IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 104

Originating Application No 1026 of 2023

Between

Silvester Selvan s/o Jeyaperagasam
and others

… *Claimants*

And

Hilda Loe Associates Pte Ltd
and others

… *Defendants*

GROUNDS OF DECISION

[Land — Strata titles — Land Titles (Strata) Act]

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v
Hilda Loe Associates Pte Ltd and others

[2024] SGHC 104

General Division of the High Court — Originating Application No 1026 of 2023
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24–25 January, 9 February 2024

19 April 2024

Christopher Tan JC

1 This application concerned the *en bloc* sale of a property known as the GSM Building, located at 141 Middle Road Singapore 188976 ("the Property"). The purchaser was Coliwoo (TK) Pte Ltd ("Coliwoo"). The claimants were members of the collective sale committee ("the CSC") overseeing the sale to Coliwoo (the "Claimants"), while the defendants represented the subsidiary proprietors ("SPs") objecting to the sale (the "Defendants").

2 Following the signing of a sale and purchase ("S&P") agreement with Coliwoo, the CSC made an application to the Strata Titles Board ("STB") under s 84A(2A)(*a*) of the Land Titles (Strata) Act 1967 (2020 Rev Ed) ("the Act"), seeking an order for the sale. The Defendants objected to the application, following which mediation sessions were held. As the objections could not be resolved through mediation, the STB issued a stop order under s 84A(6A)(*b*) of

the Act. The Claimants thus filed this application under s 84A(2A)(*b*) of the Act, seeking a court order for the sale of the Property to Coliwoo.

3 The Defendants' objections to the collective sale were grounded on s 84A(9)(*a*)(i)(A) of the Act, which states that a court should not approve the application for sale if the transaction was "not in good faith after taking into account … the sale price".[1] The Defendants, who felt that the price of the sale to Coliwoo was too low, raised a myriad of allegations in support of their objections.

4 After hearing the parties, I dismissed the Defendants' objections and granted the Claimants' application.

Facts

5 The Property, which sits on a site measuring 1,115.10 sqm, was zoned as "Commercial" under the Urban Redevelopment Authority ("URA") Master Plan 2019 ("Master Plan").[2] It is on a 99-year leasehold tenure, commencing on 2 May 1978,[3] meaning that its lease had a remainder of about 55 years as at the point of sale to Coliwoo.

6 In the past six years, the Property underwent two collective sale exercises:

(a) The first was pursuant to a collective sale agreement signed sometime in 2019–2020 ("CSA 1"). Pursuant to CSA 1, a tender was

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1 See 1st Defendant's Written Submissions dated 22 January 2024 ("D1's Submissions") at para 1.

2 See Loe Kwee Eng Hilda's ("Hilda Loe") 1st affidavit, at para 5.

3 See Hilda Loe's 1st affidavit, at para 5.

held in the middle of 2020, referred to in these grounds as "Tender 1". This failed to yield any interested bidders.[4]

(b) The second collective sale exercise was held pursuant to a collective sale agreement signed in 2022 ("CSA 2"). Two tenders were conducted pursuant to the second collective sale exercise, referred to in these grounds as "Tender 2A" and "Tender 2B":

(i) Tender 2A, held in the third quarter of 2022, failed to culminate in a deal despite negotiations with interested parties.[5]

(ii) Tender 2B, held in January 2023, yielded a single bidder, Coliwoo. At the end of this tender, the Property was sold to Coliwoo.[6]

7 The objections raised by the Defendants are best understood when laid against the backdrop of what had transpired during the past collective sale attempts leading up to the sale to Coliwoo. Unfortunately, none of the parties saw fit to fully chronologise the history of events, notwithstanding the chronology being crucial to setting their submissions in proper context. As the Defendants canvassed their litany of objections, their submissions jumped from one event to another, making it increasingly challenging to mentally place exactly where their arguments fit within the bigger picture.

8 To facilitate easier understanding of the issues, I have attempted to paint the full facts in chronological order. To avoid clutter, I have brought to the fore

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4 Claimants' Written Skeletal Submissions dated 22 January 2024 (C's Submissions") at para 55.

5 C's Submissions at para 8.

6 C's Submissions at para 9.

only those events which are most salient to the issues raised by parties.

The first collective sale exercise

9 CSA 1 was signed in 2019, with the SPs agreeing to sell the Property at the reserve price of $85m.[7] To facilitate the proposed collective sale, the collective sale committee for CSA 1 engaged the following entities:

(a) Mount Everest Properties Pte Ltd ("Mt Everest") to serve as the marketing consultant; and

(b) Asian Assets Allianz Pte Ltd ("AAA") to prepare the valuation report for the tender.

10 As preparations for this collective sale exercise progressed, some correspondence was exchanged between Mt Everest's project consultant Loi Chai Wei on the one hand, and URA on the other. The correspondence, which pertained to the Gross Floor Area ("GFA") and Gross Plot Ratio ("GPR") of the Property, culminated in URA sending Loi Chai Wei a letter, dated 20 January 2020 ("URA's January 2020 Letter"),[8] confirming the following:

(a) Under the Master Plan 2019, the Property's *allowable* GFA was 4,683.42 sqm and ascribed GPR was ***4.2*** (the GPR can be derived by dividing the GFA of 4,683.42 sqm by the site area of 1,115.10 sqm) – for ease of reference, these grounds have rounded the GFA figure down to ***4,683*** sqm.

(b) However, the Property's *existing* GFA and GPR had been

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7 See Lim Swannie's 1st affidavit, at para 15.

8 Exhibited in Loi Chai Wei's 1st affidavit, at p 113.

recomputed by URA to be *higher*, at 5,839.47 sqm and 5.23672 respectively (again, the GPR can be derived by dividing by the GFA of 5,839.47 sqm by the site area of 1,115.10 sqm) – for ease of reference, these grounds have rounded both figures down to ***5,839*** sqm for the GFA and ***5.2*** for the GPR.

(c) In the event of the site being redeveloped, the (lower) GFA and GPR in the Master Plan would apply. This meant that if the purchaser in an *en bloc* sale were to tear the Property down, any new building erected on the site would be restricted to a built-up area *lower* than that of the GSM Building currently standing on the site.

During the hearing before me, parties were unable to explain why the existing GPR (as recomputed by URA) was higher than the Master Plan GPR. Claimants' counsel surmised that at some point in the past, portions of the site may have been compulsorily acquired by the authorities – the shrunken site area would mean a smaller denominator and (consequently) a larger result in the calculation of the GPR.

11 Tender 1 was duly called, with the tender period spanning six weeks, from 3 June 2020 to 16 July 2020. The reserve price was set at $85m,[9] while the asking price was $98m.[10]

12 On 16 June 2020, *ie*, a month before the close of Tender 1, Mt Everest's Loi Chai Wei wrote a letter to URA, seeking planning permission to rezone the Property from "Commercial" to "Hotel", so that the *en bloc* purchaser could

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9 See Tan Hi-Kong's affidavit, at para 9.

10 See Tan Hi-Kong's affidavit, at para 9.

build a hotel on the site.[11] If permission were granted, this would have greatly enhanced the value of the Property in the eyes of potential bidders.

13 As Tender 1 drew to a close, AAA prepared a valuation which valued the Property at $80m. This report ("Tender 1 Valuation Report") was dated 16 July 2020, *ie*, the date on which Tender 1 closed – this was to comply with paragraph 11(2) of the Third Schedule to the Act, which states:

> A valuation report by an independent valuer on the value of the development as at the date of the close of the public tender or public auction must be obtained by the collective sale committee on the date of the close of the public tender or public auction.

Unfortunately, there were no bidders at the close of Tender 1.[12]

14 On 18 August 2020 (*ie*, about a month after Tender 1 closed), URA sent a letter to Loi Chai Wei rejecting his request to rezone the Property to "Hotel".[13] However, on that very same day (*ie*, 18 August 2020), URA sent a separate letter to Loi Chai Wei indicating that URA was open to change the zoning of the Property from "Commercial" to "Commercial & Residential" (rather than "Hotel"). In this letter, which I have referred to in these grounds as "URA's August 2020 Letter",[14] URA's officer stated the following:

> 1. … I would like to suggest an alternative development option which we can support on planning grounds:
>
> i. **Land Use & Intensity**: To rezone the subject site from Commercial at GPR 4.2 to Commercial & Residential at GPR 4.2 and Road. The site is affected by LTA's realignment of the RRL to provide an 8.5m sidetable

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11 Loi Chai Wei's 1st affidavit, at para 16 and p 63.

12 See Loi Chai Wei's 1st affidavit, at para 16.

13 Exhibited in Loi Chai Wei's 1st affidavit, at p 63.

14 Exhibited in Loi Chai Wei's 1st affidavit, at pp 58–59.

> along Middle Road. Please liaise directly with LTA about this realignment.
>
> As this proposal involves rezoning, please pay the requisite Master Plan Amendment fee of $4,815 at least 2 months before your formal development application.
> …
>
> ii. **Vesting for Street Reserve**: Please note that the subject site is affected by revised road reserve at the rear. The plot of land needed for road purpose is to be set aside as a separate plot for vesting.
>
> iii. **Urban Design Requirements**: Compliance with Urban Design requirements as set out in Annexure 1 and the Urban Design Guide Plan.
>
> iv. **Payment of Development Charge (DC) / Differential Premium (DP)**: Subject site is a former URA sale site within title restriction for the purpose of office/shopping development. Please liaise with SLA … should you wish to apply for lease extension and lifting of title restriction. The amount of DC/DP payable, if any, will be advised during formal application stage, when the submission is ready for Written Permission.
>
> v. **LTA**: Please obtain LTA Vehicular Parking (VP), Roads and Traffic (R&T) and Rail's in-principle no objection the proposed car/ coach parking provision, access arrangement and traffic related issues and furnish to us their no-objection in your formal submission. Please also liaise with LTA about incorporating wayfinding signs to the Bras Basah and Bugis MRT stations.
>
> vi. **Screening Requirements**: Compliance with security screening requirements, if any. We will consult the relevant authorities on your behalf during the course of the formal submission.
>
> vii. **GFA matters**: In the formal submission, please include the breakdown of existing Commercial GFA in the Site Plan Planning Data table: 'Office', 'Shop', 'Restaurant' etc.
>
> viii. **Development Control**: Compliance with all development control requirements. The proposal will be evaluated in detail during formal application. …
>
> [emphasis in original]

If the Property could indeed be used for "Commercial *& Residential*" purposes,

this meant that it could be converted to *serviced apartments*. Thus, while URA had closed the door to the notion of the Property being converted to a hotel, it left another door open by which the Property could possibly be converted to serviced apartments.

15 Nevertheless, URA's August 2020 Letter was, as seen from the extract above, subject to a long list of qualifications. Furthermore, the second paragraph of the letter stated that URA's guidelines in the letter were valid for only *six months*, *ie*, that they would expire on 18 February 2021:[15]

> 2. The above guidelines are valid for 6 months from 18-08-2020. We regret that this 6-month validity period cannot be extended. …

The second collective sale exercise

16 After the first collective sale exercise fell through, an Extraordinary General Meeting of the SPs was held on 21 August 2021,[16] during which a decision was taken to embark on a second collective sale exercise. Pursuant to this, CSA 2 was prepared and a new collective sale committee (*ie*, the CSC) was formed.[17] The CSC comprised seven members, of whom five had been members of the six-member collective sale committee for CSA 1. These five overlapping members included the second and third claimants.[18]

17 On 22 June 2022, the requisite 80% approval for CSA 2 was obtained.[19]

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15 Exhibited in Loi Chai Wei's 1st affidavit, at p 59.

16 See Hilda Loe's 1st affidavit, at para 19.

17 See Hilda Loe's 1st affidavit, at para 19.

18 See Hilda Loe's 1st affidavit, at para12. See also Lim Swannie's 1st affidavit, at para 16, although the latter only mentions four of the overlapping members.

19 See Tan Hi-Kong's affidavit, at para 11.

This meant that under paragraph 1(*a*) of the First Schedule to the Act, any application to the STB under s 84A(2A)(*a*) of the Act seeking an order for the sale had to be filed within 12 months of 22 June 2022, *ie*, *before 22 June 2023*.

18 As explained above, the CSC proceeded to embark on two tenders under the second collective sale exercise: Tender 2A and Tender 2B.

Tender 2A

19 Tender 2A opened on 3 August 2022, with a reserve price set at $80m.[20] The tender documents for Tender 2A stated that the Property's GFA and GPR were (as per the Master Plan) 4.2 and 4,683. However, a 34-page marketing document was issued in conjunction with Tender 2A,[21] which stated (among other things) that while these were the figures in the Master Plan, the figures for the existing GFA and GPR were (as per URA's January 2020 Letter, referred to at [10] above) *higher*, at 5,839 sqm and 5.2 respectively.[22]

20 Tender 2A spanned a total of six weeks, closing on 13 September 2022.[23] AAA prepared a valuation report ("Tender 2A Valuation Report") dated 13 September 2022 (*ie*, the date on which Tender 2A closed), valuing the Property at $77m – this was $3m *less* than the valuation in the Tender 1 Valuation Report.[24]

21 By the close of Tender 2A, two potential buyers had emerged:

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20 See Tan Hi-Kong's affidavit, at para 12.

21 Exhibited in Hilda Loe's 1st affidavit, at pp 980–1013.

22 See Hilda Loe's 1st affidavit, at p 983.

23 See Lim Swannie's 1st affidavit, at para 30; Hilda Loe's 1st affidavit, at para 27.

24 Exhibited in Tan Hi Kong's affidavit, at pp 157–176.

(a) Amberdale Properties Pte Ltd ("Amberdale"), which submitted a bid at $85,000,119.[25]

(b) KEAF Investments Pte Ltd ("KEAF"), which submitted a letter of interest proposing a price range of $80–85m, which was expressed to be "*GST free*".[26] Given this rather cryptic qualifier, the CSC's solicitors wrote to KEAF asking if "GST free" meant that the SPs (as vendors) would have to bear the cost of the GST.[27] KEAF replied without directly addressing the question, saying instead:[28]

> The proposed price range of $80 – $85 million is free of GST, *subject to us obtaining the IRAS ruling confirming that the transaction is GST free* of going concern.
>
> [emphasis added)

Thus, the CSC's solicitors were left wondering whether, if GST was indeed payable on the sale, the SPs would have to bear the GST, in which case the *de facto* offer from KEAF's would have been much lower than $80–85m.[29]

22 Given that Tender 2A closed on 13 September 2022, the statutory 10-week period (prescribed by paragraph 11(3) of the Third Schedule to the Act) for the CSC to conclude any private treaty sale (including any sale to either

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25 See Hilda Loe's 1st affidavit, at para 28(a).

26 See Seah Seow Kang Steven's ("Steven Seah") affidavit, at p 10, at section 3.

27 See Loi Chai Wei's 1st affidavit, at p 93, exhibiting a letter from the CSC's solicitors seeking clarification from KEAF on what the latter meant by "free of GST".

28 See KEAF's response exhibited in Steven Seah's affidavit, at p 16.

29 See Steven Seah's affidavit, at paras 6 and 13.

Amberdale or KEAF) would expire on 21 November 2022.[30] Unfortunately, the CSC was unable to conclude a sale with either of these two buyers:

(a) The CSC's negotiations with Amberdale fell through, with Amberdale sending a letter to the CSC on 21 October 2022 refusing to grant any further extension of the deadline for the CSC to accept Amberdale's offer.[31]

(b) The negotiations with KEAF similarly fell through, with KEAF claiming to be unable to complete its due diligence by the expiry of the private treaty deadline of 21 November 2022. KEAF had sent the CSC's solicitors a letter dated 18 November 2022,[32] ending the negotiations but nevertheless indicating that KEAF "*would be open to take part in the next tender exercise in 2023*" [emphasis added].

Tender 2B

23 After the failure of Tender 2A, the CSC resolved to hold a second tender pursuant to CSA 2, *ie*, Tender 2B.

24 However, even *before* Tender 2B opened, the CSC commenced negotiations with Coliwoo, which was interested in purchasing the Property and retrofitting it into serviced apartments.[33] Coliwoo's proposed strategy was a path less travelled, in that purchasers in *en bloc* sales typically aim to redevelop the purchased site by demolishing the existing structure and erecting something new, rather than retrofit the existing structure for a different use. To pave the

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30 See Lim Swannie's 1st affidavit, at para 36.

31 See Hilda Loe's 1st affidavit, at para 28(a).

32 See Loi Chai Wei's 1st affidavit, at para 24(b)(iv).

33 See Hilda Loe's 1st affidavit, at para 56.

way for the execution of Coliwoo's strategy (in the event of Coliwoo's bid being successful), the CSC authorised Coliwoo to file an application to URA seeking approval for changing the use of the Property from "Commercial" to "Serviced Apartment".[34]

25 On 7 January 2023, Coliwoo's architects AJ+J Architecture Pte Ltd ("AJ+J") proceeded to file the application with URA, seeking the change of use of the third to sixth storey premises to "Serviced Apartment" ("the January 2023 Application").[35] Annexed to the January 2023 Application was the authorisation letter signed by the first claimant (in his capacity as the CSC's chairperson) authorising AJ+J to make the application. The authorisation letter also declared that the SPs had been informed of and consented to the application:[36]

> … we have informed the owner(s) of the subject land of the proposed development, shown to the owner(s) all plans, documents and information in respect of the proposed development, and have obtained the consent of the owner(s) to make the application to the Competent Authority for written permission to develop the subject land for the proposed development/subdivision.

26 On 11 January 2023, *ie*, four days after the filing of the January 2023 Application, Tender 2B opened.[37] The reserve price for Tender 2B was set at $80m (*ie*, the same as Tender 2A). As with Tender 2A, the tender documents for Tender 2B stated that the Property's GFA and GPR were (as per the Master Plan) 4,683 sqm and 4.2. In conjunction with Tender 2B, a single-page

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34 3rd, 4th and 5th Defendants' Written Submissions dated 22 January 2024 ("D3–D5's submissions") at para 11; Loi Chai Wei's 1st affidavit at p 68.

35 D3–D5's submissions at para 11; Exhibited in Loi Chai Wei's 1st affidavit, at pp 66–72.

36 Exhibited in Loi Chai Wei's 1st affidavit, at p 68.

37 2nd Defendants' Written Submissions dated 22 January 2024 ("D2's Submissions") at para 12(4).

investment brief was prepared – this was an extremely brief document when compared with the 34-page marketing document issued for Tender 2A (referred to at [19] above). Pertinently, unlike the 34-page marketing document, the single-page investment brief prepared for Tender 2B did not allude to the existing GFA and GPR (as reflected in URA's January 2020 Letter, referred to at [10]), despite these being higher than the GFA and GPR in the Master Plan.

27 Various attempts were made to publicise Tender 2B. On 9 January 2023 (*ie*, two days before the tender), Mt Everest issued a statement to *The Business Times*, which led to an article being published in *The Business Times* on 10 January 2023 (*ie*, just one day before Tender 2B opened).[38] An extract from the article in *The Business Times* is set out below:

> GSM Building at 141 Middle Road has been put up for sale in its second collective sale attempt, at an unchanged guide price of $85 million, said Mount Everest Properties in a statement on Monday (Jan 9).
>
> In its earlier sale attempt in August 2022, a bid of $85 million was withdrawn before the sale and purchase agreement was entered into.
>
> The building sits on a land plot spanning about 12,003 square feet (sq ft), with a balance lease term of about 59 years.
>
> Under the Urban Redevelopment Authority's (URA) Master Plan 2019, the site is zoned for commercial use. If the purchaser acquires the building for own use, the $85 million price works out to approximately $1,352 per sq ft per plot ratio (psf ppr).
>
> An earlier application for provisional permission to redevelop the plot into a mixed commercial and residential project has been given in-principle support by the URA, the agent said.
> …

28 The CSC and Mt Everest also arranged for two newspaper

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[38] Exhibited in Loi Chai Wei's 1st affidavit, at pp 124–125.

advertisements announcing the tender:[39]

(a) One advertisement was published in *The Business Times* on the first day of the tender, *ie*, on 11 January 2023.[40]

(b) One advertisement was published in *The Straits Times* on 17 January 2023, slightly before the midpoint of the tender period.[41]

29 Tender 2B lasted for only 17 days (which included the Lunar New Year holiday), closing on 27 January 2023.[42] AAA prepared another valuation report ("Tender 2B Valuation Report"),[43] dated 27 January 2023 (*ie*, the date on which Tender 2B closed), valuing the Property at $77m. This was the same figure as that in the Tender 2A Valuation Report prepared a few months earlier.

30 At the close of Tender 2B, there was only one bidder, *ie*, Coliwoo, which offered a purchase price of $80m. Under cl 8.1 of Coliwoo's tender,[44] the CSC was required to accept Coliwoo's offer within one month from the close of tender, *ie*, before 27 February 2023.

31 On 30 January 2023, the CSC voted in favour of accepting Coliwoo's offer.[45] On 10 February 2023, the CSC's solicitors sent their letter of acceptance

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39 D2's Submissions at para 40.

40 See invoice exhibited in Loi Chai Wei's 1st affidavit, at p 121.

41 See invoice exhibited in Loi Chai Wei's 1st affidavit, at p 122.

42 See Lim Swannie's 1st affidavit, at para39; Hilda Loe's 1st affidavit, at para 33.

43 Exhibited in Tan Hi-Kong's affidavit, at pp 177–198.

44 See D2's Submissions at para 12(7); Silvester Silvan s/o Jeyaperagasam's ("Silvester Silvan's") affidavit dated 6 October 2023, at p 167.

45 See D2's submissions at para 12(8); Lim Swannie's 1st affidavit, at para 42(3).

to Coliwoo's solicitors, thereby concluding a S&P agreement with Coliwoo.[46] The S&P agreement was nevertheless subject to a condition found in cl 11.1(a) of Coliwoo's tender, which stated that URA had to approve the application for change of use from "Commercial" to "Serviced Apartment" (*ie*, the January 2023 Application, referred to at [25] above) within ten plus ten weeks of acceptance of Coliwoo's tender.[47] Given that Coliwoo's tender was formally accepted by the CSC on 10 February 2023, this meant that URA had to revert with its approval of the January 2023 Application *before 30 June 2023*, failing which Coliwoo was entitled to walk away from the sale.

32 On 3 March 2023, URA replied to the January 2023 Application, approving the proposed change of use from "Commercial" to "Serviced Apartments".[48] The change of use was to be allowed for a duration of only ten years, with subsequent renewal subject to further approval.[49]

33 On 25 May 2023, Coliwoo's parent company, LHN Limited (which is listed on the Hong Kong stock exchange) issued an exchange circular announcing Coliwoo's purchase of the Property.[50] This circular appended a valuation report by Colliers International Consultancy & Valuation (Singapore) Pte Limited ("Colliers") dated 25 May 2023 ("Colliers Valuation Report"),[51]

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46 See notice of acceptance exhibited in Silvester Silvan's affidavit dated 6 October 2023, at pp 158–186.

47 See Silvester Silvan's affidavit dated 6 October 2023, at p 169.

48 See D3–D5's submissions at para 11; Exhibited in Hilda Loe's 1st affidavit, at pp 1034–1041.

49 See Hilda Loe's 1st affidavit, at p 1034.

50 Exhibited in Lim Swannie's 1st affidavit, at pp 436–503.

51 Exhibited in Lim Swannie's 1st affidavit, at pp 478–496.

which valued the Property at $80m.[52] This was about 3.9% higher than AAA's valuation of $77m in the Tender 2A and Tender 2B Valuation Reports.

34 On 19 June 2023, the Claimants filed an application to the STB under s 84A(2A)(*a*) of the Act, seeking an order for the sale of the Property to Coliwoo.[53] The application was filed *just three days shy* of the 22 June 2023 deadline referred to at [17] above.

Legal proceedings

35 In total, seven SPs omitted to sign CSA 2.[54] These were:

(a) the first to third defendants (referred to respectively as "D1", "D2" and "D3"), as well as the fifth defendant ("D5"); and

(b) three other SPs, who did not participate in these proceedings.

Proceedings before the STB

36 Before the STB, the parties partook in mediation sessions on 2 August and 12 September 2023.[55]

37 In the course of the mediation, the Claimants procured a valuation report from an alternative valuer, SRE Global Pte Ltd ("SRE"). This report ("SRE's Valuation Report"), which was dated 5 September 2023,[56] valued the Property

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52 See D3–D5's submissions at para 11.

53 See Silvester Silvan's affidavit dated 6 October 2023, at para 3.

54 See Silvester Silvan's Affidavit dated 6 October 2023, at para 3(a).

55 See D1's Submissions at para 23; Silvester Silvan's affidavit dated 6 October 2023, at para 3(b) & (c).

56 Exhibited in Loi Chai Wei's 1st affidavit, at pp 103–115.

at $80.8m, *ie*, very close to the $80m figure in the Colliers Valuation Report.[57] Paragraph 6.0 of SRE's Valuation Report stated:

> The material date of valuation is *27 January 2023* which is the date of closing of [Tender 2A].
>
> [emphasis added]

It should be noted that although SRE's Valuation Report purportedly stated that the material date of valuation was 27 January 2023, this being at a point when URA had *yet* to revert with its approval of the proposed change of use (approval was communicated only on 3 March 2023 – see [32] above), it appears that URA's approval of the change of use was nevertheless expressly taken into consideration by SRE in its valuation. Notably, paragraph 2 of SRE's Valuation Report stated:

> The following are pertinent facts relating to the subject property: … (b) Outline planning approval *has been obtained* from [URA] for a temporary change of use of levels 3 to 6 of the subject property from commercial to serviced apartments for a period of 10 years, with subsequent renewal of temporary permission subject to further approval.
>
> [emphasis added]

38 The attempts at mediation ultimately failed, prompting the STB to issue a stop order on 26 September 2023, pursuant to s 84A(6A)(*b*)of the Act.[58] On 7 October 2023, the Claimants filed the present application on behalf of the CSC, requesting that the court order the sale of the Property to Coliwoo.[59] The defendants to the application are D1 to D3, D5, as well as D5's representative, the fourth defendant ("D4").

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57 See D2's Submissions at para 31.

58 See Silvester Silvan's affidavit dated 6 October 2023, at para3(d).

59 See C's Submissions at para 14.

Proceedings in court: D2's summons for document production

39 On 8 January 2024, D2 filed a summons against the Claimants, seeking the production of various categories of documents.[60] The learned Assistant Registrar hearing the summons granted D2's application in respect of the following three categories of documents:

(a) All presentation slides and materials presented at

(i) the general meetings and owners' meetings; and

(ii) the meetings of the CSC,

held pursuant to the second collective sale exercise (*ie*, under CSA 2).

(b) All correspondence and documents exchanged between the CSC (including the CSC's representatives, such as Mt Everest or the CSC's solicitors) on the one hand, and the valuers AAA and SRE on the other, relating to the instructions and/or brief given to these two valuers, as well as the clarifications sought from the valuers, in respect of the following valuation reports:

(i) the Tender 2A and Tender 2B Valuation Reports; and

(ii) SRE's Valuation Report.

(c) All documents and correspondence relating to the CSC's authorisation (referred to at [25] above) of the January 2023 Application seeking URA's permission for the change of use to "Serviced Apartment".

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60 See D2's Submissions at para 12(14).

40 Proceedings under the summons eventually culminated in the Claimants filing an affidavit to explain that they had already disclosed all the documents in these three categories, save for one document which was protected by legal professional privilege (this document was shown to me by the Claimants during the hearing and I agreed that it was privileged). As regards category (c) above, the Claimants explained that Coliwoo's request for the CSC to authorise the January 2023 Application had been made verbally and that there were no more documents to disclose, other than what had been disclosed earlier.[61]

Overview

41 Section 84A(9)(*a*)(i) of the Act sets out three factors that may be relevant to the determination of whether a transaction for collective sale is not in good faith:

> The General Division of the High Court or a Board must not approve an application [for an order for the sale of all the lots and common property in a strata title plan] —
>
> (*a*) if the General Division of the High Court or Board (as the case may be) is satisfied that —
>
> (i) the transaction is not in good faith after taking into account only the following factors:
>
> (A) the sale price for the lots and the common property in the strata title plan;
>
> (B) the method of distributing the proceeds of sale; and
>
> (C) the relationship of the purchaser to any of the subsidiary proprietors …

The present case focuses on the factor in limb (A) of s 84A(9)(*a*)(i), *ie*, whether there was a lack of good faith, taking into account the sale price.[62]

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61 See Silvester Selvan's affidavit dated 25 January 2024, at para 8.

62 See also D3–D5's submissions, at para 3.

42 The approach to assessing if there was a lack of good faith within the context of s 84A of the Act was recently explained by the Court of Appeal in *Low Kwang Tong v Karen Teo Mei Ling and others* [2018] SGCA 86 (at [2]):

> In our opinion, an applicant under s 84A of the Act complies with his duties under the law if he has complied with all relevant statutory requirements for collective sales and has spelt out all relevant facts which show purported compliance with his duties and nothing untoward appears on the face of the record. It is *then for any objector to point out by credible evidence that some or all of the stated facts are inaccurate or even false or that there are some other facts which will demonstrate that the transaction is not in good faith within the meaning of the Act. The applicant will have to respond to these assertions* and the Court will make its determination of the facts and express its view on whether the transaction is or is not in good faith on the facts.
>
> [emphasis added]

Thus, the burden of proving lack of good faith rests on the objectors to the collective sale. This was reaffirmed by the Court of Appeal in *Kok Yin Chong and others v Lim Hun Joo and others* [2019] 2 SLR 46 ("*Kok Yin Chong (Goodluck Garden)*"), which held (at [70]–[71]) that "[i]t was thus for the [objecting subsidiary proprietors] to point out by credible evidence that the transaction was not in good faith".

43 However, once the objectors have shown *prima facie* evidence of lack of good faith, the applicants seeking an order for sale under s 84A of the Act must establish that the transaction was in fact in good faith: *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee (Horizon Towers)*") at [200].

44 In *Ng Eng Ghee (Horizon Towers)*, the Court of Appeal gave an extensive exposition of the concept of good faith in the collective sale context, which was re-affirmed in *Ramachandran Jayakumar and others v Woo Hon*

Wai and others and another matter [2017] 2 SLR 413 ("*Ramachandran (Shunfu Ville)*") (at [58]). In essence, a collective sale committee which has transacted a sale in good faith would have exhibited the following:

(a) loyalty or fidelity;

(b) even-handedness;

(c) avoidance of potential conflicts of interest;

(d) full disclosure (albeit in *Ng Eng Ghee (Horizon Towers)*, the Court of Appeal appeared to couch this duty as focusing specifically on disclosing *conflicts of interest*: see [146]–[152]); and

(e) conscientiousness.

45 As regards the duty of conscientiousness, the Court of Appeal in *Ng Eng Ghee (Horizon Towers)* explained (at [153]–[167]) that this encompasses the following duties:

(a) to obtain the best price; and

(b) to consult the SPs.

46 At a broader level, the question arises as to whether a failure to strictly abide by any of the duties above would automatically support a finding that good faith was lacking, or whether something more is needed in terms of culpability. In *Ramachandran (Shunfu Ville)*, the Court of Appeal explained that a lack of good faith within the context of s 84A(9)(*a*)(i)(A) of the Act (*ie*, lack of good faith taking into account the sale price) *usually* entails some want of probity (at [61(a)]):

> Absent any reason for thinking that members of a collective sale committee are actuated by any improper motives or any conflict of interest, and absent clear evidence that the transaction is tainted by unfairness towards some subsidiary proprietors, in particular the dissenting subsidiary proprietors, or by some deficit in the transaction, we think as a matter of common sense, that the transaction will less likely be refused approval. This follows because, as was noted in *Horizon Towers* itself at [131], "good faith" under s 84A(9)(a)(i)(A) of the LTSA entails considerations of good faith as a matter of common law and equity; this usually entails a finding of some want of probity on the part of the relevant parties, although this can be inferred from aspects of the transaction itself.

47 In *Kok Yin Chong (Goodluck Garden)*, the Court of Appeal considered whether misconduct falling short of want of probity could still amount to lack of good faith. The Court of Appeal had considered the missteps by the collective sale committee in that case, which appeared to stem from eagerness or anxiety following the receipt of a bid that was much higher than expected. The Court of Appeal remarked that *negligence* might not amount to a lack of good faith (at [87]):

> In the circumstances, we do not think that there was any dishonest intention or improper motive on the part of those involved. At its highest, it can only be said that they had acted negligently. As we pointed out at the hearing, *there is a* ***difference*** *between someone who is* ***negligent*** *and one who is* ***not acting in good faith****.*
>
> [emphasis in italics and bold italics added]

However, the Court of Appeal also left open the question of whether lack of good faith is established if the collective sale committee's breach of duty crosses to the realm of *sheer recklessness*, particularly if this indicated that the collective sale committee "simply did not care very much about its duties" (at [85]):

> We accept … that the court [in *Ramachandran (Shunfu Ville)*] did not hold that there must always be want of probity on the part of the relevant parties before a lack of good faith can be established. *However, the court was leaving open the possibility*

> *that sheer recklessness on the part of the CSC could amount to lack of good faith, if such recklessness showed that the CSC simply did not care very much about its duties*. In our judgment, it is clear from the reference to good faith "as a matter of common law and equity" that a finding of want of probity will be present in the vast majority of cases where want of good faith is found.
>
> [emphasis added]

48 In the present case, the Defendants have (collectively) raised a long list of grievances which they say are indicative of the CSC's failure to act in good faith. Bearing in mind the legal principles cited above, I have attempted to cast each complaint as (very broadly) falling under one of three overarching headings:

(a) Lack of probity in the CSC's dealings with Coliwoo.

(b) Failure to get the best price for the Property.

(c) Failure to consult the SPs during the collective sale exercise.

In these grounds, I will deal with the Defendants' grievances under each heading, in the order delineated above.

49 It will be seen in the course of the analysis below that there *were* various missteps by the CSC in their conduct of the collective sale process. The process was not perfect. However, the Court of Appeal has held in *Ramachandran (Shunfu Ville)* (at [59]) and more recently in *Kok Yin Chong (Goodluck Garden)* (at [67(b)]) that in determining if good faith was lacking, the collective sale process should be assessed *holistically*, as:"[t]here is generally little to be gained in slicing up the sequence of events and attempting to argue that any one of them goes towards establishing lack of good faith …". Despite these missteps, I have formed the view that, viewed in its entirety, the conduct of the CSC did not cross the threshold to the point of indicating a lack of good faith.

Whether the CSC lacked probity in its dealings with Coliwoo

50 The Defendants' submissions that the CSC lacked probity in its dealings with Coliwoo can be sub-divided into the following allegations:

(a) The CSC accorded Coliwoo an unfair preference by authorising the January 2023 Application even *before* Tender 2B commenced.

(b) The CSC authorised the January 2023 Application despite not having the authority to do so.

(c) The CSC made misrepresentations in its letter authorising AJ+J to make the January 2023 Application.

(d) The CSC engineered a walkover for Coliwoo to win Tender 2B.

These allegations are addressed in turn below.

Whether the CSC accorded Coliwoo an unfair preference

51 The Defendants contended that the CSC had favoured Coliwoo by granting the latter "special" permission to apply to URA for change of use, even *before* Tender 2B commenced.[63] As explained at [25] above, the CSC authorised AJ+J to file the January 2023 Application (which sought change of use from "Commercial" to "Serviced Apartment"), four days before the tender opened.

52 I saw no impropriety in the pre-tender dealings between the CSC and Coliwoo. There is nothing wrong with a collective sale committee taking steps to either remove obstacles that potential purchasers may face in making a bid or make it more conducive for interested bidders to put up better offers. Such steps

[63] See D2's submissions, at para12(5) & 44; D3–D5's submissions, at para 55.

fully cohere with the collective sale committee's duty to secure an appropriate price for the property. Further, such steps are no less proper just because they are taken *before* the tender opens. If impediments to more attractive bids can be removed earlier rather than later, so much the better.

53 D2 sought to cast the assistance rendered as amounting to "prior dealings and unfair preference",[64] arguing that there was no evidence of the CSC granting any similar assistance to other interested parties.[65] However, given that there was no evidence of any *other* potential buyers approaching the CSC for assistance on such regulatory matters in the lead-up to Tender 2B, there would obviously be no evidence of the CSC rendering such assistance to begin with. In any case, the affidavit filed on behalf of Mt Everest stated categorically that *if* such assistance had been sought by any bidder, it would have been rendered.[66] The Defendants have not adduced any evidence to contradict this.

Whether the CSC exceeded its authority in authorising the January 2023 Application

54 The Defendants argued that the CSC had no authority under CSA 2 to authorise the January 2023 Application. By way of preliminary observation, I note that the Defendants made no effort to explain *how*, legally speaking, the alleged lack of authority translates into the conclusion that there was a lack of probity, or (more generally) lack of good faith. On their part, the Claimants submitted that *even if* CSA 2 failed to confer authority on the CSC to authorise the January 2023 Application, the CSC's act of authorising that application

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64 See D3–D5's submissions, at para 17.

65 See D2's submissions, at para 61.

66 See Loi Chai Wei's 1st affidavit, at paras 21 & 33.

would still not constitute lack of good faith.[67] There would have been neither want of probity nor recklessness; the CSC would at most have been guilty of misconstruing the scope of its powers. Ultimately, the CSC was still purporting to exercise those powers to remove an impediment faced by a potential bidder, which was entirely in keeping with its duty to secure an appropriate price.

55 I saw no necessity for me to rule on the Claimants' response on this point, given that the Defendants' argument about the CSC lacking authority was without merit to begin with. The Defendants relied on cl 2.3.9 of CSA 2, which vested the CSC with the authority to:

> sign on behalf of Each Vendor any application, plan or document or letter of authorisation or confirmation which may be required by the *Purchaser* for the purpose of redeveloping the Land …
>
> [emphasis added]

Clause 1.1.30 of CSA 2 in turn defined "Purchaser" as "*the* ***successful*** *purchaser of the Collective Sale*" [emphasis added in italics and bold italics]. Accordingly, when the January 2023 Application was made, Coliwoo was not yet a "Purchaser" within the meaning of cl 2.3.9. The CSC thus did not have any authority to authorise AJ+J to file the January 2023 Application on Coliwoo's behalf.[68]

56 However, the Defendants' argument ignored cl 2.3.15 of CSA 2. A plain reading of that clause, extracted below, shows that the CSC clearly *did* have the authority to authorise the January 2023 Application:

> 2.3 In addition and without prejudice to the generality of Clauses 2.1 and 2.2 the Collective Sale Committee shall have

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67 See Certified Transcript for 25 January 2024, at p 117.

68 See D1's submissions, at para 57(a); D2's submissions, at para 57.

> the authority of Each Vendor from each date of signing of this Agreement by Each Vendor to perform the following which shall bind the Vendors as if Each Vendor performed the same in his own name:-
> …
> > *2.3.15 to apply for or make any submission to the Singapore Land Authority or the Urban Redevelopment Authority* or such other relevant government department or other agency on matters relating to the Land (including, but not limited to, application for baseline search and removal of title restrictions (if any) affecting the Land and alienation of any land adjacent to the Land (if any)); …
>
> [emphasis added]

57 Since CSA 2 expressly authorised the CSC to make the necessary regulatory applications to (among other government bodies) URA, the CSC clearly acted within the bounds of its authority when authorising AJ+J to make such an application.

Whether the CSC was guilty of misrepresentation in its letter authorising the January 2023 Application

58 The Defendants also alleged that the letter authorising AJ+J to make the January 2023 Application contained misrepresentations by the CSC. The Defendants pointed out that this letter declared that the CSC had (a) informed the SPs of the proposed development; and (b) obtained the SPs' consent to make the application (see extract of the letter at [25] above). The Defendants contended that this declaration was untrue, as the Defendants (being SPs themselves) were unaware of the January 2023 Application at the point when it was made.[69] In my view, the Defendants' argument that the letter of authorisation issued by the CSC contained misrepresentations is a difficult one.

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[69] See Lim Swannie's 2nd affidavit, at para 19; D2's submissions, at para 62; D3-D5 submissions, at para 50.

59 Firstly, as a matter of fact, I was not convinced that the CSC had indeed failed to inform the SPs of the proposed change of use. The affidavit filed on behalf of D1 specifically mentioned that during the meeting of the SPs in *2022*:[70]

> … the CSC and [Mt Everest] informed the SPs that the '*potential buyer's interest was to convert the building into a service apartment and not re-development*'.
>
> [emphasis in original]

While the affidavit evidence before me did not give further elaboration on exactly *what* was informed to the SPs, the extract above militated against any suggestion that the CSC failed to disclose the proposed change of use to the SPs. Clearly, the change of use was discussed amongst the SPs even *before* the January 2023 Application was made.

60 Secondly, the terms of CSA 2 prevented me from definitively concluding that the SPs had *not* consented to the application. The Claimants relied on cl 2.1 of CSA 2,[71] which is a general authorisation by the SPs ratifying all acts, deeds and decisions. Clause 2.1 reads:[72]

> The Collective Sale Committee shall be the collective sale committee of the Collective Sale and *Each Vendor* by his signing this Agreement *hereby acknowledges and ratifies all acts, deeds and decisions made by the Collective Sale Committee* whether before on *or after such Vendors signing.*
>
> [emphasis added]

The authorisation of the CSC's actions under cl 2.1 thus clearly had prospective effect. The Claimants also relied on cl 2.3.15 (extracted at [56] above), which gave the CSC authorisation to make such applications. The Claimants argued

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70 See Hilda Loe's 1st affidavit, at ¶42(a)(iv).

71 See Certified Transcript for 25 January 2024, at p 115.

72 Exhibited at Silvester Silvan's affidavit dated 2 January 2024, at p 71.

that these clauses legally amounted to prior consent from the SPs to make regulatory applications to the authorities, such as the January 2023 Application. There would thus have been no inaccuracy in the statement within the CSC's authorisation letter that the SPs' consent to the January 2023 Application had been obtained.

61 The Claimants' interpretation of the purport of the clauses in CSA 2 might appear somewhat expansive at first blush, but I ultimately found it to be persuasive. It would make no commercial sense to have a clause such as cl 2.3.15 secure prior authorisation from the SPs to make the necessary regulatory applications, if the SPs were obliged to go back to the SPs and seek discrete consent every single time such an application was made.

62 I was thus unable to discern any misrepresentation in the CSC's letter authorising AJ+J to make the January 2023 Application.

Whether the CSC engineered a walkover for Coliwoo in Tender 2B

63 It was also the Defendants' case that the CSC had engineered Tender 2B in a manner that would allow the CSC's preferred buyer (*ie*, Coliwoo) to win by a walkover.[73] The Defendants alleged that the CSC had placed Coliwoo as its "singular priority without due regard to obtaining the best possible sale price from the market".[74]

64 D3–D5 went so far as to invite the court to infer that there had been collusion between Coliwoo and the CSC. Specifically, it was suggested that the CSC may have released non-public information to Coliwoo, being the fact that

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73 See D1's submissions, at paras 37–42.

74 See D3–D5's submissions, at paras 19 and 54.

URA's January 2020 Letter (referred to at [10] above) had confirmed that the Property's existing GFA and GPR were 5.2 and 5,839 sqm, *ie*, higher than the Master Plan. This information would not have been widely known, given that the tender documents for Tender 2B and the accompanying investment brief stipulated only the lower GFA and GPR in the Master Plan, *ie*, 4,683 sqm and 4.2 respectively (see [26] above). Yet, after successfully securing the bid, Coliwoo had commissioned Colliers to prepare a valuation report which specifically pointed to URA's January 2020 Letter, where the existing GFA of 5,839 sqm was conveyed.[75] The inference was thus that the URA's January 2020 Letter must somehow have been leaked to Coliwoo.

65 I was not persuaded by the Defendants' submissions above. First and foremost, the Defendants were unable to point to any plausible motive for the CSC to favour Coliwoo at the cost of stymying competition from potential bidders. There was no evidence of any CSC member having a personal nexus, in any shape or form, with Coliwoo that would engender a real or even perceived conflict of interest. Rather, being SPs themselves, members of the CSC would have benefitted directly from any contest to Coliwoo's bid that would serve to spur higher bids. D2 suggested that there was a motive for the Claimants to push for the sale to Coliwoo, notwithstanding a sub-optimal sale price, because members of the CSC owned multiple units in the Property. Specifically, the second claimant owned three units, while the third claimant owned two. D2 argued that both these Claimants would (in their capacity as SPs) stand to gain "asymmetrically" in the event of an *en bloc* sale, as such a sale would generate higher yields than if their units were individually sold on the market.[76] However, it is obvious that this argument is a double-edged sword, with D2 bringing only

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75 See Tan Hi-Kong's affidavit, at para 56.

76 See Lim Swannie's 1st affidavit, at para 87; D2's submissions, at para 54(3).

one edge to the fore. Higher prices arising from stiff competition would similarly lead to asymmetrically higher *gains* for those SPs holding more units, who would correspondingly bear an asymmetrically greater brunt from the sale being transacted at an undervalue. If it was D2's point that an *en bloc* sale at a sub-optimal price (due to lack of competition) would *still* bestow a premium that exceeds the yield from selling the units individually, she certainly did not adduce any market evidence to that effect.

66 It should also be pointed out that there is nothing inherently objectionable with a collective sale committee prioritising its resources to focus on a specific buyer, if market conditions warrant such a strategy (barring any suggestion of conflict of interest arising from links with that buyer). As the Court of Appeal in *Ng Eng Ghee (Horizon Towers)* recognised (at [156]):

> There may be situations where the adage "a bird in the hand is worth two in the bush" holds true. [A collective sale committee's] duty to obtain the best price is counterbalanced by its overarching mandate, which is to bring about a collective sale …

67 One example where a collective sale committee had devoted its resources to courting a specific buyer is seen in the case of *Ramachandran (Shunfu Ville)*. The collective sale committee in that case had held a tender at a reserve price of $688m, which ultimately attracted no bids. Nevertheless, a potential buyer, the Qingjian group, emerged with an indication of interest to negotiate at a lower price. The collective sale committee proceeded to seek approval from the SPs to lower the reserve price to $638m. However, even before that approval could be secured, the collective sale committee embarked on a second tender at the *same* reserve price as the first tender, *ie*, $688m. When the second tender similarly yielded no formal bids, the collective sale committee proceeded to conduct private treaty negotiations with the Qingjian group. By

that time, the SPs had approved a lower reserve price of $638m, paving the way for the collective sale committee to conclude a sale to the Qingjian group at that price. The SPs objecting to the sale argued that the true motivation of the collective sale committee in calling the second tender was to trigger the ten-week private treaty window in paragraph 11 of the Third Schedule to the Act:

(a) Paragraph 11(1) states that a collective sale *must* be launched by way of a public tender / auction.

(b) However, paragraph 11(3) affords the collective sale committee a ten-week window after the public tender or auction closes, within which a collective sale may be negotiated by private treaty.

The objecting SPs alleged that the second tender was not held in good faith, as it was called only *as a matter of form* and with the expectation that the tender would fail. They contended that the tender served as nothing more than the means for the collective sale committee to achieve its underlying objective, which was the activation of the ensuing ten-week private treaty window. Without that window, the collective sale committee was unable to privately negotiate a deal with the Qingjian group: see *Ramachandran (Shunfu Ville)* at [30(b)]. The Court of Appeal held that while procuring the private treaty window may in large part have been a motivation for the second tender, this did not in itself indicate impropriety or an absence of good faith (at [70]):

> As for the conduct of the Second $688m Tender, we are prepared to infer that in the circumstances, this was motivated in large part by the desire to enable the CSC to have another opportunity to enter into a private treaty with a prospective buyer during the ten-week period which followed the close of a public tender. But this, in itself, does not indicate an absence

> of good faith or impropriety on the CSC's part. Of course this too depends on the circumstances …

The Court of Appeal had then looked at the facts of the case and noted that it may not have been practicable to get the SPs' consent in time to hold a tender at the lowered reserve price. The Court of Appeal also observed that attempting a fresh collective sale exercise would entail significant drawbacks, *eg*, the property was an ageing development which faced rising maintenance costs (see [70]–[71]). The Court of Appeal thus observed (at [72]):

> In our judgment, even if the CSC had proceeded with the Second $688m Tender primarily to obtain a second opportunity to negotiate a private sale with Qingjian, this would not in itself be improper or constitute an absence of good faith given the particular circumstances of this case.
>
> [emphasis in original omitted]

68 Similarly, in the present application before me, if the CSC had made a judgment call that the most promising course was to prioritise Coliwoo's bid, that would not in itself be indicative of a lack of good faith.

69 As for the suggestion that the CSC might have colluded with Coliwoo to help it win the bid, this was a serious allegation for which I found no supporting evidence on affidavit. As alluded to at[39(c)] above, D2 had filed a summons for production against the Claimants, where one of the principal categories of documents demanded by D2 was correspondence relating to the CSC's authorisation of the January 2023 Application. As explained above, the summons culminated in the first claimant filing an affidavit stating that:

(a) Coliwoo's request for the CSC to authorise the January 2023 Application was a verbal one; and

(b) the CSC did not have any other documents relating to the January

2023 Application other than those already disclosed.[77]

The Defendants were unable to point me to anything in the documents which were disclosed that was suggestive of the collusion alleged.

70 The Defendants argued that the inference of collusion was buttressed by how Coliwoo came to possess non-public information, namely, the confirmation in URA's January 2020 Letter that the existing GFA was 5,839 sqm, and not (as reflected in the tender documents) 4,683 sqm. They thus suggested that this information had been leaked to Coliwoo, which channelled the same to Colliers, which then reflected that information in the Colliers Valuation Report. However, this submission ignores the fact that the 34-page marketing document issued in conjunction with Tender 2A (referred to at [19] above), issued merely a few months before Tender 2B opened, had prominently stated that the existing GFA and GPR were 5,839 sqm and 5.2 respectively. This meant that by the time Tender 2B opened, the information about the existing GFA and GPR was *already in the public domain*. Anyone gleaning the information from the 34-page marketing document could have, by way of due diligence, sought confirmation by asking the CSC for a copy of URA's January 2020 Letter. I saw no reason why the CSC was not at liberty to extend such a copy. The suggestion that the CSC had privately leaked confidential information to Coliwoo was thus unfounded.

Conclusion on the allegations of lack of probity in the CSC's dealings with Coliwoo

71 Having considered the submissions and evidence above, I found that the Defendants failed to establish that there had been any want of probity in the

[77] See Silvester Silvan's affidavit dated 25 January 2024, at para 8.

CSC's dealings with Coliwoo.

Whether the CSC breached its duty to obtain an appropriate price

72 I now move to the second main plank in the Defendants' case, which is that the CSC failed to get the best price when selling the Property to Coliwoo.

73 In *Ng Eng Ghee (Horizon Towers)*, the Court of Appeal explained (at [168]) that the collective sale committee's duty to get the best price would include taking the following steps:

(a) acting with due diligence in appointing competent professional advisers;

(b) marketing the property for a reasonable period to the largest number of potential purchasers, to create the widest catchment of offers;

(c) following up on all expressions of interest and offers, including carrying out sufficient investigations and due diligence to determine their genuineness (if any doubt exists);

(d) creating competition (where reasonable) between interested purchasers;

(e) obtaining independent expert advice on matters relevant to the decision to sell the property;

(f) waiting for the most propitious timing for the sale, to obtain the best price;

(g) ensuring that it has been properly informed of all potential conflicts of interests that may affect the advice it receives from

any of its professional advisers; and

(h) seeking fresh instructions or guidance from the consenting SPs where the committee entertains a reasonable doubt that its original mandate no longer reflects the consensus of the consenting SPs.

74 In *Ramachandran (Shunfu Ville)*, the Court of Appeal expounded on its decision in *Ng Eng Ghee (Horizon Towers)*, explaining that the duty to secure the *best* price is more properly framed as a duty to secure a price that is *appropriate* under the circumstances of the case. The Court of Appeal in *Ramachandran (Shunfu Ville)* held (at [61(c)]):

> … [Counsel for the appellants] made extensive reference to the fact that in *Horizon Towers* we referred to the duty to secure the best possible price as a critical aspect of a sale committee's conduct of the transaction and even identified specific steps that could or should have been taken. We make three points in relation to this. First, *we prefer to frame the question in terms of whether the price obtained is* ***appropriate*** *in the circumstances … To say that a better price was obtainable, as the appellants contend, seems theoretical and, significantly, nothing has been put forward to establish this contention in this case. The real task for the court is to analyse all the circumstances, including the price, and then consider whether, in that light, it is appropriate to permit the sale to proceed.* This leads to our second point in this connection, which is that the appropriate price always entails a fact-sensitive inquiry. This is not new and was recognised in *Horizon Towers* where our references to obtaining the best price were invariably qualified by words like 'in the circumstances'.
>
> [emphasis in original in bold italics; emphasis added in italics]

75 Furthermore, it would not suffice for SPs objecting to the collective sale to simply complain that the collective sale committee should have done this or that and postulate that a higher price could theoretically have been obtained if these steps had been performed. In *Ramachandran (Shunfu Ville)*, the Court of Appeal made it clear (at [61(c)]) that:

> … a party seeking to make the argument that the price obtained is not an appropriate one for the purpose of letting the sale proceed should particularise the steps that should have been but were not taken *and* explain how the taking of those steps would have realised a better price.
>
> [emphasis in original]

This view, which coheres with the position stated at [42] above that the burden of proving lack of good faith rests on the persons objecting to the sale, was reaffirmed in *Kok Yin Chong (Goodluck Garden)* (at [88]).

76 Returning to the present case, the Defendants had raised a slew of what they considered to be shortcomings by the CSC in conducting Tender 2B, which ultimately led to a sale (to Coliwoo) at a sub-optimal price. The alleged failures by the CSC could broadly be divided into the following limbs:

(a) Failure to procure a valuation of the Property when determining the reserve price for the tender.

(b) Failure to stipulate the Property's *existing* GFA and GPR (which were higher than the GFA and GPR in the Master Plan) in the tender documents.

(c) Failure to promote the Property's potential for conversion to serviced apartments.

(d) Failure to generate adequate publicity leading up to the tender.

(e) Holding the tender open for too short a duration.

(f) Failure to follow up with parties who had previously shown an interest in purchasing the property.

(g) Relying on a flawed valuation report when accepting Coliwoo's bid.

77 I proceeded to address each of these limbs in turn.

Failure to conduct a valuation before setting the reserve price

78 The Defendants complained that the CSC failed to conduct a valuation when setting the reserve price for Tender 2B.[78] In my view, this allegation was unfounded, given that the Tender 2A Valuation Report was prepared barely four months before Tender 2B opened. There was no evidence that the valuation in the Tender 2A Valuation Report had been superseded in any way within this short span of time, such that the CSC ought not to have relied on it when setting the reserve price for Tender 2B.

79 For completeness, I should add that there did not appear to have been a sufficiently contemporaneous valuation to support the reserve price that was set for Tender 2A. The last valuation on record (for purposes of an *en bloc* sale) prior to Tender 2A was the Tender 1 Valuation Report, which was prepared over two years before Tender 2A opened. However, given that Tender 2A did not result in any concluded sale, this failure turned out to be inconsequential.

Failure to stipulate the Property's existing GFA and GPR in the tender documents.

80 The Defendants also complained that the tender documents were incomplete, in that they failed to allude to the *existing* GFA of 5,839 sqm and GPR of 5.2, as set out in URA's January 2020 Letter. Instead, the tender documents stipulated only the (lower) GFA and GPR from the Master Plan,[79]

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78 See Hilda Loe's 1st affidavit, at para 23; Tsui Kee's affidavit, at para 17; D1's submissions, at para 13.

79 Exhibited at Hilda Loe's 1st affidavit, at pp 966–969.

ie, 4,683 sqm and 4.2.[80]

81 I did not think that this omission was indicative of a lack of good faith. To begin with, the evidence before me suggested that within the *en bloc* context, Coliwoo's strategy of *not* redeveloping a building after an acquisition and simply retrofitting the same for a different use is *very rare*. The valuer from AAA, Dr Wilson Lim, affirmed as follows:[81]

> Any developer who wanted to retain the current GFA would have to develop the Development while retaining the building as it is, except for modifications. *While I am aware that the eventual purchaser is doing that, I wish to point out that it is a very rare scenario*; *in almost every case the differential premium in value is realised only by a full redevelopment of the site*. I also wish to point out that the Residual Method of valuation that we used is the method used by all valuers in en bloc cases. This method is premised upon full redevelopment. The approach taken by the Purchaser in the present case, to retain the current building, *is a novel approach* and it is still not clear whether it would pay off for them or start a new trend.
>
> [emphasis added in italics]

This evidence was not contradicted. The Claimants asserted that no other developer had adopted Coliwoo's strategy within the vicinity of the Property.[82] During oral arguments, counsel for the Claimants invited the Defendants to point to any single instance reported in *The Business Times* within the last ten years where a developer had pursued Coliwoo's strategy of purchasing a property *en bloc* to retrofit the same for a different use, rather than for redevelopment.[83] The Defendants were unable to identify any. I thus accepted

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80 See D1's submissions para 59, D3–D5's submissions, at para 35; Hilda Loe's 1st affidavit, at paras 42(b) & 67; Tan Hi Kong's affidavit, at para 8.

81 See Dr Wilson Lim's affidavit, at para 23.

82 See C's submissions, at para 29.

83 See Certified Transcript for 24 January 2024, at pp 106 (line 30) – 107 (line 15).

the Claimants' contention that most purchasers would want to redevelop the property, *ie*, tear down the existing building and erect a new structure. Following from this, it was undisputed that a purchaser redeveloping the Property would have to abide by the (lower) GFA and GPR in the Master Plan, since URA's January 2020 Letter made it clear that the existing (higher) GFA and GPR would *not* apply to any new building erected on the site (see paragraph 10(c) above). The CSC could thus not be faulted if they had taken the position that the existing GPR and GFA figures were not material, given the evidence that these figures would generally *not* have been the focus of *en bloc* purchasers.

82 In any case, the Defendants were unable to specify any prejudice from the failure of the Tender 2B tender documents to allude to the existing GFA and GPR, given that these were released to the market by other avenues. Firstly, the 34-page marketing document explicitly stated that while the GFA and GPR in the Master Plan were 4,694 and 4.2, the existing GFA and GPR for the Property were higher, at 5,839 sqm and 5.2 (see [19] above). This document was released in conjunction with Tender 2A, which was held just four months before Tender 2B opened. Secondly, the existing GFA and GPR could be gleaned from *The Business Times* report dated 10 January 2023 (extracted at [27] above).[84] Specifically:

(a) The report stated that "$85 million price works out to approximately $1,352 per sq ft per plot ratio (psf ppr)". Dividing $85 million by the per square foot price of $1,352 gives rise to the GFA of 62,870 sq feet, *ie*, **5,839** sqm.

(b) The report also stated that "[t]he building sits on a land plot

[84] See Certified Transcript for 25 January 2024, at p 140 (lines 21–30).

spanning about 12,003 square feet (sq ft)". Dividing the GFA of 62,870 square feet by the site area of 12,003 gives rise to the GPR of **5.2**.

83 In short, information about the existing GFA and GPR was clearly in the public domain.

Failure to promote the Property's potential for conversion to serviced apartments

84 The next limb undergirding the Defendants' contention that the CSC failed to obtain an appropriate price centred on the CSC's failure to actively promote the Property's potential to be converted to serviced apartments. Specifically:

(a) The Defendants argued that the CSC should have actively publicised URA's August 2020 Letter (extracted at [14] above) in which URA expressed support for the Property's zoning to be changed from "Commercial" to "Commercial & Residential". If this had been broadcasted, potential bidders would have been alerted to the *prospect* that the Property could be acquired for conversion to serviced apartments.

(b) In early 2023, *ie*, two-and-a-half years after the CSC received URA's August 2020 Letter, Coliwoo emerged and intimated an intention to pursue that very prospect, *ie*, converting the Property to serviced apartments (see [25] above). To facilitate Coliwoo's plans, the CSC had authorised the January 2023 Application seeking URA's approval for Coliwoo's proposed change of use. D1 argued that the CSC, having been apprised of Coliwoo's strategy, should have actively wooed other potential bidders by offering to assist them in making a similar

application to URA for change of use.[85]

On behalf of the Claimants, Loi Chai Wei countered that it was not industry practice, nor would it be reasonable to expect, that an agent marketing the property explore every potential change of use permutation.[86]

85 As a preliminary point, it would be factually incorrect to say that the CSC failed to promote the Property's potential for use as a serviced apartment. URA's willingness to consider a rezoning (as encapsulated in URA's August 2020 letter) *was* broadcasted to the public. As seen in the extract at [27] above, *The Business Times* report of 10 January 2023 expressly stated:

> An earlier application for provisional permission to redevelop the plot into a mixed commercial and residential project *has been given in-principle support by the URA*, the agent [from Mt Everest] said.
>
> [emphasis added]

The issue was therefore whether the CSC should have marketed the potential change of use *more extensively*, and whether its failure to do so demonstrated a lack of good faith in securing an appropriate price. I did not think so.

86 Firstly, our courts have held that valuation reports which are prepared for the purpose of assisting a collective sale committee should not be based on speculative elements that might *possibly* enhance the value of the property: this is explained in greater detail at [113] below. It follows from this that a collective sale committee is expected to base its decisions on *existing facts* and not required to act on speculation. In the present case, URA's August 2020 Letter merely expressed URA's *willingness* to support rezoning. It could not be taken

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85 See D1's submissions, at para 57(c).

86 See Loi Chai Wei's 1st affidavit, at para 18.

for granted that the requested change of use or rezoning *would* ultimately be granted by URA. Further, URA's August 2020 Letter came with a long list of pre-conditions that had to be satisfied before rezoning would be considered. The first claimant had thus deposed (rightfully, in my view) that from the CSC's perspective, there was no certainty as to whether URA was eventually going to approve the change of use.[87]

87 Secondly, URA's August 2020 Letter was clearly qualified as being based on guidelines that were valid for only *six months* (see [15] above) – the premise underpinning the letter would expire by 18 February 2021. This meant that by the Extraordinary General Meeting on 21 August 2021, during which the decision was taken to embark on the second collective sale exercise, the indication in URA's August 2020 Letter would have already expired by a year. In this light, it was difficult to see the basis for the Defendants' insistence that the CSC still had to actively advertise the prospect of a change of use or zoning.

88 Thirdly, as I had alluded to at [81] above, the evidence before me suggested that in the *en bloc* context, Coliwoo's strategy of *not* redeveloping the site post-acquisition but simply retrofitting it for a proposed change of use was very rare. Given how uncommon Coliwoo's strategy was, one could reasonably harbour doubts as to just how much traction could be reaped from marketing the Property's potential to be retrofitted as serviced apartments. Against that backdrop, the CSC could not be blamed for failing to actively market the Property's potential change of use.

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87 See Silvester Silvan's affidavit dated 2 January 2024, at para 38.

Whether there was adequate publicity leading up to the tender

89 The Defendants' next complaint centred on what they perceived to be the inadequacy of the publicity generated by the CSC, prior to Tender 2B. To recapitulate, the CSC and its agents had taken the following steps to publicise Tender 2B:

(a) Mt Everest issued a statement to *The Business Times* on 9 January 2023 (*ie*, two days before the tender), which led to an article about the Tender 2B being reported in *The Business Times* on 10 January 2023 (see [27] above).

(b) Two newspaper advertisements were published to advertise Tender 2B: one was published in *The Business Times* on the first day of the tender (on 11 January 2023) while the other was published in *The Straits Times* slightly before the midpoint of the tender, on 17 January 2023 (see [28] above).

90 The Defendants' contentions that the publicity was inadequate centred on both the *number* and *timing* of the publications:

(a) The Defendants argued that collectively, *The Business Times* article and the two newspaper advertisements constituted a "languid" attempt at publicity.[88]

(b) The Defendants also argued that the publicity was *too late* to garner the necessary interest from prospective buyers, with *The Business Times* article being published only a day before the tender opened and the two newspaper advertisements being

[88] D3–D5's submissions, at para 37. See also D1's submissions, at para 38; D2's submissions, at paras 40–41.

published only after the tender commenced.[89]

In my view, these criticisms did not suffice to support an inference that good faith was lacking.

91 As regards the number of publications, the Defendants' arguments in essence amounted to no more than a bald assertion that two advertisements plus one press release were not enough. Simply accepting this at face value would have been problematic. If the CSC had issued three advertisements or press releases, the Defendants could always respond that it should have issued four. If the CSC had issued four, the Defendants could then counter that it ought to have issued five. There would be no end to this. The Defendants ought to have clearly specified just how many of such publications would, in their view, have been enough and, more importantly, why. This they failed to do.

92 As regards the timing of the press report and advertisements, I had some sympathy for the Defendants' criticism that these were issued late in the day (coming only on the eve of, and during, the tender period). Earlier publicity would have given more time for potential bidders to react. As the Court of Appeal observed in *Ng Eng Ghee (Horizon Towers)* (at [157]), the collective sale committee "ought to market … the property for a reasonable period of time to the largest number of potential purchasers in order to create the widest catchment of offers".

93 Be that as it may, I was mindful of the fact that when it comes to open tenders, the timing of the publicity needs to be carefully calibrated: too late and the target audience might not have time to react; too early and any interest stirred

[89] See D1's submissions, at paras 39–40.

by the advertising may grow cold by the time the tender commences. On this, the Defendants failed to adduce any evidence of the industry practice as to the typical window for advertising *en bloc* sales, to give the court a better idea of where the appropriate balance should have been struck in this case. There was no evidence as to *how much* earlier the press release and advertisements ought to have been issued (*eg*, a week, a fortnight, a month, *etc*), in the circumstances of this case. That would have served to give the court a better sensing of just how far off the mark the CSC had been, thereby facilitating an assessment of whether the lapse had crossed to the realm of a lack of good faith.

94 The Defendants also contended that the inadequate publicity was manifested in the dearth of printed marketing materials for Tender 2B. As explained at [26] above, the CSC had prepared a single-page investment brief when Tender 2B was launched. In contrast, the CSC had procured a much more comprehensive 34-page marketing document in conjunction with Tender 2A (see [19] above). By way of preliminary observation, there did not appear to be any direct evidence as to how either the single-page investment brief or the 34-page marketing document had been circulated to the market. However, as the Defendants stopped short of asserting that these publications were never circulated (it would have been odd for these documents to have been prepared, only to be stowed away), I proceeded on the premise that both documents *were* released to the market.

95 The Defendants argued that compared to Tender 2A, the printed marketing materials for Tender 2B were clearly lacking.[90] Unlike the 34-page marketing document issued in conjunction with Tender 2A, the single-page

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90 See Hilda Loe's 1st affidavit, at paras 71–72; Lim Swannie's 1st affidavit, at para 83.

investment brief issued in conjunction with Tender 2B was bereft of details.[91] Critically, the latter document failed to clarify the existing GFA and GPR, so that potential bidders would only be apprised of the (lower) Master Plan GFA and GPR that had been stipulated in the tender documents.

96 In my opinion, the Defendants' submissions on this point failed to account for the full context. It bore emphasising that Tender 2A and Tender 2B were part of the *same* collective sale exercise, held pursuant to CSA 2. When Tender 2B opened on 11 January 2023, this was barely *four months* after Tender 2A had closed. Any marketing done for Tender 2A, including the release of the 34-page marketing document, would have been relatively fresh. Viewed in this light, the CSC's decision to release only an abridged investment brief for Tender 2B could not be regarded as a serious shortcoming.

97 To conclude on this point, there was some substance to the Defendants' complaint that the CSC could have done more in publicising the tender. However, looking holistically at the number and timing of the advertisements and press releases, as well as the printed marketing materials, I was unable to conclude that the CSC's efforts in this regard were so lacking as to justify a conclusion that good faith was absent.

Whether the tender period was too short

98 The Defendants also complained that the tender period for Tender 2B was far too short, lasting for all of 17 days, which included the 2023 Lunar New

[91] See D1's submissions, at para 41; D2's submissions, at para 42; D3–D5's submissions, at para 37.

Year holiday.[92] The Defendants also suggested that this could be explained by the fact that negotiations with Coliwoo were already underway and, to secure what was thought to be a bird in hand, the CSC decided to shorten the tender period to facilitate a successful bid by Coliwoo.[93]

99 I did not think that the duration of Tender 2B was in any way indicative of a lack of good faith by the CSC in securing the best price. Given the failure of Tender 2A to generate a successful sale, there was some time pressure on the CSC if they wanted to close a deal within the collective sale exercise held pursuant to CSA 2. As explained at [17] above, the requisite 80% approval for CSA 2 was obtained on 22 June 2022, meaning that the 12-month statutory period (prescribed by paragraph 1(*a*) of the First Schedule to the Act) within which an application had to be made to the STB sanctioning the sale (under s 84A(2A)(*a*) of the Act) expired on *22 June 2023*. Loi Chai Wei explained that by shortening Tender 2B, this would give some flexibility to the CSC to conduct a *third* tender pursuant to CSA 2, after factoring in the ten-week private treaty period prescribed by paragraph 11(3) of the Third Schedule to the Act, plus another month for finalising the transactional documents.[94]

100 D1 submitted that Loi Chai Wei's explanation made no sense, as compressing Tender 2B to 17 days still failed to make adequate room for a third tender. D1 sought to demonstrate this with the following projections:[95]

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92 See Lim Swannie's 1st affidavit, at para 82; Hilda Loe's 1st affidavit, at para 75; Tan Hi-Kong's affidavit, at para 44; Tsui Kee's affidavit, at para 30; D1's submissions, at para 51; D2's submissions, at para 44(2); D3–D5's submissions, at para 28.

93 See Tan Hi-Kong's affidavit, at paras 49-52; D2's submissions at para 53.

94 See Loi Chai Wei's 1st affidavit, at para 25.

95 See D1's submissions, at para 54.

> [A]fter taking into account the 10-week private treaty period after the close of the 3rd Tender, the earliest that the Claimants would be able to hold a further tender exercise is 7 April 2023 (*i.e.*, 10 weeks after 27 January 2023). Should there be a further 10-week private treaty period after 7 April 2023, that period would end on 9 June 2023. If 1 month thereafter was required to finalise the sale and purchase agreement, this would have exceeded the 1-year deadline under Section 84A(3) read with Reg 1(a) of the First Schedule of the LTSA to submit the STB application (*i.e.*, by 22 June 2023). Mr Loi's assertion that the duration of the 3rd Tender was to allow the Claimants to conduct a further tender exercise in March 2023 therefore does not make sense.

With respect, D1's projections were misconceived as they assumed that Tender 2B *must* be followed by ten weeks of private treaty negotiations. This was not necessarily the case: if Coliwoo had decided not to proceed and there were no credible bids emerging at the close of Tender 2B on 27 January 2023, the CSC would not (as contemplated by D1's projections above) have to spend ten weeks on private treaty negotiations at the tender's close. The CSC could simply have embarked on preparations for a third tender forthwith. Under that scenario, D1's argument (that shortening Tender 2B would still leave no room for a third tender) fell apart – this can be seen when one works backwards:

(a) The deadline for making the STB application was 22 June 2023.

(b) On the premise postulated by parties that one month was needed for the CSC to finalise the documentation and submit the sale to the STB for sanction, this meant that any private treaty period following the third tender (if one was held) must have been concluded by 22 May 2023.

(c) Even if one were to assume that the private treaty period following the third tender took the *full* statutory ten-week span, this meant that the private treaty negotiations had to commence, and the third tender would have to close, by 14 March 2023 at the latest.

These projections thus showed that there was a period of about *six weeks* between the point when Tender 2B closed (on 27 January 2023) and the point by which the third tender would have to close (on 14 March 2023). This would clearly have been a sufficient buffer to hold the third tender, should Tender 2B fail to yield any credible bids. Additionally, *even* if private treaty negotiations were held at the close of Tender 2B, these could have been conducted on an expedited basis without consuming the full ten weeks, thereby still leaving a buffer for a third tender. The ten weeks prescribed by paragraph 11(3) of the Third Schedule to the Act is the *maximum* duration within which a deal may be concluded by private contract – there is nothing to stop parties from ending their private treaty negotiations earlier.

101 I therefore rejected D1's suggestion that shortening the duration of Tender 2B would not have made room for a third tender. It was clear to me that shortening Tender 2B to 17 days enabled various permutations under which a third tender would remain a live prospect.

102 The Defendants suggested that instead of compressing the window for Tender 2B to make space for a possible third tender, the CSC should simply have stretched Tender 2B over a longer duration, *ie*, keep it open for more than just 17 days.[96] This would have served to widen the catchment window for potential bidders, without a need to provide for a third tender. I agreed that this was certainly *another* way to skin the cat, but I failed to see how the CSC's choice of picking one strategy over another amounted to a lack of good faith. In *Kok Yin Chong (Goodluck Garden)*, the property was put up for sale by public tender, on the assumption that a development charge ("DC") would have been payable by any purchaser intending to redevelop it. Barely *nine days* before the

[96] See D1's submissions, at para 53.

tender closed, it transpired that no DC was payable after all. The collective sale committee informed the potential bidders of this development but *failed to extend the tender period*. When the property was sold at the close of the tender, the objecting SPs complained that the short span of nine days was insufficient for potential bidders to react to the news (that a DC was not payable). The Court of Appeal agreed (at [82]) that nine days might have been rather short for potential bidders to react, and that the tender ought to have been extended. However, it rejected the SPs' suggestion that a higher bid might have emerged if there had been such an extension (at [92]):

> … it is speculative to say that a higher bid would have been received if the tender period had been extended. There is simply no evidence to support this assertion. In particular, there was no request for the tender period to be extended. We think that, on balance, an interested bidder would have at least enquired about an extension within the seven working days available to them. Thus, the appellants had not shown that extending the tender might have realised a better price.

Returning to the present case, there was similarly no evidence to suggest that a higher bid might have come in had Tender 2B been lengthened. As was observed in *Kok Yin Chong (Goodluck Garden)*, any interested party who was daunted by the tight tender period could have enquired about whether Tender 2B could be extended if it was interested in bidding and wanted more time to prepare. In the present case, no such party emerged.

103 Finally, *even* if the CSC had been unduly hasty in bringing Tender 2B to a close, haste stemming from eagerness or anxiety does not in and of itself suffice to show lack of good faith: see *Kok Yin Chong (Goodluck Garden)*, at [87]. I note that the Court of Appeal in *Ng Eng Ghee (Horizon Towers)* indicated (at [188]) that haste motivated by undisclosed potential conflicts of interest may demonstrate a lack of good faith but, as I have already indicated (at [65] above), the Defendants failed to point to any potential conflict of interest on the CSC's

part that was apparent on the face of the affidavits.

Failure to follow up with parties who previously showed interest in the Property

104 In *Ng Eng Ghee (Horizon Towers)*, the Court of Appeal explained that in seeking to get the best price, the collective sale committee should follow up on all expressions of interest and offers arising from marketing efforts and, where reasonable, create competition between interested purchasers (at [158]–[159]). The Defendants in the present case argued that the CSC failed to abide by this duty as it omitted to follow up with KEAF when conducting Tender 2B.[97] To recapitulate, KEAF was one of the potential buyers which had engaged in private treaty negotiations with the CSC at the close of Tender 2A. Upon aborting these negotiations, KEAF specifically intimated that it "would be open to take part in the next tender exercise in 2023" (see [22(b)] above). The Defendants were particularly aggrieved by the CSC's omission to follow up with KEAF during the course of Tender 2B, as KEAF had indicated that it was willing to pay $80–85m for the Property (see [21(b)] above), *ie*, exceeding Coliwoo's price by a margin of up to $5m.

105 In my view, the CSC *should* have reached out to KEAF to invite it to participate in Tender 2B. There were prior discussions between KEAF and the CSC on key terms and, despite these negotiations eventually being aborted, KEAF explicitly said that it was "open" to taking part in the next tender. KEAF's posture clearly extended beyond a passing expression of interest.

106 Nevertheless, I was not convinced that the omission to reach out to

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97 See Hilda Loe's 1st affidavit, at para 76; D1's submissions, at para 43; D2's submissions, at para 43.

KEAF sufficed to constitute a lack of good faith on the CSC's part, given the surrounding facts. Firstly, the Defendants attempted to paint a much rosier picture of KEAF's potential offer than what was really the case. As explained at [21(b)] above, KEAF's price was explicitly stated to be "GST free". When the CSC's solicitors tried to pin KEAF down to stating whether this meant that the SPs (as vendors) would have to bear the cost of GST, KEAF sidestepped the query by replying that its proposed offer was subject to the Inland Revenue Authority of Singapore ruling that GST would not be charged on the sale: see the extract of KEAF's reply at [21(b)] above. This left the CSC with no certainty as to whether the SPs would have to bear the brunt of the GST, if an exemption from GST could not be secured. If the SPs bore the cost of GST, a significant portion of the ostensibly attractive purchase price range of $80–85m would have been shaved off, potentially dragging KEAF's effective price to *below* the reserve price of $80m.[98] In light of this, the CSC's decision to go with Coliwoo's offer, which was pitched at an unambiguous $80m, free of any strings pertaining to deduction for GST, was not without justification.

107 Of course, it would not have taken much effort for one of the CSC's members to give KEAF a call and alert the latter that Tender 2B was underway, thereby priming KEAF to enter the bidding fray. Even then, I noted that the Defendants did not go so far as to suggest that KEAF was unaware of Tender 2B. As mentioned at [27] above, *The Business Times* carried an article on the sale of the Property a day before Tender 2B opened – this was also publicised in two newspaper advertisements. It was significant that KEAF's private treaty negotiations with the CSC ended a mere *eight weeks* before the publication of *The Business Times* article, meaning that the exercise of bidding for the Property

98 See Certified Transcript for 24 January 2024, at p 76 (lines 11–23).

would have been very much fresh in KEAF's mind. Notwithstanding all of this, nothing was heard from KEAF. On these specific facts, I found that while the CSC ought to have reached out to KEAF, pursuant to its duty follow up on expressions of interest and stimulate competition, its failure to do so (given KEAF's behaviour) did not cross the threshold for demonstrating a lack of good faith.

Whether the Tender 2B Valuation Report was flawed

108 In support of their case that the CSC failed to get the best price, one of the primary contentions raised by the Defendants was that the Tender 2B Valuation Report was flawed. Specifically, the Defendants contended that the report ascribed too low a valuation, thereby paving the way for the CSC to accept Coliwoo's bid, notwithstanding the bid being at an undervalue.

109 The Defendants' principal complaint about the Tender 2B Valuation Report was that it failed to take into account:

(a) the proposed change of use which (if approved) would have allowed the Property to be used as serviced apartments;[99] and

(b) the fact that the existing GFA and GPR were higher than the GFA and GPR in the Master Plan.[100]

It should be noted that both items (a) and (b) were closely intertwined. It was only if a purchaser planned to retrofit the existing building for a proposed change of use (rather than redevelop it) that the existing GFA and GPR (which

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99 See D1's submissions, at para 78; D2's submissions, at para 83: Lim Swannie's 1st affidavit, at para 90; Tan Hi-Kong's affidavit, at para 23.

100 See D1's submissions, at paras 71–73 and 77; Hilda Loe's 1st affidavit, at paras 42(a)(iii), 55 and 57.

were higher than the Master Plan GFA and GPR) would become relevant to that purchaser. Any other purchaser planning to redevelop the property would, after tearing the existing building down, be bound by the Master Plan GFA and GPR.

110 Apart from this, the Defendants also raised a long list of other criticisms about the methodology adopted by the Tender 2B Valuation Report, which I have also dealt with below.

The report's failure to take into account the proposed change of use and the existing GFA and GPR

111 The Defendants pointed out that if the Tender 2B Valuation Report had taken both these factors into account, the valuation would have been higher than just $77m. As support for this, the Defendants relied on email correspondence between AAA's Dr Wilson Lim and the CSC's solicitors, which had been disclosed by the Claimants in the course of the proceedings. In one of the emails, dated 18 July 2023, the CSC's solicitors had asked Dr Wilson Lim whether there would be a difference in valuation if he had factored into account the change of use from commercial to serviced apartment and used the higher GFA of 5,839 sqm. Dr Wilson Lim had responded "yes", explaining that these differences would translate into a difference in the returns generated.[101]

112 Additionally, D2 pointed to SRE's Valuation Report, which valued the Property at $80.8m, as well as the Colliers Valuation Report, which valued the Property at $80m. D2 suggested that both these valuations were higher *precisely* because SRE and Colliers had each taken the proposed change of use into account.[102]

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101 See email exchange exhibited in Dr Wilson Lim's affidavit, at pp 115–116.

102 Lim Swannie's 1st affidavit, at para 92; D2's submissions, at para 85.

113 In my view, these criticisms were not sufficient to impugn the Tender 2B Valuation Report. Firstly, while Dr Wilson Lim's email had stated that taking the change of use into account *would* have resulted in a difference in valuation, that email did *not* go on to concede that the change of use *should* have been taken into account by the Tender 2B Valuation Report. In my view, he had good reason not to. As at the point when the Tender 2B Valuation Report was issued on 27 January 2023, URA had yet to revert with its approval of the proposed change of use. In fact, URA's approval was communicated only some five weeks later, on 3 March 2023 (see [32] above). Whether the change of use would be approved was thus still up in the air at the point when AAA prepared the Tender 2B Valuation Report and, consequently, could not be taken for granted. Regard should be had to the views expressed by the High Court in *Lim Hun Joo and others v Kok Yin Chong and others* [2019] SGHC 3 ("*Lim Hun Joo HC*"), which held (at [318]) that the valuation should not be based on a *possibility* of achieving a higher GPR, as such speculation was inappropriate for a valuation meant to assist a collective sale committee. In the same vein, the High Court in *Mrs Spykerman Chwee Wah Christina née Lim v Yow Jia Wen and others* [2023] SGHC 158 held (at [100]) that a valuation should not be based on a speculative estimate of a property's potential. In contrast, Colliers and SRE prepared their respective valuation reports long after URA's letter of 3 March 2023 approving the change of use – this was a development which both valuers could thus take as a given, when preparing their reports. I was mindful that as regards SRE's Valuation Report, paragraph 6.0 purported to state that the material date of valuation was 27 January 2023 (when the tender closed), which was *before* URA's approval on 3 March 2023. Yet, paragraph 2.0 of SRE's Valuation Report explicitly recognised that one of the "pertinent facts relating to the subject property" was that URA had *already approved* the proposed

change of use from commercial to mixed residential and commercial.[103] Loi Chai Wei had thus explained that SRE's valuation had some benefit of hindsight.[104] His observation was of course true not just in respect of SRE's Valuation Report but also the Colliers Valuation Report. It would therefore not be right to point to the valuations by SRE and Colliers and say that just because they had taken the change of use into account, the Tender 2B Valuation Report should have done the same.

114 The Defendants contended that the CSC should have at least procured a *fresh* valuation report which would expressly account for the change of use.[105] Specifically, D3–D5 argued that although the change of use had yet to be approved by URA at the time Coliwoo's bid was accepted, the fact that the sale to Coliwoo was based on the *condition precedent* that the change of use *would* be approved meant that absent such approval, there would be no sale to Coliwoo to speak of.[106] This made it wholly appropriate for the CSC to procure a fresh valuation report, prepared on the *specific premise* that the change of use was going to be approved, so as to properly to determine if Coliwoo's bid had indeed been appropriately priced. D2 added that the fresh valuation could then be used to press Coliwoo for a higher price.[107] The Defendants felt particularly aggrieved by the failure to get a fresh valuation report, because this option was *specifically* contemplated at the CSC's meeting held on 30 January 2023, three days after Tender 2A closed.[108] The minutes of that meeting captured the CSC as agreeing

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103 See Loi Chai Wei's 1st affidavit, at p 104.

104 See Loi Chai Wei's 1st affidavit, at para 27.

105 See Lim Swannie's 1st affidavit, at para 91; Tan Hi-Kong's affidavit, at para 22, D1's submissions, at paras 81–82; D2's submissions, at paras 84-86.

106 See D3–D5's submissions, at para 24.

107 See Lim Swannie's 1st affidavit, at para 92.

108 Exhibited in Tsui Kee's affidavit, at p 27.

to seek another valuation of the Property, over and above the Tender 2B Valuation Report. Yet, those exact same minutes showed the meeting concluding in an inexplicable about turn, with the CSC adopting a resolution to *accept* Coliwoo's offer.[109]

115 I was of the view that the CSC's failure to procure a fresh valuation report did not amount to a lack of good faith.

116 Firstly, taking the Defendants' argument to its logical conclusion, a collective sale committee would have to prepare a discrete valuation for every regulatory application made, catering to the hypothetical eventuality of the application being approved, in respect of every bidder who has subjected his bid to the condition that the application is ultimately approved. No authorities were cited for placing such a burden on the collective sale committee.

117 Secondly, the Defendants have not satisfied me that if such a fresh valuation report had been prepared, the increase in the fresh valuation over the valuation in the Tender 2B Valuation Report would have been so great as to compel rejection of Coliwoo's bid. On this, some guidance may be obtained from the High Court's decision in *Ngui Gek Lian Philomene and others v Chan Kiat and others (HSR International Realtors Pte Ltd, intervener)* [2013] 4 SLR 694. In that case, a development was put up for *en bloc* sale by way of public tender, at a reserve price of $580m. Less than two weeks before the tender opened, it was announced that a land parcel at Bright Hill Drive, which was adjacent to the development, had been sold by way of a Government Land Sale ("the Bright Hill Drive GLS announcement"). Eight days after the tender

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109 See Lim Swannie's 1st affidavit, at para 42; Tan Hi-Kong's affidavit, at para 22; D2's submissions, at para 35.

opened, another announcement was made, this time concerning the Thomson Mass Rapid Transit, where it was revealed that one of the train stations would be within a five-minute walk from the development ("the MRT announcement"). At the close of the tender, a report was prepared valuing the development at $492m. The collective sale committee relied on this report in accepting a bid at $590m. The SPs objecting to the sale contended that the valuation report was flawed, as it failed to take account of both the Bright Hill Drive GLS announcement and the MRT announcement. Furthermore, the valuation was lower than two previous valuations of the development prepared by the same valuer, in the face of what the SPs contended was a rising market. The High Court rejected the complaint that the collective sale committee had relied on a flawed valuation report (at [28]):

> In my view, the shortcomings of the … valuation report do not lead to the conclusion that the CSC had breached its duty to obtain the best price for the Development. The issuance of the valuation report at the close of tender and the Purchaser's $590m bid were plainly two distinct events. Even if [the valuer] had directed its mind to the MRT Announcement and the Bright Hill Drive GLS, *there is no evidence to suggest that the valuation would have exceeded the Purchaser's $590m bid such as to cause the CSC to hold back acceptance of the bid.*
>
> [emphasis added]

Similarly, the Defendants in the present case did not demonstrate just *how much* higher the valuation in the Tender 2B Valuation Report would have been, if its underlying calculations had been modified to factor into account the change of use. That Colliers and SRE (which both took the change of use into account) arrived at valuations exceeding the valuation in the Tender 2B Valuation Report did not assist the Defendants' case. Pertinently, Colliers's valuation (despite being higher than that in the Tender 2B Valuation Report) failed to exceed Coliwoo's bid. As for SRE's valuation, while this exceeded Coliwoo's bid (albeit very slightly), the Defendants failed to isolate the *degree* to which SRE's

higher valuation could be specifically attributed to any premium arising from the change of use. To the extent that the increase was explicable by generic variations in methodology (which would inevitably exist across different valuers) that had no relation with the change of use, this would not assist the Defendants' case on this point. The evidence was thus equivocal as to whether taking the change of use into account would necessarily have resulted in a markedly higher valuation meriting rejection of Coliwoo's claim.

118 Thirdly, the suggestion that a fresh valuation should have been procured and then used to press Coliwoo for a higher price must be tempered against the realities on the ground. I had some sympathy for the concerns expressed by the Claimants, to the effect that driving too hard a bargain carried the risk of driving Coliwoo away. This would have been an exceptionally unpalatable prospect, given that Coliwoo was offering a price that was acceptable to 80% of the SPs and there were no other bidders in sight.[110]

119 Finally, as regards the minutes of the CSC meeting on 30 January 2023, I could not discern anything untoward behind what was captured. It was true that those minutes reflected the CSC saying they would seek a second opinion on the valuation of the Property. However, the minutes clearly qualified that this second opinion would be obtained "[u]pon getting approval of change of use".[111] It was undisputed that as at the CSC meeting on 30 January 2023, the CSC members would neither have known whether URA was ultimately going to approve the application for change of use, nor whether that approval would be communicated in time for the 27 February 2023 deadline (see [30] above) for

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110 See Loi Chai Wei's 1st affidavit, at para 34.

111 See Lim Swannie's 1st affidavit, at para 42(2); Hilda Loe's 1st affidavit, at para 80; Tsui Kee's affidavit, at para 34.

the CSC to accept Coliwoo's offer. With the benefit of hindsight, we now know that URA reverted with its approval only on 3 March 2023, which was *after* that deadline. Given the uncertainty faced by the CSC, even if it had concluded the 30 January 2023 meeting with a decision to accept Coliwoo's offer and not get a second valuation (as contemplated earlier on in the meeting), there would have been nothing inherently wrong with that.

120 The above analysis has focused primarily on the failure of the Tender 2A Valuation Report to take account of the change of use. As regards the complaint that the report failed to take account of the existing GFA of 5,839 sqm,[112] this latter grievance did not appear to be borne out. A perusal of the Tender 2B Valuation Report showed that Dr Wilson Lim *did* use the existing GFA. If one looked at the calculations in the Tender 2B Valuation Report,[113] one would see that the GFA was reflected as 62,855.47 square feet, *ie*, 5,839 sqm. I was unable to reconcile this with Dr Wilson Lim's affidavit, where he stated that his calculations in the Tender 2B Valuation Report had used the (lower) *Master Plan* GFA of 4,683 sqm.[114] Despite the Defendants expressly pointing to this discrepancy,[115] the Claimants did not see fit to provide any response explaining why the existing GFA of 5,839 sqm had been used in the calculations within the Tender 2B Valuation Report, when Dr Wilson Lim's affidavit affirmed otherwise. As such, I was compelled to conclude that there likely *was* an error in Dr Wilson Lim's calculations in the Tender 2B Valuation Report, in that he used the existing GFA of 5,839 sqm when he actually intended

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112 See D1's submissions, at paras 71–73 and 77; Hilda Loe's 1st affidavit, at paras 42(a)(iii), 55 and 57.

113 Exhibited in Tan Hi-Kong's affidavit, at p 197.

114 See Dr Wilson Lim's affidavit, at para 22.

115 See Hilda Loe's 1st affidavit, at paras 60–61; D1's submissions, at paras 83–84; D3–D5's submissions, at para 41(b).

to use the (lower) Master Plan GFA of 4,683 sqm.

121 Nevertheless, if there had indeed been such an error, it was one which went towards *increasing* the valuation. In other words, if the correct figure of 4,683 sqm had been plugged into the calculations in the Tender 2B Valuation Report,[113] the resulting valuation would have been even *lower* than $77m. This result thus did *not* support the Defendants' case that the Tender 2B valuation was erroneously *low*. If there had been any error at all, it had led to the Tender 2B Valuation Report being erroneously *high*. It was thus not open to the Defendants to contend that this error lulled the CSC into accepting an unduly low bid.

Other flaws in the Tender 2B Valuation Report

122 The Defendants also raised a long list of other criticisms regarding the Tender 2B Valuation Report. Having gone through them, I found these criticisms to be insufficient in establishing a lack of good faith by the CSC in its efforts to secure an appropriate price for the Property.

123 Firstly, the Defendants observed that the valuation in the Tender 2B Valuation Report remained the same as that in the Tender 2A Valuation Report (*ie*, $77m) and even *dipped* below that in the Tender 1 Valuation Report (*ie,* $80m) prepared two years earlier. The Defendants found this to be perplexing, given that property prices had been *rising*.[116] However, Dr Wilson Lim explained that the COVID-19 pandemic had precipitated the termination or non-renewal of many commercial tenancies, causing valuations in the commercial

116 See Lim Swannie's 1st affidavit, at para 95; Hilda Loe's 1st affidavit, at paras 42(a)(i) and 48; D2's submissions, at para 28. See also Tan Hi-Kong's affidavit, at para 20; Tsui Kee's affidavit, at para 16.

segment to stagnate or even dip from 2020 to 2023.[117] Still, the Defendants remained unconvinced, with D3 adducing past bank valuations for its unit within the Property which showed a 14.5% increase in value from March 2022 to January 2023.[118] However, Dr Wilson Lim reasoned that the intended use of a property, as well as the purpose of the valuation, would have an impact on the valuation figure.[119] In the case of D3's unit, the valuation was for the purposes of a bank loan, which was very different from when an entire site is being valued for purposes of an *en bloc* sale. The Defendants did not offer any evidence from the valuation industry to counter Dr Wilson Lim's explanation on these points.

124 The Defendants also contended that the Tender 2B Valuation Report failed to make appropriate comparisons with similar property transactions within the vicinity. The Defendants cited various examples which they said ought to have been used as comparable transactions in the valuation process.[120]However, Dr Wilson Lim refuted these examples by explaining that they were unable to meet the tests of similarity, proximity and transaction conditions.[121] Again, the Defendants produced no evidence from the valuation industry to contradict Dr Wilson Lim's evidence on this.

125 The Defendants also raised various miscellaneous grievances about the methodology adopted in the Tender 2B Valuation Report. For example:

(a) They queried why the construction costs adopted by AAA in the Tender 2B Valuation Report were higher than that adopted by

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117 See Dr Wilson Lim's affidavit, at para 15.

118 See Tan Hi-Kong's affidavit, at para 20.

119 See Dr Wilson Lim's affidavit, at para 18.

120 See Tan Hi Kong's affidavit, at para 19; Tsui Kee's affidavit, at paras 14 and 21.

121 See Dr Wilson Lim's affidavit, at para 17.

SRE in the latter's valuation report.[122]

(b) They asked why the Property was valued based on the remaining term of the lease, which had about 55 years left to run, when it was more sensible to value it based on 99 years, given that developers would usually ask the authorities to top up the lease post-purchase.[123]

(c) They questioned why GST was factored into the calculations, thereby lowering the ultimate valuation, when the developer purchasing the Property would have been able to claim input tax.[124]

126 As can be seen, these were all rather technical objections. Without the benefit of evidence pertaining to established industry practice, it was difficult for the uninitiated to affirmatively conclude if they should be dealt with one way or the other. As with the other complaints raised above, the Defendants did not offer any expert evidence to weigh in on the doubts which they were seeking to cast. This was notwithstanding the fact that in October last year, I had given the Defendants an extension of time so that they could call experts to challenge the Claimants' case. The court is of course not obliged to unquestioningly accept a party's expert evidence, just because the other side decides not to call an expert of its own: see *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [76]. However, I am also mindful of the guidance offered by the Court of Appeal in *Saeng-Un Udom v PP* [2001] 2 SLR(R) 1 (at [26]), citing *Halsbury's Laws of Singapore* vol 10 (Butterworths, 2000) at para 120.257, to the effect

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122 See Lim Swannie's 1st affidavit, at para 94.

123 See Hilda Loe's 1st affidavit, at para 63; D1's submissions at para 86.

124 See Hilda Loe's 1st affidavit, at para 62.

that the court:

> … should not, when confronted with expert evidence which is unopposed and appears not to be obviously lacking in defensibility, reject it nevertheless and prefer to draw its own inferences.
>
> [emphasis in original omitted]

I stress that I have *not* accepted the testimony of the Claimants' expert unquestioningly. As highlighted at [120] above, I have concluded that there may have been a mistake in Dr Wilson Lim's valuation, on account of him using the wrong GFA figure. However, the court is not bound to reject an expert's opinion in its entirety simply because it has rejected some portions: see *Armstrong, Carol Ann (executrix of the estate of Peter Traynor, deceased, and on behalf of the dependents of Peter Traynor, deceased) v Quest Laboratories Pte Ltd and another and other appeals* [2020] 1 SLR 133 (at [92]). In the absence of any countervailing expert evidence, I accepted the other parts of Dr Wilson Lim's expert views, to the extent that there was nothing to detract from their logic, coherence and consistency.

127 To recapitulate, the Defendants (as objectors to the collective sale) bore the burden of proving lack of good faith by the CSC in securing an appropriate price. As explained by the Court of Appeal in *Ramachandran (Shunfu Ville)*, in the passage extracted at [75] above, the party arguing that the price obtained was not appropriate should not only particularise the steps that should have been taken, but also explain how these steps (if taken) would have realised a better price. As regards the Tender 2B Valuation Report, it was not enough for the Defendants to simply throw up what they perceived to be flaws in the methodology adopted by the valuation report. To properly assist the court, the Defendants had to explain why the methodology was wrong, what the appropriate methodology was and how adoption of the appropriate

methodology would have yielded a better price. They failed to do so.

Whether the CSC failed in its duty to consult the SPs

128 In *Ng Eng Ghee (Horizon Towers)*, it was held (at [166]) that when there is reasonable doubt as to the proper course that the collective sale committee should adopt, the committee should seek fresh guidance from the SPs. This duty to consult arises out of the collective sale committee's fiduciary obligations, independently of its contractual obligations. Relatedly, a collective sale committee is required to act in a transparent manner and provide all relevant information to the SPs, including those SPs objecting to the application: *Ng Eng Ghee (Horizon Towers)* at [169(a)].

129 The Defendants submitted that the CSC was guilty of various instances of failing to properly consult, and be sufficiently transparent with, the SPs:

(a) The CSC failed to disclose the valuation reports for Tenders 1, 2A and 2B, despite the SPs asking for them.

(b) The CSC failed to disclose the Property's potential change of use (to serviced apartments), as well as the fact that the existing GFA and GPR were higher than the GFA and GPR in the Master Plan.

(c) The CSC failed to disclose that it had authorised Coliwoo's architect to make the January 2023 Application, to facilitate Coliwoo's intended change of use, even before Tender 2B commenced.

I touch on each of these points in the following sections.

Failure to disclose the valuation reports for Tenders 1, 2A and 2B

130 The Defendants complained that the CSC failed to disclose the Tender 1, Tender 2A and Tender 2B Valuation Reports to the SPs, despite "repeated requests".[125] For example, the Tender 2B Valuation Report was disclosed only upon the Claimants' application to the STB.[126]

131 In my view, copies of any valuation reports prepared for setting the reserve price, and of valuation reports prepared at the close of tender (pursuant to paragraph 11(2) of the Third Schedule to the Act), whether for the current or past collective sale exercises, should (so long as these are in the collective sale committee's possession) be made available to SPs who request for them. There is no good reason for a collective sale committee to withhold these reports from SPs asking to see them. To hold otherwise would be to merely pay lip service to the committee's duty of transparency. Such reports are potentially vital in assisting the SPs regarding various critical decisions, including whether to approve the reserve price, as well as whether to revise any reserve price previously approved.

132 However, on the facts of the present case, there was some ambiguity as to *when* the SPs asked the CSC for the valuation reports. This was important as it went towards whether the delayed disclosure of the reports bore any material impact:

(a) As regards D2, she testified that she had asked for the valuation

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125 See D1's submissions, at para 63; D2 submissions, at paras 66–67; Hilda Loe's 1st affidavit, at paras 17 and 65.

126 See Lim Swannie's 1st affidavit, at para 50.

report on 22 February 2023 and 26 May 2023.[127] This was *after* Coliwoo's offer already had been accepted on 10 February 2023. By this time, the CSC could no longer back out of the deal with Coliwoo. The impact from D2 not getting the report promptly would thus have been limited.

(b) As for D1, her evidence was as follows:[128]

> Further, *at the same owners' meeting of 13 December 2022*, the CSC informed the SPs that the valuation of the GSM Building was $77 million. This valuation was the same exact valuation as purportedly set out in the July 2020 Valuation Report – a valuation done more than 2 years ago at the height of the COVID-19 pandemic. *I understand that some of the other SPs had requested the CSC to share the valuation report for the 2nd Tender*. The CSC however refused to provide the valuation report.
>
> [emphasis added]

The above extract from D1's affidavit suggested that some SPs had asked for the valuation reports during the owner's meeting of 13 December 2022 (presumably, the reports referred to here would have been the Tender 1 and Tender 2A Valuation Reports, given that the Tender 2B Valuation Report had yet to come into existence at this point). As of 13 December 2022, any refusal by the CSC to provide the reports would have been consequential, as it would have denied the SPs the opportunity to reconsider their prior approval of the reserve price. However, I note that D1 failed to explain *how* she came to "understand that some of the other SPs has requested the CSC to share the valuation report" – it was not even apparent from her affidavit whether this

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127 See Lim Swannie's 1st affidavit, at paras 47(4)–(5) and 49(3).

128 See Hilda Loe's 1st affidavit, at para 32.

"understanding" was derived first-hand or from hearsay. She also failed to provide particulars of the SPs who had asked for, and were refused, the valuation report. Certainly, no affidavits were adduced from any of them. I thus found her evidence in this regard to be equivocal.

(c) In contrast, Loi Chai Wei testified categorically that the Defendants actively requested for the valuation reports only *after* the CSC had signed the S&P agreement with Coliwoo (*ie*, after it was no longer possible for the CSC to back out of the deal), with the earliest request being made only on 22 February 2023.[129] His evidence thus cohered with that of D2 (who affirmed that she asked for the reports only on 22 February 2023 and 26 May 2023: see [132(a)] above). Loi Choi Wei went so far as to say that prior to 22 February 2023, the Defendants failed to raise any concerns about the valuation reports.[130]

133 Given the vagueness of D1's evidence, I preferred the evidence of Loi Chai Wei, which I found to be consistent with D2's account. This was thus not a case of the CSC casting a stone wall against the Defendants' requests for the valuation reports, while trying to seal the deal with Coliwoo. The evidence showed that by the time the Defendants asked for the valuation reports, there was already no turning away from Coliwoo, and revising the reserve price was no longer an option. Hence, while the CSC's delayed disclosure of the valuation reports might have been at odds with its duty to be transparent with the SPs, I was not satisfied that on these facts, the omission sufficed to translate into a lack of good faith.

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129 See Loi Chai Wei's 1st affidavit, at para 19.

130 See Loi Chai Wei's 1st affidavit, at para 20.

134 The Defendants' complaint about not being extended the valuation reports was tied to a more serious allegation. Specifically, the Defendants claimed that the CSC had *misled* the SPs into thinking that the valuation in the Tender 1 Valuation Report was $77m, when it was in truth $80m. D2 claimed that the CSC had "consistently represented" that the valuation of the Property stagnated at $77m from 2020 to 2023.[131] This was supported by D1, who claimed that she "came to learn from the CSC" that the valuation for Tender 1 was $77m.[132] Her affidavit stated:[133]

> 20b. … the valuation in the [Tender 1] Valuation Report was apparently $77 million *as was told to me by the CSC and/or [Mt Everest].*
> …
> 32. Further, at the same owners' meeting of 13 December 2022, *the CSC informed the SPs that the valuation of the GSM Building was $77 million. This valuation was the same exact valuation as purportedly set out in the* [*Tender 1*] *Valuation Report* – a valuation done more than 2 years ago at the height of the COVID-19 pandemic. …
>
> [emphasis added]

As to why the CSC would want to understate the valuation in the Tender 1 Valuation Report, the Defendants suggested that disclosing the true valuation in the Tender 1 Valuation Report to the SPs would shine a spotlight on the "inconvenient truth" that the valuation had inexplicably fallen from $80m the Tender 1 Valuation Report (prepared in July 2020) to $77m in the Tender 2A and Tender 2B Valuation Reports (prepared in September 2022 and January 2023 respectively), notwithstanding surging property prices.[134]

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131 See Lim Swannie's 1st affidavit, at para 66 and 3rd affidavit, at para 25.

132 See Hilda Loe's 1st affidavit, at para 17.

133 See Hilda Loe's 1st affidavit, at paras 20b and 32.

134 See D1's submissions, at paras 11 and 63; D2's submissions at para 28.

135 I rejected the allegation of misrepresentation. Given the gravity of the conduct with which the CSC had been charged, it behoved the Defendants to provide clear particulars of the misstatements concerned. However, the affidavits were bereft of key details, such as the exact words which were uttered to mislead the SPs, the identity of the person who uttered these words, as well as the composition of the audience to whom these words were uttered.

Failure to disclose the Property's potential change of use and the existing (higher) GFA and GPR

136 The Defendants complained that the CSC failed to disclose to the SPs the Property's potential to be converted to serviced apartments. Specifically:

(a) The CSC failed to disclose URA's August 2020 Letter, which had expressed willingness to allow rezoning of the Property to "Commercial & Residential" – the SPs were thus kept in the dark that the path had been paved for the Property to be converted to serviced apartments.

(b) Two-and-a-half years later, when the CSC authorised the January 2023 Application, which sought this *very* conversion (*ie*, turning the Property into serviced apartments), the application was not disclosed to the SPs either.[135]

Relatedly, the Defendants also complained that the fact that the existing GFA and GPR of the Property were (as reflected in URA's January 2020 Letter) higher than that reflected in the Master Plan (*ie*, 5,839 sqm and 5.2, instead of 4,683 sqm and 4.2) was not disclosed to the SPs.

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135 See Lim Swannie's 1st affidavit, at para 74; Hilda Loe's 1st affidavit, at paras77–79; D2's submissions, at para 77.

137 The Defendants thus argued that the SPs were deprived of the opportunity to decide whether, in light of these newly discovered aspects of the Property, the reserve price should have been raised.[136]

138 I was not satisfied that the CSC's failure to disclose these matters to the SPs arose from a lack of good faith:

(a) As I mentioned at [86] above, URA's August 2020 Letter merely contained an intimation of its willingness to support rezoning. It could not be taken for granted that change of use or rezoning *would* ultimately be granted.

(b) Secondly, as stated at [87] above, URA's August 2020 Letter was expressly stated to be based on guidelines that were valid for six months, which validity period had expired long before the Extraordinary General Meeting at which the decision to embark on the second collective sale exercise was taken.

139 As regards the failure to inform the SPs about the January 2023 Application, it was doubtful whether the CSC even was obliged to disclose this. As explained above, a collective sale committee abides by its duty to get an appropriate price if it takes steps to enhance the conduciveness for better offers to be made. Such steps would include authorising applications to the authorities for regulatory approvals that pave the way for turning plans contemplated by interested bidders into reality. On this, Loi Chai Wei explained that it was not uncommon for applications to be made on behalf of potential bidders to URA for approval of their proposed use of the Property, even before they submit a tender. He also averred that it was not necessary to disclose to SPs every such

136 See Tan Hi-Kong's affidavit, at para 27; D3–D5's submissions, at paras 48(b) and (c).

application that is made, particularly in a situation where it is as yet unclear that URA would even approve the application.[137] The Defendants did not produce evidence of any industry practice contradicting Loi Chai Wei's testimony on this point, which I accepted. In my view, demanding that the SPs be kept apprised of every single regulatory application that has been filed, even before that application has reached any semblance of conclusion, could place a potentially arduous reporting burden on collective sale committees. The Defendants cited no authorities in support of their contention that such a burden should be held to exist at law.

140 It might have been a different matter if URA had given regulatory approval *before* the S&P agreement with Coliwoo was inked, as an argument could *possibly* be made that disclosure would have allowed the SPs to rethink the reserve price and possibly halt the impending sale to Coliwoo. An example of this can be seen in the case of *Kok Yin Chong* (*Goodluck Garden*), where the reserve price for the *en bloc* sale was set at $550m. One day before the tender, the marketing agent appointed by the collective sale committee had informed SPs at an owners' meeting that the purchaser of the property would have to pay a DC of $63.19m to develop it. The DC amount was also conveyed to potential bidders. However, nine days before the tender closed, the CSC received a letter from URA indicating that no DC was payable after all. This latest development was conveyed to the potential bidders, as well as to the collective sale committee, but *not* to the SPs. At the close of the tender, the property was sold for $610m. It was only after this that the SPs were apprised that no DC had been payable. The SPs in that case were aggrieved as the DC was significant, constituting 11.5% of the reserve price. The Court of Appeal observed (at [79]–[81]) that the fact that no DC was payable *should* have been conveyed to the

[137] See Loi Chai Wei's 1st affidavit, at para 22.

SPs:

> 79 … the DC is an important factor when determining the reserve price. Obtaining the DC first would enable subsidiary proprietors to make an informed decision as to what reserve price to set.
> …
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> 81 … the Judge held that when the CSC discovered that no DC was payable, it should have informed and consulted the subsidiary proprietors about this material development. Instead, the CSC updated only the potential bidders and informed the subsidiary proprietors only … after the tender was awarded. We agree with the Judge. The respondents pointed out that no prejudice was caused by the delay in updating the subsidiary proprietors. However, this submission misses the point. As a fiduciary, the CSC is required to act in a transparent manner: *Horizon Towers* ([40] *supra*) at [106] and [169]. This court also held in *Horizon Towers* that "whenever there is reasonable doubt as to the proper course to adopt, the [CSC] ought to seek fresh instructions or guidance from the consenting subsidiary proprietors from whom it draws its mandate" (at [166]). The CSC should have informed the subsidiary proprietors to allow them to decide whether the reserve price should be raised.

For completeness, I should also add that the Court of Appeal nevertheless took the view that the collective sale committee's failure to update the SPs (that no DC was payable) did not suffice to cross the threshold for finding a lack of good faith (at [87]):

> … having regard to the missteps in relation to the DC … together with the failure to put the approval of the apportionment of sale proceeds and the terms and conditions of the CSA to a formal vote at the EGM, we do not think that there was sufficient material before us to establish that the transaction was not in good faith. We think that the missteps were the result of eagerness (or perhaps anxiety) on the part of the CSC, [their solicitors] and [the marketing agent] to conclude the sale, especially after receiving a bid which was much higher than what was initially expected.

As per the extract set out at [47] above, the Court of Appeal proceeded to conclude that at the highest, the collective sale committee could only be said to

have acted negligently and that this was different from not acting in good faith.

141 A key distinguishing factor that set *Kok Yin Chong (Good Luck Garden)* apart from the present application was that the material development in that case (*ie*, that no DC was payable) was *confirmed by URA*, by way of a letter to the collective sale committee nine days before the tender closed: see *Lim Hun Joo HC* at [20]–[21]. This must be contrasted with the present case where, up to the point that the CSC accepted Coliwoo's offer on 10 February 2023, URA's reply on the January 2023 Application was nowhere in sight. In fact, URA replied with its approval only some three weeks after that, on 3 March 2023 (see [32] above), when there was no longer any prospect of raising the reserve price. I was thus not satisfied that the CSC's failure to disclose the January 2023 Application demonstrated a lack of good faith.

142 In any case, it was undisputed that in 2022 (*ie*, before Tender 2B commenced), the CSC and Mt Everest *did* inform the SPs that the "*potential buyer's interest was to convert the building into a service apartment and not re-development*" [emphasis in original].[138] It was thus not open to the Defendants to suggest that the SPs were kept in the dark about the prospect of a change of use that would allow the Property to be converted into serviced apartments.

143 I now turn to the CSC's failure to disclose to the SPs the existing (higher) GFA and GPR, as reflected in URA's January 2020 Letter. As alluded to at [88] above, the existing GFA and GPR would only be relevant to a developer whose strategy was *not* to redevelop the property but merely retrofit the building (as is). As explained at [81] above, the evidence before me suggested that within the *en bloc* context, such a strategy is very rare. It was

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138 See Hilda Loe's 1st affidavit, at para 42(a)(iv).

thus doubtful as to just how much traction could be reaped from marketing the Property's potential to be retrofitted as serviced apartments. Over and above this, there was no guarantee that regulatory approval would even be granted for the proposed change of use to serviced apartments. As such, I did not think that as at the time of Tender 2B, the existing GFA and GPR were sufficiently material, to the point that failure to disclose them to the SPs amounted to lack of good faith.

Conclusion

144 While I have granted the order sought by the CSC, these grounds of decision should not be seen as vindicating all that the CSC had done. As noted at various points in these grounds, there were instances of the CSC failing to properly discharge some of its duties.

145 Specifically, there was some evidence that the CSC failed to disclose the past valuation reports in a timely fashion, despite these being sought by the SPs. In my view, if a valuation report has already been prepared for the purpose of an *en bloc* sale, a collective sale committee in possession of that report should (if the report had not already been disseminated) disclose a copy to any SP who asks for it. This would allow the SP to make an informed decision on whether the reserve price is appropriate. In light of the duty to consult and deal transparently with SPs, any tight-fistedness by the collective sale committee in this regard would be difficult to justify. It just so happened that in this case, the failure to disclose the valuation reports promptly did not turn out to be material, given that the requests for the reports were made only after Coliwoo's offer had been formally accepted and the option for raising the reserve price was no longer on the table.

146 Furthermore, the CSC should have scrutinized the valuation reports more closely. While it is true that members of a collective sale committee are lay persons who are not paid for their work on the committee, the court would not endorse "passive or supine conduct … in the face of an obviously erroneous valuation": see *Ng Eng Ghee (Horizon Towers)* (at [160]), citing Alec Samuels, "The Duty of Trustees to Obtain the Best Price" (1975) 39 Conv 177 at 178. To that end, a collective sale committee cannot blindly rely on an expert valuation. As noted in *Ng Eng Ghee (Horizon Towers)* (at [203]):

> While a trustee is entitled to obtain advice from experts on matters that are not within his competence or knowledge, ultimately the trustee has to reach his own decision in good faith, responsibly and reasonably.

In this case, as I have pointed out at [120] above, the calculations within the Tender 2B Valuation Report appeared to contain a rather material error in its selection of the appropriate GFA figure. Serendipitously, that figure served to *inflate* the valuation and, in that respect, militated against the Defendants' complaint that the valuation facilitated the acceptance of an unduly low bid. If the error had been in the other direction, the outcome of this application might have turned out very differently.

147 On the specific facts of this case, I saw no evidence of want of probity or recklessness on the CSC's part. Although the CSC was guilty of various missteps, a holistic assessment of the CSC's conduct led me to conclude that these ultimately failed to tip the balance towards a finding that good faith was lacking. Accordingly, I allowed the Claimants' application.

148 Parties have agreed between themselves that for this application, each

party is to bear its own costs.

Christopher Tan
Judicial Commissioner

N Sreenivasan SC, Valerie Ang and Felicia Tee (K&L Gates Straits Law LLC) (instructed), Steven Seah and Nicole Huang (Seah Ong & Partners LLP) for the claimants;
Zhuo Jiaxiang, Ngo Wei Shing and Kyle Chong (Providence Law Asia LLC) for the first defendant;
Peh Aik Hin and Rebecca Chia (Allen & Gledhill LLP) for the second defendant;
Hui Choon Wai and Luke Chew (Wee Swee Teow LLP) for the third to fifth defendants.