no circulation of minutes of the SC. He also submitted that the SC had sent a circular dated 29 March 2007 to convene a meeting on 31 March 2007 of SPs on a proposed CSA and the MSP of $68.5 million. This was an unreasonable rush to pressurise SPs to agree to the CSA. Furthermore, the CSA already contained the name of the property consultant, that is, ERA, and the solicitors, that is, R&T. He submitted that there was no consultation with SPs on these names and the fees of ERA and R&T were higher than those quoted by others. The SC had also obtained the signatures of SPs of eleven units to the CSA before the intended meeting on 31 March 2007. Together with members of the SC, there would be more than 20% of the share value in support of the intended CSA. All these steps were taken to frustrate the attempts of one Ang who had sent an earlier circular dated 16 March 2007 to the SPs to state his intention to form an alternative SC. There was also no consultation with SPs on whether the sale should be by way of EOIs or public tender or private treaty.

93 Mr Liew submitted that the EOI exercise was conducted in an improper manner for many reasons:

(a) Poon had been allowed to retrieve an envelope which contained an EOI, from, apparently, Premier which was superceded by another envelope from Premier which had been submitted on the closing date, *ie*, 18 April 2007. It was said that the fact and the substance of the withdrawn EOI was not disclosed to SPs in the afternoon of 18 April 2007 when various letters of EOI were opened at R&T's office or in the evening of 18 April 2007 at a meeting of SPs.

(b) Soh had disclosed to Elizabeth Lim (one of the Minority) that the SC knew each and every offer before the EOIs tender box was opened on 18 April 2007. It was subsequently learned on or about 24 June 2007, when a copy of the withdrawn EOI from Premier was eventually made available, that it was for $73.3 million. This was lower than the second highest EOI from First Capital for $73.6 million.

(c) None of the EOIs were circulated to SPs in the evening of 18 April 2007. Also, none of the SPs were told then that in Ecco's EOI, there was a statement that "… we will consider matching or improving our offer provided there are other genuine written offers from developers". Neither were SPs who attended the opening of the EOIs in the afternoon of 18 April 2007 told of this. Neither was Ecco approached to improve its EOIs. Although See said she did do so, Mr Liew submitted she ought not to be believed because initially she said she approached Ecco once after the EOI envelopes were opened and then she said more than once.

(d) The SC had also informed the SPs at the opening of the EOI envelopes on 18 April 2007 and at the meeting that same evening and in the SC's circular of 20 April 2007 to the SPs that Premier's EOI would lapse at midnight of 30 April 2007 but Premier's EOI itself did not contain such a deadline. Furthermore, the SPA was signed after 30 April 2007, on 12 May 2007. Goh, who was the chairman of the SC, had given evidence that the SC was informed of this alleged deadline by See after the opening of the EOI envelopes on 18 April 2007. See herself said she was told orally about the deadline the day after the opening of the EOI envelopes. Yet, the circular dated 20 April 2007 from Goh suggested that the deadline of 20 April 2007 was already mentioned at the night meeting of 18 April 2007. Mr Liew's submission was that there was in fact no such deadline and it was created by See or the SC to put pressure on the SPs to sign the CSA on or before 30 April 2007.

(e) Mr Liew also submitted that no attempt was made to ask other interested parties, aside from Ecco, to improve their offers even though some of them had said that their offers were open to a date after 30 April 2007. He suggested that See's evidence that she had approached others

after the EOIs were opened on 18 April 2007 should not be believed as her evidence wavered between contacting only Ecco or others as well and she had not shown documentary evidence to support her contention.

(f) Mr Liew submitted that according to Tan Peck Kheng and Koh who were members of the Minority, Koh was approached by See together with a representative from Premier, one Lyon Tan. After See and Koh had learned from Koh about his recent renovations, Tan offered him $20,000 in an attempt to get them to sign the CSA. On the other hand, See's version was that the discussion was on whether Premier was prepared to increase the price for the entire RG land so that owners of individual units would get more and there was no offer to pay more to Koh (and Tan Peck Kheng) only. Mr Liew's point was that See should not be believed because any question about raising the entire purchase price should be broached with the SC and not with Koh alone and the price for RG would not be dependent on Koh's renovations. Also, See had not filed an affidavit to refute the points which had been raised in the affidavit of Tan Peck Kheng and Koh.

(g) Mr Liew submitted that Goh had misrepresented to the SPs about the extent of roof leakage and water pump problems and the need to raise funds in order to pressurise them to sign the CSA.

94 The RG Board noted that there was no objection to the appointment of R&T and ERA at the meeting of 31 March 2007 even though their fees had been discussed then. Also, there was no evidence of collusion. The RG Board was also of the view that there was nothing wrong in allowing Poon to retrieve the envelope he had tendered at the meeting of 31 March 2007. There was nothing wrong with the SPs of 11 units signing the CSA before the meeting of 31 March 2007 in the absence of evidence of bad faith, deceit or coercion. As for the condition imposed by the Conditional SPs which raised the MSP, the Board was of the view that only signatories to the CSA could object to that condition. As for the short interval between the letter of 29 March and the 31 March 2007 meeting, the RG Board was of the view that there was no evidence of insufficient notice to the SPs.

95 In order to better understand Mr Liew's arguments on this sub-issue, it is necessary to set out the background events in some detail.

96 See said that on or about 18 December 2006, she had received an offer from Ecco to buy RG at $59 million.

97 On 30 December 2006, letters were sent or handed by Ang to SPs to inform them that a sale committee had been formed.

98 On 3 January 2007, ERA sent a letter to SPs to attend a presentation on 6 January 2007. On 6 January 2007, there was a meeting of SPs. A presentation was made by ERA that day about the offer of $59 million.

99 Subsequently, on 16 March 2007, Ang sent or handed letters to SPs to update them on the latest developments pertaining to the collective sale. He stated that due to differences, he was no longer a member of the sale committee and that since 6 January 2007, Ecco had improved on its initial offer of $59 million twice: once to $61 million and then to $64 million. He suggested that the sale be by way of a public tender and also suggested an MSP of $68 million. He proposed to form an alternate pro-tem sale committee. He was also pitching for the job of acting as the solicitor to act for the SPs in the collective sale. He set out some quotations which I will come back to later.

100 Two days later, a sale committee (of which Goh was the chairperson) sent a letter to the SPs

dated 18 March 2007. The persons in this committee were the same persons appointed as members of the SC under the CSA and I will refer to them as "the SC" even though the first signatures to the CSA were effected on or about 29 March 2007. The letter stated that a higher price of $64 million had been received (from Ecco). It stated the intention to seek more offers by way of an EOI because a public tender needed the agreement of 80% of the owners which in turn required time to obtain.

101 Another two days later, the SC sent a letter dated 20 March 2007 to the SPs. The letter stated that they had received an email from Ang stating his intention to form an alternate pro-tem sale committee. They also referred to his letter which was distributed to the SPs on 16 and 17 March 2007 but not to members of the SC. The SC's letter reiterated the SC's intention to proceed by way of an EOI.

102 By a letter dated 29 March 2007, the SC invited all SPs to a meeting on 31 March 2007 at the Bukit Timah Community Club ("BTCC"). The heading of the letter stated that the meeting was for the presentation of a collective sale agreement and the signing thereof. A copy of the collective sale agreement was attached. The letter stated that because of the quick rising market conditions, the SC was going to recommend a higher MSP. Apparently, the MSP of $68.5 million was already inserted in the proposed collective sale agreement as were the names of R&T as the solicitors and ERA as the marketing agents.

103 Before the meeting on 31 March 2007, SPs of 11 units had already signed the CSA. At the meeting of 31 March 2007, ERA and R&T made their presentations. Also, Poon handed over a sealed envelope which he said contained an offer higher than the MSP. Gan took over custody of this envelope till he deposited it into a tender box of sorts on 18 April 2007 which was to contain all EOIs. For convenience, I will refer to the amounts expressed in the EOIs as offers or bids although there is a technical difference between an EOI and a tender in that a tender is usually a binding offer which cannot be withdrawn and an EOI may be considered more of an invitation to treat, as opposed to an offer, in law.

104 Subsequently, the SC sent letters dated 11 April 2007 to the SPs to invite them to witness the results of the EOI exercise at the office of R&T on 18 April 2007 at 3pm and to inform the SPs of a meeting in the same night also of 18 April 2007 to discuss the results of the EOIs and future direction of the collective sale.

105 In the afternoon of 18 April 2007, various persons attended at the office of R&T to witness the results of the EOI exercise. As mentioned above, Gan deposited the earlier envelope handed over by Poon into the relevant box that day. Four other EOIs were also deposited by various persons into the box that day. However, a request was made (apparently by a representative of Premier) for the return of the earlier envelope which Poon had handed over on 31 March 2007. This envelope apparently had a chop from the law firm of Seah Ong & Partners as did another envelope which contained the highest bid. However, the sizes of the envelopes were different and Gan was able to distinguish between the two. The earlier one was eventually returned unopened to Poon that same afternoon as he was the one who had first handed over the earlier envelope on 31 March 2007. The remaining four EOIs yielded the following results:

(a)	Premier	- $76.8 million (with an additional $10 million if two plots of state land were alienated to it)
(b)	First Capital	- $73.6 million

(c) Ecco - $64 million

(d) Sim Lian - $60.5 million

106 I should make the following observations as well. Unlike the EOI from Premier, none of the other EOIs provided for any uplift in the price even if both or either of two plots of state land were alienated to the developer concerned. Indeed, Sim Lian's EOI was subject to such alienation and its offer was already the lowest of the four.

107 I should also mention that although Premier was incorporated only on 16 April 2007, nothing turned on this. According to See, the real party behind Premier was an entity called LaSalle whom she described as "a very big company" and the identity of LaSalle had been revealed in the night meeting of 18 April 2007.

108 In the night of 18 April 2007, there was a meeting of the SPs when the outcome of the EOI exercise was announced.

109 Subsequently on 20 April 2007, the SC sent another letter to the SPs. This was to inform the SPs in writing of the highest offer from Premier at $76.8 million or $86.8 million if the two plots of state land were obtained. The letter also informed the SPs that Premier's offer may lapse by 30 April 2007 and urged them not to miss the boat.

110 On 28 April 2007, the Conditional SPs signed the CSA with the condition that the MSP was to be $76.8 million. I have referred to this condition under Issue No. 3. As I mentioned , the Conditional SPs brought the total share value of SPs signing the CSA beyond the 80% threshold.

111 On 5 May 2007, the SC sent a letter to all SPs to inform them that the SPs who had signed the CSA owned 82.8% of the share values. The letter also referred to the deadline of end April 2007 and said that the SC and R&T were in the process of finalising a formal sale agreement with Premier. Significantly, the letter also mentioned that over the last few days, Ang had learned that the 80% majority had been achieved and he had sent messages to Goh and to some SPs to say that he had a higher offer. Ang had held a meeting after his messages which was attended by some SPs and the SC. However, no offer to purchase was produced by Ang. Ang was asked to produce a higher offer in writing but had not done so as at the date of the letter of 5 May 2007.

112 On 12 May 2007, the SC signed the SPA with Premier.

113 On 14 May 2007, the SC sent another letter to inform the SPs that the SPA had been signed and dated 12 May 2007 and that an extraordinary general meeting (EOGM) would be held. Some details of the SPA, including the sale price, completion and the delivery of vacant possession were also given.

114 On 1 June 2007, the SC sent a letter to notify the SPs about an EOGM to be held on 24 June 2007. The EOGM was held on 24 June 2007. Copies of the EOIs were distributed including the earlier one which had been handed in by Poon and then returned to him.

115 Subsequently, the Notice was forwarded by hand to the SPs on 1 August 2007. An earlier notice dated 27 July 2007 was sent by registered post. The Application was submitted on or about 3 August 2007.

116 As regards Mr Liew's criticism that the MSP of $68.5 million was arbitrarily derived, the evidence from See was that the SC and her had used the earlier $64 million offer from Ecco as a guide and considered adding 5% to 10% onto that figure. Eventually, they settled on 7% which brought the figure to $68.48 million and they then rounded it up to $68.5 million. Even if the real reason for the $68.5 million was that it was meant to pip Ang's proposed MSP of $68 million, the Minority had not quarrelled with Ang's proposed MSP as being too low after they had received Ang's letter.

117 Mr Liew was suggesting that more work should have been done before deciding on the MSP of $68.5 million but it seemed to me that the issue was not whether the SC, or See, could be criticised for not having done more. Such criticism can be easily levelled at any sale committee or marketing agent. The issue was whether the overall conduct of the process resulting in the sale price demonstrated an absence of good faith which was quite different (see s 84A(9)(*a*)(i) LTSA).

118 Mr Liew suggested that the SC were in a rush to respond to Ang's letter of 16 March 2009 but the letter from the SC dated 20 March 2007 showed that the members of the SC were apparently unaware of Ang's letter (which was not sent to them) until the SC's letter of 20 March 2007, although I should mention that the MSP of $68.5 million was also not mentioned in either of these two letters. It was only mentioned in the proposed CSA.

119 Mr Liew also criticised the SC for not pursuing the issue of possible alienation of state land and of increasing the plot ratio to enhance the value of RG. However, the possibility of alienation of state land had been mentioned in the advertisements put up by ERA. As for the increase in plot ratio, Goh admitted that he did not pursue this with the relevant authority. It is, however, worth noting that the Chief Planner, URA had sent a letter a few years earlier dated 2 February 2000 to the management council of RG. The material part stated:

> 2 Our position on the issue of upping the plot ratios for Rainbow Gardens has already been explained in the above-mentioned letter to the Management Council. Mr Tan See Nin has also explained in his phone conversation with you that piece-meal increases to plot ratios will not be considered.
>
> 3 The Master Plan 1998 is a legally binding document. It is statutory requirement however for it to be reviewed every 5 years. Where there is a need to change the land use and/or plot ratios at that point in time, it would certainly be considered, provided there are good reasons to support it.
>
> 4 We have already tried to the best of our ability to respond to your queries on the issue of reviewing the plot ratios for Rainbow Gardens.

120 There was some suggestion by Mr Liew during the hearing before the RG Board that the SC should have provided good reasons to increase the plot ratio. He was focussing on paragraph 3 while Mr Lee focussed on paragraph 2 which stated that piece-meal increases to plot ratios will not be considered. Paragraph 3 also stated that the Master Plan would be reviewed every five years. There was a review in 2003 and the next review would therefore be in 2008 whereas the intended sale of RG was in April/May 2007. Paragraph 4 of URA's letter also suggested some exasperation on URA's part because there had already been previous queries on the plot ratio.

121 In addition, it is significant to note that even Ang did not mention the plot ratio in his letter of 16 March 2007 (to the SPs). At the end of the day, neither Ang nor anyone else , came up with an offer higher than Premier's EOI of $76.8 million, which was increased to $77.3 million when the SPA was signed or the eventual sale price of $81.3 million in view of the alienation of one plot of state

land.

122 The fact that the SC did not maintain minutes of their meetings reflected poorly on their professionalism but there was no suggestion that this omission was deliberate.

123 As regards the interval between the letter of 29 March 2007 (for a presentation of the CSA and the signing thereof) and the meeting on 31 March 2007, this was admittedly a very short timeframe. When pressed during cross-examination, Goh agreed that the short timeframe was unreasonable. Mr Liew stressed this short timeframe and Goh's admission to support his argument about an absence of good faith. He submitted that this was deliberately done to pressurise the SPs to agree to the CSA and also to agree to R&T as the solicitors and ERA as the marketing agents. By 31 March 2007, SPs of 11 units had signed the CSA and he submitted that this was the SC's strategy to present some sort of *fait accompli* to the others because the SPs who had signed, together with the members of the SC, would hold more than 20% of the share value.

124 The email evidence showed that the SC had initially thought of giving one week's notice for the intended meeting on the CSA as they had been advised by R&T to give at least one week's notice. It was Soh (a member of the SC), who suggested that 31 March 2007 be used as that was the date when the intended venue, *ie*, BTCC was available on a weekend. If that date was not taken, then there would be a delay of another two weeks and she was keen to press on. The SC then agreed to this suggestion and that was how that meeting came to be fixed on 31 March 2007. In my view, that was an unwise decision as the SPs should have been given more time to consider the CSA. However, it seemed to me that the date of 31 March 2007 was not a deliberate attempt to pressurise the SPs to agree to the CSA. Moreover, if the SPs were unhappy about that date, they could have asked for an adjournment. There was no evidence that an adjournment had been sought.

125 I also did not think that the fact that SPs of 11 units had already signed the CSA was as sinister as Mr Liew was suggesting. The SC were pushing on. If other SPs were prepared to sign first, that was their prerogative just as it was the prerogative of others not to sign yet. As mentioned, the 80% threshold was not achieved until 28 April 2007 when the Conditional SPs signed.

126 Even if the names of R&T and ERA were already inserted in the CSA as appeared to be the case, the SC had taken the view that these were the appropriate persons to use. However, in addition to the short interval, Mr Liew submitted that the quotations of these persons were not the lowest and this meant that the Minority also had to pay more. But, if he was right, this also meant that the Majority, and in particular, the SC as well, also had to pay more. It ought to have been obvious that the SC would have wanted to save money for themselves too but yet this criticism was levelled at the SC without any evidence of collusion with R&T or with ERA.

127 I come now to some details about the fees. The initial quoted fee of R&T for the conveyancing aspect was 0.25% of the sale price. This appeared to be slightly higher than that of another firm of solicitors who quoted 0.24%. R&T's total figure appeared even higher than was actually the case because they also made provision for appearances before the High Court which that other firm did not provide for. R&T's initial quote was also higher than that of Ang's.

128 Ang had quoted a fee of 0.188% of the sale price and was prepared to waive attendance fees before the RG Board and any appeal thereafter. He also proposed a consortium of marketing agents "who shall work closely with my firm" at a graduated scale being:

(a) 0.5% for a sale price of up to $70 million

(b) 0.55% for a sale price of between $70 to $75 million

(c) 0.6% for a sale price of $75 million and above

129 The SC was not minded to use Ang's services or the marketing agents he had proposed. There had already been differences with him when he was a member of the earlier sale committee. In Goh's view, Ang had undercut all other bids after he had had a chance of viewing the bids as a member of the earlier sale committee. Secondly, the SC did not believe that he had had the necessary experience. The SC appeared to be particularly impressed with Gan (of R&T) when Gan made his presentation to them.

130 I should add that eventually R&T reduced their fee for the conveyancing aspect to 0.22%. There was some suggestion by Mr Liew, when Goh was being cross-examined by him, that R&T had also undercut the others, but this might not have been a fair suggestion of R&T because the circumstances as to how they had come to reduce their fee was not explored. They might have reduced it after the SC had chosen them in principle and requested them to reduce their fee. R&T's eventual fee for the conveyancing aspect turned out to be the lowest, excluding Ang's.

131 As the SC was not minded to appoint Ang, it followed that they could not have the benefit of the graduated scale of fees he had negotiated from a consortium of marketing agents. Excluding Ang's consortium, ERA had quoted the lowest fee among the interested marketing agents.

132 I could not fault the SC for not wanting to appoint Ang in the circumstances. I would also add that as events turned out, much more work had to be done before the RG Board and the High Court than might have been anticipated in view of the many objections raised by the Minority and other dissenting SPs. If Ang had been appointed, there might well have been a question about his ability to meet such objections and his motivation or lack thereof given that he had seemed to assume that not much work would be needed and had been prepared not to charge for attendances before the RG Board and the High Court.

133 It is useful to bear in mind that the cheapest is not necessarily the best option. The trick is in getting the right balance. As events turned out, the choice of R&T was in a sense vindicated but still that choice was being criticised by Mr Liew.

134 I should also mention that according to See's evidence, her team also did not have experience in marketing collective sales although ERA as a company, did. There was no evidence that the SC knew this and, in any event, she was the one who had come up with the initial offers from Ecco as I set out above.

135 In the circumstances, Mr Liew's criticism about the choice of R&T and ERA as indicative of a lack of good faith was misplaced.

136 The next criticism related to the fact that the envelope handed by Poon on 31 March 2007 was returned to him on 18 April 2007. The evidence from Seah was that the envelope contained an earlier letter dated 31 March 2007 from his firm Seah Ong & Partners offering to buy RG at $73.3 million. This was superseded by their second letter dated 18 April 2007 in which they stated that they acted for Premier and offered $76.8 million or $86.8 million if the two parcels of state land were alienated to Premier. As I mentioned, this second letter which was opened together with three other EOIs on 18 April 2007 turned out to be the highest offer.

137 I was of the view that Mr Liew was making a mountain out of a molehill in respect of the return

of the first envelope to Poon. As Gan had explained it, any interested purchaser was not obliged to keep its EOI open. Accordingly, Gan saw no reason to refuse to return the first envelope. It was Gan, not Goh, who allowed the return. He was the solicitor in charge then. It was clear to me that he had acted *bona fide*. If he had made a mistake, that was a different matter not to be construed as something more sinister.

138 The Minority or Tan had suggested that the return demonstrated a lack of transparency in the process and that the first letter should not have been returned. It seemed to me that either option was justifiable. As I mentioned, Gan had *bona fide* thought it was alright to do so and he acted openly. There was no lack of transparency.

139 Did the return somehow give Premier an unfair advantage over the other bidders as Mr Liew was suggesting? Mr Liew failed to say how Premier was given an unfair advantage by the return of the first envelope. Premier would have been entitled to submit a second and higher offer on 18 April 2007 even if the first envelope had not been returned. Any one else could have submitted a higher offer even after 18 April 2007 and indeed, that was what Mr Liew was suggesting the SC should have done, *ie*, seek a higher offer even after 18 April 2007. I will come back to this point later.

140 Therefore, whether the return of the first envelope to Poon was specifically mentioned in the evening meeting of 18 April 2007 or not was immaterial. Indeed, there was no deliberate attempt to hide the fact of the return. It would have been foolish to do so because some of the SPs, including Tan, had attended at R&T's office in the afternoon and had witnessed the return of the first envelope.

141 Mr Liew's submission that Soh had disclosed to Elizabeth Lim that the SC knew each and every bid from the other developers before all the envelopes were opened put a different complexion on the matter. Mr Liew submitted that because the SC had such information, they, or one of them, had disclosed the information to Premier thus enabling Premier to put in a second and higher bid before the close of the EOI exercise. But for this second and higher bid, Premier's initial bid of $73.3 million would have been marginally below that of the bid from First Capital at $73.6 million and Premier would have lost out to First Capital. Here again, there was a fundamental flaw in Mr Liew's submission. Even if Premier did not make a second bid on 18 April 2007, they could do so thereafter. As I mentioned above, Premier and any one else could always make a bid even after 18 April 2007. The return of the first envelope was therefore immaterial. It was, however, used to bolster the argument that somehow Premier was being unduly preferred.

142 If Premier had been unduly preferred, it would be First Capital and the other bidders who would complain. Except for the principle that there ought to be fair play, the SPs would not have lost out in receiving a higher bid.

143 In any event, the evidence did not point to Premier being unduly favoured.

144 Firstly, it must be remembered that, initially, the only offers came from Ecco, through See. If the SC or See was minded to favour anyone, it would have been Ecco, not Premier.

145 Secondly, the second letter from Premier was not only slightly higher than First Capital's bid. It exceeded First Capital's bid by more than $3 million and the difference was even higher with the possibility of another $10 million which I have mentioned. If Premier had been privy to all the bid amounts before they were opened, Premier would not have made the offer that it did.

146 Thirdly, how would any member of the SC know all the other bids before they were opened?

Those bids were only submitted on 18 April 2007 itself and deposited into the box at R&T's office. That is where they remained until they were opened in the afternoon. Would each and every offeror orally disclose to any member of the SC or even Ms See the amount of its bid before the EOI exercise was concluded? It would have been unwise for any of them to do so and I did not think that any of them did so, let alone all of them.

147 If the Minority had carefully reflected on these points, they would have realised that their suspicion of undue preference for Premier was unfounded. In my view, Elizabeth Lim had either lied about what she had heard from Soh or she had been mistaken. Therefore, the fact that she had alluded to the substance of the conversation (as she remembered it) in a summary of objections enclosed with an email dated 13 June 2007 was neither here nor there. It is true that she had also mentioned in that summary that the first letter from Seah Ong & Partners contained an offer of $70.3 million or $73 million (it was actually $73.3 million) but that only suggested that the SC or someone in the SC knew about that figure before the EOGM on 24 June 2007. It did not show that all the bid amounts were known before the EOIs were opened on 18 April 2007.

148 As for Mr Liew's emphasis that Ecco had qualified in its EOI letter that "… we will consider matching or improving our offer provided there are other genuine written offers from developers"("Ecco's offer to improve"), See's evidence was that she did approach Ecco to see if it would improve on its offer but it did not. True, See's evidence was not entirely consistent. At one stage, she said she spoke to Ecco once on the same day after the EOIs was concluded and on another occasion during cross-examination, she said she also met up with Ecco. She also said she had spoken to other bidders after 18 April 2007 and none would improve on their offers.

149 It was also not clear from Goh's evidence whether the SC themselves gave See any specific instruction to follow up with Ecco. It is arguable whether they should have but, in any event, I was of the view that even if they had not and even if See had not followed up with Ecco or any of the other bidders, their omission did not indicate a lack of good faith. Let me elaborate.

150 If a bidder's offer from a public exercise is used as a bargaining chip to get better offers from others, it may cause him to withdraw his bid. Such a strategy by an offeree may also cause others to distrust the offeree as they may think that the offeree will also be using their offers in turn as a bargaining chip with others. That will lead to an unhealthy situation for the offeree. Indeed, it is pertinent to note that First Capital's EOI stated specifically that its offer was not to be used to obtain a more favourable price and Ecco's EOI stated that its contents should be kept confidential and any breach of confidentiality would cause its EOI to lapse. I will say more about Ecco's EOI later.

151 In *Horizon Towers*, the Court of Appeal said at [159] that where it was reasonable to do so, a sale committee should try and create competition between interested purchasers. The qualification of reasonableness to do so ought not to be forgotten. Also, in that case, a public tender exercise had closed on 15 August 2006 with no bids. Subsequently, on 3 January 2007, a sale committee member received a written offer of $510 million from Malaysian solicitors acting for a Hong Kong company. On 4 January 2007, some members of the sale committee met with representatives of a Singapore listed company, Hotel Properties Ltd ("HPL") who verbally suggested a price of $500 million. Eventually, an agreement was entered into with HPL to sell the property in question to it for $500 million. It was in these circumstances that the Court of Appeal made the observation I mentioned above. In the case before me, competition and interest had already been created by ERA before the close of the EOI exercise. There were four advertisements in three newspapers: the Business Times, the Straits Times and the Lianhe ZaoBao between 27 March to 3 April 2007. See had contacted 19 developers and met with 17 of them.

152 It seemed to me that, in the circumstances, there were points in favour of each argument as to whether there should have been follow-up with Ecco and other bidders. No one approach could be said to be categorically right or wrong. Yet, that was the submission for the Minority.

153 Coming back to Ecco's offer to improve, I did not think that the SC was obliged to follow up on it. It was really an attempt by Ecco to have a second bite at the cherry. Not only that, it seemed to me that Ecco wanted to have a second bite with the advantage of knowing what the other developers were offering. I did not think that that was a fair qualification especially when Ecco itself did not want its offer to be disclosed as I have mentioned.

154 Let me now come to another condition which was stated in Ecco's EOI which Mr Liew had overlooked. That condition was that Ecco had said that they were extending their offer of $64 million (said to be made earlier on 8 March 2007) on the basis that they would have the first priority to purchase (and if need be, to match or improve their offer). Bearing in mind also the condition which I already mentioned, *ie*, that the contents of its EOI letter be kept confidential, what Ecco therefore wanted was the opportunity to out-bid others but not for others to out-bid them. In the light of the totality of Ecco's EOI , I would not have blamed the SC even if no one had in fact followed up with Ecco.

155 It also seemed to me ironical that, on the one hand, Mr Liew was submitting that Premier was being given undue preference and yet, on the other hand, he was effectively suggesting that Ecco be given undue preference (if their conditions were followed).

156 There was also a suggestion by Mr Liew that Ecco's offer to improve was deliberately suppressed as it was apparently not mentioned in the afternoon of 18 March 2008 even though the bids were read out (perhaps only the bid amounts were read out) or in the meeting that same night. As I mentioned, copies of the various EOIs were distributed only at the meeting on 24 June 2007 (after the SPA was signed) apparently in response to inquiries made after 18 April 2007. Having considered all the evidence, I was not persuaded that Ecco's offer to improve was deliberately suppressed.

157 As for following up with other bidders, I was of the view, as I intimated, that even if there was no follow up with any of them, this did not indicate an absence of good faith.

158 Furthermore, at the end of the day, Ecco and each of the other bidders must have known soon enough that its bid was not the highest one as at 18 April 2007. None came up with a higher offer.

159 I come now to Mr Liew's submission about the deadline of 30 April 2007 to accept Premier's offer. He had submitted that the deadline had been fabricated to put pressure on the SPs who had not yet signed the CSA to do so. It is undisputed that the second letter from Seah Ong & Partners (*ie*, the one dated 18 April 2007) did not mention this deadline. Goh said he had learned about the deadline from See after the conclusion of the EOI exercise. He could not remember when he learned about the deadline. The relevant part of the letter he sent on 20 April 2007 to the SPs stated:

> 20 April 2007
>
> Dear Fellow SPs
>
> **...**
>
> **OWNERS' MEETING**

We held the Owners' Meeting on the same evening [ie, 18 April 2007] at 8.00p.m. at the Bukit Timah Community Club. At this meeting, the lawyer announced to all SPs present, the 4 bids received from the developers.

The lawyer explained that to enter into an agreement with Premier Land Development, we must have at least 80% SPs to sign the CSA. If we do not have 80% signatures by 30 April 2007, the offer may lapse.

…

SIGNING OF CSA

About 67% of owners have signed the CSA. We need another 13% owners' signatures within the next ten days.

Premier Land's offer of $76.8 million works out to a gross amount of $1,200,000.00 per SP and they have even factored in $10 million to all SPs in the event that they are successful in obtaining the two plots of land for development. Premier Land is generous enough to pay each SP $156,250 for a land we do not own!

The committee trust that you will find this offer attractive and we urge all SPs who have not signed the agreement to do so before the offer lapse. You may contact Ms See … to arrange the signing of the CSA.

Do not miss the boat!

160 As can be seen, the circular did not make it clear whether the deadline of 30 April 2007 was mentioned at the meeting (of 18 April 2007) although that might have been the impression given.

161 See's evidence on this point was also not very clear. At one stage of her cross-examination, she said that she learned about the deadline from Premier's representative, one Lyon Tan the day after 18 April 2007 and at another stage, she intimidated that it was on the same day. However, it was not disputed that Goh learned about it from her. He did not concoct it on his own. Neither side called Lyon Tan to give evidence.

162 Was the deadline part of an overall and deliberate strategy by the SC to put pressure on the SPs to sign the CSA? I did not think so. As I mentioned, Goh himself believed the deadline. Also, while the tone and substance of his circular of 20 April 2007 was urging the SPs to sign, it could not be said to be oppressive. I accepted that when a person is urged to do something, it may be said that some pressure is being applied but that in itself is not wrong. The issue was whether the pressure was such that it affected the validity of any of the signatures to the CSA or was indicative of an absence of good faith. None of the signatories sought to set aside their agreement to the CSA. Neither was I persuaded that See had lied about the deadline even though Lyon Tan should have been called by the Majority to give evidence. Even if See had lied about the deadline, I was not persuaded that it should affect the validity of the sale to Premier in the circumstances.

163 It is appropriate to deal at this point with Mr Liew's submission that Goh had misrepresented to the SPs the extent of roof leakage and water pump problems and the need to raise funds as part of an overall and deliberate strategy to put pressure on the SPs to sign the CSA. Goh did not deny that he had mentioned such problems but said it was in response to a question.

164 Looking at the evidence in totality, I was of the view that there was no such strategy as alleged.

165 I come now to a more serious allegation. This was the allegation that Koh and his wife had been offered $20,000 to persuade them to sign the SPA which they did not agree to do. As I mentioned, See's version was that she and Lyon Tan were walking around the estate when they met with Koh and his wife. Upon hearing about their recent renovations, there was a discussion about asking Premier to increase its offer so that the SPs of each unit would get more. In fact, the purchase price was increased from Premier's EOI offer of $76.8 million to the SPA price of $77.3 million before the uplift for state land alienation.

166 Mr Liew submitted that some others in the Majority were likely to have received the offer to pay them individually more to procure their signatures to the CSA but he was unable to adduce evidence beyond the inference he was advocating.

167 I would say that although Mr Liew had submitted that See's affidavit did not deal with all the specific points raised in the affidavit of Koh and his wife, See did not have sight of that affidavit before she executed hers.

168 As for Mr Liew's submission that any discussion about raising the price for the RG land would have been made with the SC and not the SPs individually, it must be remembered that the discussion came about because Koh had raised the issue with See and Lyon Tan about his recent renovations.

169 It was not in dispute that eventually the purchase price was increased by $500,000 when the SPA was signed even though Premier's EOI of 18 April 2007 was already the highest. This was probably to encourage more SPs to sign the CSA and it did lend some weight to See's version that any discussion about paying more was in respect of the entire development and not to certain SPs individually.

170 The GD did not address this allegation specifically although the RG Board must have considered and ruled against the Minority on it. The burden was on the Minority to prove its allegation of impropriety. I could not say that the Board had erred in concluding against the Minority on this point. In any event, in my view, the Minority had failed to establish it.

171 In all the circumstances, I was of the view that the Minority had not made out the second sub-issue under Issue No. 4.

Issue No. 5 - The RG Board erred in law in granting the collective sale order in that:

(i) The President of the RG Board was biased or there was a reasonable suspicion of bias on his part; and

(ii) The President of the RG Board violated the rules of natural justice in making adverse comments and in making excessive interruptions during the examination and cross-examination of witnesses during the hearing which strongly indicated that he had predetermined the Application even before considering the evidence.

172 There was a litany of complaints under Issue No. 5. Mr Liew grouped them under 44 sub-headings in his initial submissions before me, many of which overlapped. In the plaintiffs' reply submissions ("PRS"), *ie*, the reply submissions for the Minority, Mr Liew summarised his complaints in [8] to [9] and [69] to [72] as follows:

8. Taking an active part in case management or to intervene in order to understand the issues and the evidence, is in substance very different from preventing Counsel or the affected parties from asking questions, refusing to hear, and making disparaging remarks. In the Plaintiffs' Written Submissions, it has been clearly pointed out that the [President] of the Board had gone way beyond taking an active part in managing the case or intervening in order to understand the issues. The Plaintiffs have pointed out from the Notes of Evidence that the [President] coached witnesses, and shut out questions from the Plaintiffs' Counsel as well as the other respondent who acted in person, showed that the [President] had in fact entered the arena and was taking sides. This was also evident from the tone he used and the impatience he displayed. The following are just a few clear examples of the [President's] apparent bias:

(i) "Yes, they can. I see no reason why they cannot sign before"

(The [President] was in fact telling the Plaintiffs off in that he was of the view that it was alright to him that owners had signed the CSA before it was to have been explained and approved at a subsequent meeting.)

(ii) "You mean they want to sign earlier, cannot? It must be signed at the - - "

(as in (i) above)

(iii) "—wasting one whole day hearing the frivolous objections by both parties"

(The [President] was not inclined to hear the preliminary objections)

(iv) "What sort of prejudice is there? Suppose the Board allow you further objections, so where is the prejudice now?

(The [President] was clearly voicing his view that he felt there was no prejudice to the Plaintiffs)

(v) "If according to the draft, it there is amendment – if there is not amendment, that will become the --"

(The [President] was voicing his view that if there were no amendments to the draft CSA, which was not yet explained and approved at a subsequent meeting, then to him, the draft CSA would become the actual CSA).

(vi) "Where? No, prescribed form is but this is not under the rule"

(In response to the Plaintiffs' Counsel's point that Form 1A is a prescribed form, prescribed by the Strata Titles Boards and found in the Strata Titles Boards website for prescribed forms to be used for a collective sale application, the [President] in effect challenged this point in that he was of the view that the prescribed forms were not provided for under the LTSA and BMSMR).

(vii) "It is not requirement it is the direction"

(Again, the [President] was repeating his challenge as in (iii) above.)

(viii) "so we are suspecting that there may be some contradictory in this form"

(The [President] was openly supporting the Defendants' contention that there was something wrong with Form 1A, which was prescribed by the Strata Titles Boards and in fact, filed by the Defendants.)

(ix) "Is there anything law to say that I – before the opening, I cannot withdraw my letter of offer? So otherwise, do not waste time, because he has – if he has every right to withdraw the bid –"

(The [President] was clearly expressing his view that the offeror has a right to withdraw his bid)

(x) "Oh yes, if they do not look at it properly and signed their death warrant, just too bad, that is their –"

(The [President] was expressing his view when the Plaintiffs' witness, in answering the Defendants' Counsel's question, said that she did not know if the 80% SPs who signed the CSA looked at the terms properly)

(xi) "Is there anything wrong, you sign, it is confidence of the Rajah & Tann and all the property agents, I close my eyes I sign everything. Is there anything wrong?"

(The [President] was expressing that there was nothing wrong in signing a draft CSA before it was voted upon and approved at the meeting called to vote on and approve the CSA)

9. Such remarks and views which the [President] had openly expressed during the course of the hearing and the cross examination of witnesses showed that the [President] had already formed his views and prejudged the issues, and it was clear that he was in favour of the collective sale.

…

G. **<u>Conduct of STB</u>**

69. The Plaintiffs disagree that the STB was thorough and patient with them throughout the hearing. In fact, the Plaintiffs submit that the [President] of the STB was especially impatient, and refused to hear or allow many arguments put forth by the Plaintiffs' Counsel.

70. The reason why the Plaintiffs maintain that the [President] has shown bias or a likelihood of bias is because it was the [President] who excessively and unnecessarily interrupted and made disparaging remarks, preventing a fair hearing, whereas the other members of the Board only raised questions when they needed clarification.

71. Taking an active part in case management or intervening to understand issues and evidence is vastly different from making derisive remarks of "wasting time", and entering the arena, as the [President] had obviously done, as set out in the Plaintiffs' Written Submission, and as elaborated in paragraph 8 herein regarding evidence as gathered from the Notes of Evidence of the [President's] prejudgment of issues. In this case, the [President]:

(i) interrupted the examination of the witnesses by the Plaintiffs' Counsel;

(ii) treated the witnesses on the Plaintiffs' side in an unequal and inconsistent manner;

(iii) asked questions that were directed at obtaining concessions from the Plaintiffs rather than at clarifying points;

(iv) kept on harping on the issue of the Plaintiffs "wasting time";

(v) made several uncalled for disparaging remarks.

72. The Plaintiffs disagree that the [President's] active role in case management extended to both the Defendants' and well as the Plaintiff's Counsels. The [President] allowed the Defendants' Counsel to carry out his cross examination with minimal interruption and did not make disparaging remarks the way he did with the Plaintiffs' Counsel. The 3 examples given by the Defendants in their Reply Submissions pale in comparison to the numerous occasions the Plaintiff's Counsel and the Plaintiffs as well as the other Respondents in the Application were interrupted and told off by the [President]!

173 A number of cases were cited by Mr Liew for the legal principles. He and Mr Lee had proceeded on the basis that Issue No. 5 was to be dealt with on the basis of an adversarial system and so did I. Since then, the Court of Appeal has given its judgment in *Horizon Towers* in which it said at [173] and [174] that the proceedings before an STB are inquisitorial and not adversarial. Nevertheless, as I had dealt with Issue No. 5 on the basis of an adversarial system before the RG Board, I need refer only to a recent decision of the Court of Appeal in *Mohammad Ali bin Johari v PP* [2008] 4 SLR 1058. In that case, Justice Andrew Phang Boon Leong said at [175]:

It is appropriate, in our view, to summarise the applicable principles that can be drawn from the various authorities and views considered above, as follows (bearing in mind, however, that, in the final analysis, each case must necessarily turn on its precise factual matrix (see also above at [162])):

(a) The system the courts are governed by under the common law is an adversarial (as opposed to an inquisitorial) one and, accordingly, the examination and cross-examination of witnesses are primarily the responsibility of counsel.

(b) It follows that the judge must be careful *not* to descend (and/or be perceived as having descended) into the arena, thereby clouding his or her vision and compromising his or her impartiality as well as impeding the fair conduct of the trial by counsel and unsettling the witness concerned.

(c) However, the judge is not obliged to remain silent, and can ask witnesses or counsel questions if (*inter alia*):

(i) it is necessary to clarify a point or issue that has been overlooked or has been left obscure, or to raise an important issue that has been overlooked by counsel; this is particularly important in criminal cases where the point or issue relates to the right of the accused to fully present his or her defence in relation to the charges concerned;

(ii) it enables him or her to follow the points made by counsel;

(iii) it is necessary to exclude irrelevancies and/or discourage repetition and/or prevent undue evasion and/or obduracy by the witness concerned (or even by counsel);

(iv) it serves to assist counsel and their clients to be cognisant of what is troubling the judge, provided it is clear that the judge is keeping an open mind and has not prejudged the outcome of the particular issue or issues (and, *a fortiori*, the result of the case itself).

The judge, preferably, should not engage in sustained questioning until counsel has completed his questioning of the witness on the issues concerned. Further, any intervention by the judge during the *cross-examination* of a witness should *generally* be *minimal*. In particular, any intervention by the judge should not convey an impression that the judge is predisposed towards a particular outcome in the matter concerned (and *cf* some examples of interventions which are unacceptable which were referred to in *Valley* (see [138] above)).

(d) What is crucial is not only the quantity but also the qualitative impact of the judge's questions or interventions. The ultimate question for the court is whether or not there has been the possibility of a denial of justice to a particular party (and, correspondingly, the possibility that the other party has been unfairly favoured). In this regard, we gratefully adopt the following observations by Martin JA in *Valley* (reproduced above at [138]):

> Interventions by the judge creating the appearance of an unfair trial may be of more than one type and the appearance of a fair trial may be destroyed by a combination of different types of intervention. The ultimate question to be answered is not whether the accused was in fact prejudiced by the interventions but whether he might *reasonably* consider that he had not had a fair trial ***or*** whether a reasonably minded person who had been present throughout the trial would consider that the accused had not had a fair trial …
>
> [emphasis added in bold italics]

(e) Mere discourtesy by the judge is insufficient to constitute excessive judicial interference, although any kind of discourtesy by the judge is to be eschewed.

(f) Each case is both *fact-specific as well as context-specific*, and no blanket (let alone inflexible) rule or set of rules can be laid down.

(g) The court will only find that there has been excessive judicial interference if the situation is an *egregious* one. Such cases will necessarily be *rare*. It bears reiterating what we stated earlier in this judgment (at [125] above):

> [T]he argument from judicial interference cannot – and must not – become an avenue (still less, a standard avenue) for unsuccessful litigants to attempt to impugn the decision of the judge concerned. This would be a flagrant abuse of process and will not be tolerated by this court. Parties and their counsel should only invoke such an argument where it is clearly warranted on the facts …

174 I will now refer to the allegations in PRS about coaching witnesses and those stated in [71] of PRS with references to some of the 44 sub-headings and references to illustrations thereunder contained in Mr Liew's initial submission for Issue No. 5. References to the Plaintiff's (Minority's) Bundle of Documents will begin with the prefix "PBD" and then the page numbers.

175 As regards the allegation about the President coaching witnesses, this allegation was covered by, for example, sub-headings (vii), (x), (xiii), (xiv), (xviii) and (xxx) of Mr Liew's initial submission for

Issue No. 5.

176 Using sub-heading (x) as an illustration, this referred to the following exchange on 4 February 2008 (at PBD 2647):

Mr Liew:	Now Ms See, just to clarify, on 16th February, why did you attention this quotation to Mr Richard Goh? That is all.
The [President]:	What is that?
Panel Member:	Huh?
Mr Liew:	Why did you send this quotation to Mr Richard Goh?
The [President]:	Why? You want to get the job. Why, like lawyers, if she sends in, there is nothing wrong in that. Is there anything wrong if you send it?
A.	No.

177 While the above did suggest that the President was answering for the witness, See and was taking the side of the Majority, as well as being impatient, it must be remembered that there was actually no issue about See having sent a quotation (of fees) to Goh unless Mr Liew was fishing to find some fault with the entire process. Besides, a consideration of the notes of evidence thereafter shows that Mr Liew was allowed to pursue this question which See answered by saying that she sent the quotation to Goh because he was the one she had liaised with.

178 Another illustration was sub-heading (xxx). This referred to the following exchange on 31 January 2008 (at PBD 2516 to 2519):

Mr Liew:	I actually wanted to ask and say, look, this letter was sent by Mr Goh to these people, the handwriting on its right side was in fact - -
[The President]:	Was by him?
Mr Liew:	- - his signature.
[The President]:	But he says he didn't see.
Mr Liew:	He says he didn't - - he had no notice of this letter.
[The President]:	Huh? Have a look whether that's your signature there.
Panel Member:	Is that your signature?
A.	Sorry, sir, I need to rectify, sir. That was - -

[The President]: What is that?

A. That was my signature, sir.

[The President]: Your signature?

A. Sorry, sir.

[The President]: But you didn't see?

A. I really didn't see because I just - -

[The President]: You see first then before you answer, you are creating a lot of - -

A. Sorry, sorry.

[The President]: - - confusion. Look at the letter, there is no hurry, you know. There is no haste, you know, we all are not going to – this is not another en bloc sale, you know, you just go through the letter and say whether it's sent - -

Mr Liew: Sir, that is our point.

[The President]: - - otherwise your evidence - -

Mr Liew: That is why we said that our instruction - -

[The President]: - - you said "No, I have not seen this" but your initial is there.

Mr Liew: - - was that he knew about it. It was given to him as the chairman and that he actually sent it to the members, and there was this issue that he was well aware of.

[The President]: No, but inadvertently he must have forgotten, even his signature, he has forgotten, so what is there - -

A. Yes, sir.

Mr Liew: But I want to - - at least be fair, sir, to him, at least be fair to my clients and to everybody that he said that he didn't know about this letter.

[The President]: Yes.

Mr Liew: I have to point out that he actually sent this letter out to people; that was his signature.

A. But that was 2000, sir, I have forgotten about it.

[The President]: Yes, he has forgotten about it already.

Mr Lee: Sir, I am thankful for that clarification because my questions were all surrounding - - based on the fact that Mr Richard Ng -- Mr Richard Goh had seen this letter.

Now, Mr Goh, now that we -- now you are reminded that you have seen this letter before --

A. Yes.

Q. - - can you look at paragraph 2 with me of this letter and it addresses an application or request to up the plot ratio for Rainbow Gardens and it says:

Your -- "Our position on issue of upping the plot ratio has already been explained and they say that piecemeal increases will not be considered", will not be considered.

Now that you have seen this again today, today this paragraph now that you have seen this paragraph and you know URA's position is piecemeal increases in plot ratio will not be considered, would you have applied to the URA to increase a plot ratio in year 2007 before the revision of masterplan?

A. I will not, sir.

179 The above exchange pertained to a letter which Goh had said he did not see but it turned out that his signature was on it. It is true that the President's response that Goh must have forgotten about it appeared to suggest a way out for Goh and the President should not have said aloud that Goh must have forgotten about it.

180 However, I would add that the letter was in respect of the possibility of an increase in plot ratio and it was accepted that the SC did not follow up on the plot ratio. I have elaborated on the issue about the plot ratio under Issue No. 4 and will not repeat what I have said.

181 I would also point out that the above exchange demonstrated the President's frustration or impatience with a witness for the Majority while Mr Liew was complaining about how witnesses for the Minority had been treated.

182 As regards the allegation about the President's interruptions about the examination of witnesses by Mr Liew, this allegation was covered by, for example, sub-headings (v), (vi), (ix), (xix), (xxii), (xxvii).

183 Using sub-heading (v) and the first cross-reference thereunder as an illustration, as there were many cross-references, the first referred to the following exchange on 29 January 2008 (at PBD 2139 to 2140):

Mr Liew: 28th April. All right, so what I am trying to establish, sir, is this. Mr Goh says that look, the three of them signed on 28th April, they put this condition, signature not valid unless you get not less than 76.8. But by the time they signed the sale and purchase agreement with the developer, which is on 12th May, about two weeks later or about a week later, they are saying that because they signed at that point in time, they achieved that minimum. You know, therefore these three signatures must be valid, all right. That is their point. And the simple point is that because once they signed the CSA, they are bound by the CSA. That is their point, you see. So I need to establish that because I am moving on into the CSA itself, you see.

[The President]: Well, that is for submission what.

Mr Liew: No - -

[The President]: Because they say I am selling it with certain condition.

Mr Liew: Yes, I know.

[The President]: As long as they come to tender, you get this price, I will sell.

Mr Liew: I understand, sir.

[The President]: But before that, you are saying that even before that, they must have - - they must get the price minimum - -

Mr Liew: No, no, to establish the fact, you see, Mr Goh basically says this, there is these three - - you see, if you take into account these three, if their signatures are not valid, it may affect the 80 per cent, they may not even achieve the 80 per cent. So I am trying to establish that. You see, the 80 per cent signed with a condition, and the condition is that you must have a minimum sale price, right.

[The President]: Yes.

184 The above exchange was in respect of Issue No. 3. It will be recalled that the Conditional SPs had signed the CSA with the condition that the MSP was $76.8 million whereas under the CSA, the MSP was $68.5 million. It seemed to me that the facts in respect of those signatures were not in dispute. Whether the condition invalidated the earlier signatures of other SPs or the CSA in its entirety was, rightly, a matter for submission. There was no need to cross-examine Goh on it.

185 Having said that, I accepted that not all the President's interruptions cited by Mr Liew were as clear cut. I also accepted that the President should not have interrupted as much as he did.

186 As regards the allegation that the President had treated the witnesses on the Minority's side in an unequal and inconsistent manner, this allegation overlapped with the other allegations like the next allegation and the allegation about disparaging remarks.

187 As regards the next allegation that the President had asked questions that were directed at obtaining concessions from the Minority rather than at clarifying points, this allegation was covered by, for example, sub-headings (xxxiv) and (xxxviii).

188 Using sub-heading (xxxiv) as one illustration, this referred to, *inter alia*, the following exchange on 5 February 2008 when Elizabeth Lim (one of the Minority), was on the witness stand (at PBD 3150 to 3153):

[The President]:	So you want Ang to be appointed as the lawyer instead of Rajah & Tann, is it?
A.	No, no, no. I did not want Ang. I just asked.
[The President]:	Yes?
A.	I did not want to appoint Ang. I mean, if - - no, no, no.
[The President]:	Why? You also angry with Ang. I thought he is a - -
A.	That was not my point . My point is surely it will be fairer to let the SPs decided whether they wanted Ang's lower quotation.
[The President]:	Well, Ang is a member, he is also the owner there, you know. If you appoint Ang, a lot of people -- there will be a lot of accusation saying that he is a - -
A.	No, he said that he will only act - -
[The President]:	-- conflict of interest, he is the owner.
A.	No, he declared his interest and he said he will only act if more than 50 per cent agreed.
[The President]:	Yes. So that is correct.
A.	Yes. So my question was - -
[The President]:	He did - - Ang did directly the - -
A.	My question - -
[The President]:	- - so has he managed to get 50 per cent?
A.	No, my question was surely you should let the SPs - -
[The President]:	Surely you should - - he should try to garner like 50 per cent of the owners to - -

A. - - SPs decide, he was not given the time.

[The President]: Yes?

A. He was not given the time. By the time - -

[The President]: Who was - - have not been given the time?

A. By the time he came up with his suggestion on the - - he was going around the estate on the 17th of March.

By that time, by - -

[The President]: He must do it fast, yes.

A. By that time 29th March already, you know, the CSA, the signatures were obtained already, sir.

[The President]: Yes.

Mr Liew: Sir, I think it is not fair to say, that is the question you should address to Ang, you see. You should address to my client.

[The President]: Right.

Mr Liew: My client is explaining what was the situation then.

[The President]: Yes. She said already, why do not get Ang, maybe she is more confident with Ang than with Rajah & Tann.

A. No, that is not my point. That is not my point.

[The President]: Yes.

A. My point was, I think the SP should have a say to the - -

[The President]: You specially mentioned Ang, that is why we want to know.

A. No, no, because that was the only one available that was lower.

[The President]: I mean, know any lawyers you know in town?

A. No, that was the quotation that was received that was lower. I mention him not because I wanted to appoint him.

[The President]: Lower - -

A. But because I wanted to - - I felt that it was fairer to let the SPs decided.

[The President]: No, you are entitled to your views, all right.

189 As can be seen, the above exchange was in response to the Minority's view that the SC should not have pushed for R&T to be appointed as solicitors to act for the vendors. It seemed to me that the President was wondering what the fuss was about in respect of that appointment. Although I accepted that some of his remarks were uncalled for, I did not think he was trying to descend into the arena. I would add that I too was surprised that the Minority was raising the fact and the manner of R&T's appointment as an indication of an absence of good faith in the circumstances. This has been covered under Issue No. 4 and I will not repeat what I said there.

190 I come now to the allegation that the President kept on harping on the issue of wasting time by the Minority or Mr Liew. This allegation was covered by, for example, sub-headings (i) and (xxxiii). There were many cross-references under sub-heading (i).

191 Taking the first two cross-references under sub-heading (i), the exchange was on 6 December 2007 (at PBD 1853 to 1858):

Mr Lee: It is - - I move on to another point, sir, which is the respondents, the minority have also objected to say that the subsidiary proprietors signed the CSA before the meeting to explain the CSA.

Sir, I think in the statute, the only relevant date is the start date of the CSA, which is the 29th, in this case, it is the date when the first signature is placed on the CSA, as your Honours are aware. And in this case, this is the 29th March 2007. So we have in our application stated this very clearly that the start date of the CSA is 29th March 2007. The first signature was placed on that date. What the respondents are complaining of is that there was a meeting on 31st March for the CSA to be explained to the subsidiary proprietors. And how is it that some people have chosen to sign it before it is explained to them?

Sir, I think this point, sir, is that some people do not require an explanation, so they can sign before hand.

[The President]: Yes, they can. I see no reason why they cannot sign before.

Mr Lee: Yes, sir, if they are solicitors, for example, they do not need to be explained to.

[The President]: Yes.

Panel Member: Why are we listening to all these? I mean - -

Mr Lee: These are the objections by the respondents, sir.

Panel Member: You want to object, I mean are you really objecting to the objection, I mean when this issue - -

[The President]: All you are wasting - -

Panel Member: At the end of the day, we will be hearing all these all over again anyway.

[The President]: Yes.

Mr Lee: Yes, sir.

[The President]: Yes, I do not know why party is trying to - -

Panel Member: Mr Liew?

Mr Liew: My point, your Honour, is that this is an interlocutory application.

[The President]: Yes.

Mr Liew: Many of the matters are subject to the obtaining of the evidence and the cross-examination of the evidence. So at this stage when plaintiff or the applicant take out this interlocutory application to strike out on the ground that many of the further objections are, according to them, irrelevant, really, it is up to the Board to decide after only the evidence has been taken. At this stage, in terms of interlocutory application, I do not think it is right for the applicants to try to shut out the respondents in terms of saying that these further objections that I have raised are irrelevant. It is ultimately subject to evidence that has been taken and up to the Board - -

[The President]: But it was you who insisted you want to hear with the preliminary objections.

Mr Liew: No, your Honour - -

[The President]: This should be heard in the open court when we hear witnesses testify and we say whether it is correct or not. You are wasting everyone's time.

Mr Liew: Sir, this is - -

[The President]: And you chose to do it, we hear.

Mr Liew: Sir, this is the plaintiff's application.

My - -

[The President]: This application is for against your further particulars.

Mr Liew: Correct, your Honour. But my objections, your Honour, the interlocutory application is not in respect of all the further objection. In respect of procedural requirements affecting three to four documents.

[The President]: Yes, procedure requirement - - even at the later stage, when we hear the evidence, in submissions you still can raise this point - -

Mr Liew: I understand, your Honour.

[The President]: - - but you want to raise them now, we can hear it.

Mr Liew: But sir, but my point is simply this, the applicant first take out this objection and say the respondents have no right to put in further objections and they are now in this interlocutory application saying these further objections are irrelevant. The relevancy of it is still subject, your Honour, to the evidence and the Board's decision. My point is simply this - -

[The President]: No, why do parties not - - if parties can agree, then your further objections reserve until the finding of the case, then we can go on on his first objection about whether you people can file further - -

Mr Liew: I understand that, your Honour.

[The President]: So if parties can agree, then we can go on with the case, rather than - -

Mr Lee: Yes.

Mr Liew: So we will call - -

[The President]: Rather than - -

Mr Liew: Sorry.

[The President]: - - wasting one whole day hearing the frivolous objections by both parties.

Mr Lee: Yes.

Mr Liew: Your Honour - -

Mr Lee:	Sir, I am happy to proceed on with the case, without even proceeding with my application, sir.
[The President]:	Yes.
Mr Lee:	I do not have to - -
[The President]:	If parties can agree, then we are going to proceed with hearing the case.
Mr Liew:	No, your Honour, my point is this, your Honour, that the plaintiffs - - the applicants say that the further objection is irrelevant, ought to be struck out because filed late. I can –
[The President]:	That is why you want to reserve this for Board to decide.
Mr Liew:	I understand that, your Honour.
[The President]:	After hearing the case, we can tell you whether your objections are frivolous or not.

192 Viewing the exchange in its entire context and not just the part where the President mentioned to Mr Liew about the wasting of time, it will be seen that the President, as well as a panel member, was rather annoyed with having to deal with various preliminary objections. The Minority had filed objections to the Application. One of the objections was that some of the SPs had signed the SPA before the meeting of 31 March 2007 (and I have dealt with this point under Issue No. 4). In turn, the Majority had apparently applied to strike out this objection. The President was of the view that the Majority's application to strike out could and should have been dealt with at the main hearing and during the exchange on the striking out application, the President also mentioned that the Minority too had raised preliminary objections about procedural defects which he also thought could and should have been dealt with at the main hearing. Hence, the reference to the wasting of time was really directed at both sides.

193 At this stage, I would mention that the above passage also covers [8(iii)] of the PRS (cited above at [172]). I did not think it was fair to describe the statement about, "wasting the whole day hearing the frivolous objections by both parties" as simply an indication that the President was not inclined to hear the preliminary objections of the Minority. As I mentioned above, the President was thinking that they could all be dealt with at the main hearing. He was not trying to shut out either side as the PRS was suggesting. In any event, as earlier intimidated, there were separate and earlier hearings for the Minority's preliminary objections and the Majority's striking out application.

194 As regards the allegation that the President made several uncalled for disparaging remarks, this allegation was covered by, for example, sub-headings (xii), (xv), (xxi), (xxiv), (xxxi), (xxxvi), (ixi) and (ixii).

195 Using sub-heading (xii) as an illustration, the reference was to a remark made by the President on 4 February 2008 (at PBD 2660):

[The President]: But your clients all did not sign. They all - - your client all did not take her word for right.

Mr Liew: Sir, the point of the matter is this - -

[The President]: Yes.

Mr Liew: - - is that - -

[The President]: Your client are all very intelligent man.

…

196 I accepted that the President should not have made what appeared to be a sarcastic remark about the Minority being intelligent but it was on a non-issue.

197 I come now to some of the examples given in [8] of PRS about the President's apparent bias (see [162] above).

198 As regards the allegation in 8(i) and (ii) of PRS that the President was telling the Minority off that it was alright for SPs to sign the CSA before the meeting of 31 March 2007, I accepted that the President should have exercised restraint although he was right in that any SP may sign the CSA if he so chooses without waiting for the meeting.

199 As regards the allegation in 8(vi) to (viii) that the President was challenging Mr Liew's point that Form 1A was a form prescribed by the STB and found in the relevant website, it seemed to me that the President was not so much challenging the point but was drawing a distinction between that and a requirement under the primary or subsidiary legislation, as I elaborated under Issue No. 2. The President was grappling with the unusual situation that the website was "prescribing" a form not found in the legislation.

200 As regards the allegations in 8(ix) to (xi) of PRS that the President was expressing his views on various points, it seemed to me that he was testing various positions taken by the Minority although he should have done so in a less colourful manner.

201 On the other hand, there were also instances when the President made remarks against Mr Lee or the SC. For example, on one occasion on 29 January 2008, the President observed that Mr Lee kept jumping up to object (see PBD 2199). He also remarked that the Minority had scored a point about the SC's letter of 29 March 2007 giving too short a notice for the meeting on 31 March 2007 (see PBD 2200). He also observed disapprovingly on 31 January 2008 that the SC had not maintained minutes of their meetings. He asked whether they were illiterate (see PBD 2385).

202 I considered the notes of evidence in their entirety. I also bore in mind that verbatim transcripts tend to give the impression that a tribunal has interrupted much more than it actually has. I would add that another member of the Board had also asked many questions and made various comments although not as many as the President.

203 I did not agree with some of the interruptions of the President and I was of the view that he should have been more careful and restrained in a number of his remarks even though some of the

points taken by the Minority were obviously unsustainable such as those relating to the appointment of R&T and ERA and the distracting objection over the return of the first envelope to Poon. However, looking at the matter holistically and bearing in mind the qualitative impact of his remarks and interruptions, I was of the view that the President was not biased and had not predetermined the Application. There was no denial of justice to the Minority and a reasonably minded person who had been present throughout the hearings would not have considered that they had not had a fair trial. His conduct was not so egregious as to merit sending the dispute back to be heard by a differently constituted STB.

204 In the circumstances, I concluded that the Minority had failed to establish their case under Issue No. 5.

Issue No. 6 - The STB erred in law in granting the collective sale order in:

(i) making wrong findings of facts in the GD;

(ii) failing to give due weight to evidence that ought to have been considered in making their findings of facts; and

(iii) giving weight to evidence that ought to have been disregarded in the face of evidence to the contrary, in making their findings of facts.

205 Most of the specific allegations under Issue No. 6 were already covered under the earlier issues.

206 In oral submissions before me, Mr Liew highlighted one specific allegation under Issue No. 6. Mr Liew submitted that Gan was only admitted as a witness of fact, but yet he was allowed to give his opinion in respect of Form 1A (see Issue No. 2). However, it transpired that it was Mr Liew himself who had asked Gan questions on Form 1A. While Mr Liew at first accepted (on 8 August 2008) that it was he who had asked Gan such questions, he subsequently said (on 18 September 2008) that it was the President who had done so. As a result, I had to remind him that he had earlier accepted before me that it was he who had asked Gan questions on Form 1A.

207 I would also mention one other point raised in Mr Liew's initial (written) submissions before me under Issue No. 6 although he did not highlight it verbally. This was the point that the RG Board should have subpoenaed Poon as a witness on the question about Poon's relationship with Premier. I mention this point in case Mr Liew should wish to resurrect it in the light of the Court of Appeal's decision in *Horizon Towers* about the role of an STB as regards witnesses.

208 Poon's name was mentioned in the course of the hearing before the RG Board in various contexts, and, in particular, the aspects regarding the first envelope which was returned to him and his relationship with Premier (the latter is relevant under s 84(9)(*a*)(iii) LTSA). I have already dealt with the return of the first envelope under Issue No. 4. As for Poon's alleged relationship with Premier, there was nothing more for me to go on.

209 As regards the point that the RG Board should have subpoenaed Poon, I would mention (and as Mr Liew accepted) that the RG Board did at various times suggest that Poon be called as a witness. However, both Mr Lee and Mr Liew declined to do so. There was a suggestion by Mr Liew that he was unsuccessful in contacting Poon (see PBD 2259-2261). However, it seemed to me that if he had really wanted to, he would have been able to locate Poon's whereabouts and get a subpoena issued against him. Mr Liew could also have obtained a subpoena in respect of Lyon Tan of Premier or any other

representative who could provide the requisite information. The facts before me were different from those in *Horizon Towers* where the STB declined for a technical reason to allow one side to call someone as a witness.

210 As regards the inquisitorial role of an STB, as mentioned above, and the Court of Appeal's point that an STB can and should call for a witness on its own initiative, the RG Board was acting on the basis of an adversarial process. Furthermore, as Mr Liew had been coy about calling Poon as a witness, I did not think it was fair for him to even assert in his initial submissions that the RG Board should have subpoenaed Poon as a witness.

Issue No. 7 - The Board erred in making conflicting costs orders in their GD;

Issue No. 8 - The Board erred in making an order that all SPs be bound by the CSA as if they were parties thereto.

211 As regards Issues No. 7 and 8, Mr Liew accepted that they did not touch on the substantive appeal.

212 For Issue No. 7, Mr Liew submitted that in [70] of the grounds of decision, the Board had said that it made no order as to costs (because the objections raised by the Minority were not frivolous or groundless). Yet, under 71(4), the Board had ordered, "That all costs and disbursements (including the majority owners' solicitors' costs), fees and disbursements of and in connection with the application be borne by all the subsidiary proprietors (including the minority owners) in accordance with the terms of the CSA dated 30th day of March 2007".

213 In a letter dated 30 April 2008, the Board sought to clarify the costs it made. The letter stated:

> "2. By para 70 of the Board's decision, the Board decided not to make any order in respect of costs as the objections raised by the Respondents were not frivolous or groundless. That is, subject to paragraph 71 where the Board ordered that all costs and disbursements (including the majority owners' solicitors' costs), fees and disbursements of and in connection with the application be borne by all the subsidiary proprietors, the Board decided not to make any other order as to costs."

214 That letter was not well drafted. Nevertheless, it was clear to me that there was no conflict in the GD or that letter. In [70] of the GD, the RG Board was saying that the Minority did not have to pay the Majority's costs of the Application. This meant that insofar as additional work had to be done by the Majority's solicitors to address the Minority's objections, the Minority did not have to pay the brunt of the costs of such additional work. Nevertheless, the Minority had to pay their share of the Majority's solicitors' costs which would cover both the initial work in respect of the Application and the additional work to address the Minority's objections. For illustration purposes only, if the initial work cost the Majority, say, $5,000 and the additional work for the objections before the RG Board cost, say, another $30,000, the total would be $35,000 (excluding the appeal to the High Court). The RG Board's decision in [70] and [71(4)] meant that the Minority had to pay their share, say, 6% of the $35,000 instead of paying their 6% share of $5,000 and, say, 65% of the $30,000 on a standard basis.

215 There was clearly no conflict in the RG Board's order and Mr Liew, as counsel for the Minority, should have known what [70] and [71(4)] meant when considered together. It seemed to me that he was under the mistaken impression that the RG Board's order in [71(4)] meant that the Minority still

had to pay for most of the initial and additional work for the Application which was not the case.

216 If the Minority were still aggrieved by the correct meaning of the costs order in [71(4)], that was a different matter. On that point, Mr Liew submitted that the Minority had not agreed to the CSA and therefore had not agreed to pay the costs of the Application whether in respect of the initial work or the additional work.

217 It seemed to me that, here again, Mr Liew was conflating his arguments. Although the Minority did not agree to the costs of R&T, it was open to the RG Board to make them pay for their share of such costs. The initial work in respect of the Application was done for the benefit of all the SPs since it involved a collective sale of RG entirely. It was not wrong for the Minority to bear their share of the cost of the initial work, even though they were objecting to the collective sale, because, eventually, they would be receiving their share of the sale proceeds, whether they wanted the sale or not.

218 As for R&T's cost of the additional work, the RG Board could have ordered the Majority to bear that entirely or the Minority to bear it on, say, a standard basis or the Minority to bear their share thereof. The Board decided on the third alternative which was less costly to the Minority than the second alternative. Yet, the Minority were still complaining that they had to pay their share because the RG Board had said that their objections were not frivolous or groundless. In my view, what the RG Board meant was that the objections were not entirely frivolous or groundless because some were clearly unsustainable for the reasons I have stated. In any event, someone had to pay for the costs of the additional work by R&T. While the Minority stressed that the Board had said that their objections were not frivolous or groundless, the fact remained that they had failed in their objections and it was their objections which resulted in additional work having to be done by R&T. I might have opted for the second alternative. In all the circumstances, the Board was not clearly wrong in the costs order and there was no reason for me to disturb it.

219 I come now to the details of Issue No. 8. Mr Liew submitted that the Board had no jurisdiction to order the Minority to be bound by the CSA since they had not signed it. What he meant was that the Board had no power to do so. He submitted that under s 84B(1)(*b*) LTSA, the effect of an order of the Board for the collective sale was that all the SPs would be bound by the SPA, but not the CSA since there was no mention of being bound by the CSA in s 84B(1)(*b*) or the rest of s 84B(1).

220 There seemed to me no practical purpose in raising Issue No. 8 unless the real purpose was to avoid paying even a share of R&T's conveyancing fee and ERA's fee, both of which had been stipulated in the CSA.

221 Mr Liew also relied on parts of [7] and [43] of the judgment of Chan CJ in *Ng Swee Lang*-CA which states:

> 7 … 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 (see s 84B(1)(*b*) of the Act). The sale takes effect by virtue of the Board's order, and not by virtue of the sale and purchase agreement. In short, the collective sale is not a contractual sale, but a new form of statutory sale.
>
> 43 … The Act does not require the appellants, as minority owners, to sign the S&P Agreement as it would not be practical to make them do so. They are not under any contractual obligation to sell their unit to the Purchaser, but they are under a statutory obligation to do so. …

222 I was of the view that those passages did not assist the Minority. What Chan CJ was saying was that any minority owner would be bound by a sales and purchase agreement, which the majority enter into with a purchaser, not because the minority owner had voluntarily entered into such a contract, but because the LTSA makes him bound by it once a collective sale order is made. Chan CJ was not addressing the question whether an STB has the power to make a minority owner also bound by a collective sale agreement. If an STB has such a power, a minority owner would be bound not because he had voluntarily entered into a collective sale agreement but because the STB ordered it so.

223 Mr Lee submitted that under s 84(11) LTSA, the RG Board was given the necessary power. It states, "The Board may make all such other orders and give such directions as may be necessary or expedient to give effect to [a collective sale order]". He submitted that the order made by the RG Board was one that was commonly made by an STB appointed under the LTSA. In the present case, it was necessary or expedient to make the Minority bound by the CSA so that R& T could represent all the SPs to act in the sale. It was also only right that the Minority be bound to pay their share of all disbursements and fees incurred in respect of the collective sale.

224 I was of the view that s 84(11) did empower the RG Board to bind the Minority to the CSA. Accordingly, they had failed in Issue No. 8.

Summary

225 In the circumstances, I dismissed the Minority's appeal by way of the present Application with consequential orders on costs.

226 As I have stressed, the price which Premier was eventually liable to pay under the SPA was much higher than any other bid. The recent global financial meltdown meant that that price was even more attractive. In the course of the hearing before me, the parties did try to resolve their differences and they appeared close to doing so but for an outstanding dispute or two. It is such a pity that the saga continues.