Tan & Au LLP *v* Goh Teh Lee
[2012] SGHC 130

Case Number : Suit No 606 of 2010

Decision Date : 25 June 2012

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Christopher Anand Daniel and Ganga Avadiar (Advocatus Law LLP) for the plaintiff; The defendant in person.

Parties : Tan & Au LLP — Goh Teh Lee

Tort – negligence

25 June 2012 Judgment reserved.

Judith Prakash J:

Introduction

1 This action started in the Subordinate Courts as a claim by a firm of solicitors against a former client for payment of their fees. The defendant resisted the claim vigorously and mounted a counterclaim for damages, both against the firm and one of its partners, on the basis that as a result of the negligent handling of his case, he had sustained loss. The action was subsequently transferred to the High Court.

2 The plaintiff in the original action is Tan & Au LLP ("the firm"), a firm of solicitors in which the partners are Tan Beng Hui Carolyn ("Ms Tan") and Tony Au Thye Chuen ("Mr Au") who are also husband and wife. The defendant in the original action and the plaintiff in the counterclaim is Goh Teh Lee ("Mr Goh") who was the firm's client between about June 2007 and March 2009.

3 The firm's claim is for the sum of $27,203.66 being fees and disbursements payable under two invoices rendered on 25 November 2008 and 23 March 2009 and includes a sum of interest claimed against the firm by Merill Legal Solutions.

4 Mr Goh's claim is for losses suffered by reason of professional negligence on the part the firm, in particular, Ms Tan. Mr Goh has quantified his loss as being the sum of $200,000 which he asserted that he would have accepted in settlement of his claim had he been correctly been advised and for further sums incurred as legal costs and disbursements which he would not have incurred had it not been for the wrong advice he was given. It bears mention that at all material times during these proceedings, Mr Goh acted in person.

Background

5 In June 2007, Mr Goh and his ex-wife, Mdm Sng Siok Ching ("Mdm Sng"), were the co-owners under a joint tenancy of the property known as unit 136D Koon Seng House ("the unit").

6 The unit was one of the 24 apartment units comprising Koon Seng House, a 4 storey block of flats, which was built on one piece of freehold land which also contained nine terrace houses (Koon

Seng House and the terrace houses are hereafter collectively called "the development"). The flats were not strata subdivided but were comprised in 999,999 year leases with no share in the land. The nine terrace houses were owned by the landowner. This statement of facts is taken from the judgment of Andrew Ang J in *Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 1 SLR 1041 ("*Goh Teh Lee HC*") which also contains in [4] thereof a history of how the development came about.

7 Most of the apartment owners were keen on achieving a collective sale of the development. The landowner was also in favour of the sale. By late June 2007 when Mr Goh first approached the firm to act for him, the only persons opposing the collective sale were Mr Goh and the owners of apartments 134A, 134H and 136H. Mdm Sng had moved out of the unit some time previously and she had agreed to the collective sale.

8 Mr Goh asked Ms Tan to give him legal advice on the actions and steps taken by the sale committee formed by some of the owners in the development to achieve a collective sale of the development.

9 On 16 April 2008, the sale committee applied to the Strata Titles Board ("the Board") for an order allowing them to proceed with the sale. This application, STB 33 of 2008 ("STB 33"), was required because not all the owners of the development had agreed to the sale. On 24 April 2008, the firm acting on behalf of Mr Goh filed written objections to the collective sale ("the Objections") before the Board.

10 Prior to the hearing of STB 33, two mediation sessions were held. The first mediation session was held on 28 May 2008. Present were Mr Goh and both partners of the firm as well as the members of the tribunal appointed by the Board to hear STB 33. At that time, there were two other dissenting owners, Mr and Mrs Han, and they and their lawyer were also present at the first mediation session.

11 In May 2008, the owners of each apartment in the development stood to receive a sum of about $642,000 for that apartment if the collective sale was completed. As an incentive to Mr Goh and the Hans and with the consent of the proposed purchaser of the development, Mr Leong Kwok Yan ("Mr Leong"), the solicitor representing the majority owners, offered Mr Goh and the Hans $800,000 for their respective apartments if they were to withdraw their objections to the collective sale. Subsequently, Mr Leong wrote to Mdm Sng's lawyers in the divorce proceedings making an offer of $200,000 above the original price for the unit. This offer was conveyed to the firm as well on 5 June 2008.

12 Mdm Sng found the offer acceptable and signed the collective sale agreement but no reply was received from Mr Goh or the firm on his behalf. When the tribunal was informed of this non acceptance, it proceeded to give directions for the hearing.

13 Mr Goh's Objections were heard by the tribunal on 3 and 4 December 2008. By that time, he was the sole dissenting owner. Ms Tan represented him before the tribunal. The result of the hearing was in favour of the sale committee and the tribunal ordered the collective sale to proceed.

14 Mr Goh then instructed the firm to appeal the decision in STB 33. On 29 December 2008, the firm filed an originating summons (OS 1627 of 2008) ("OS 1627") in the High Court for the setting aside of the order made by the Board.

15 Thereafter, the firm requested Mr Goh to place it in funds to continue representing him in OS 1627 and to pay the outstanding bills. No payment was received from Mr Goh. On 22 January 2009, the firm informed Mr Goh that if he failed to pay its outstanding bills, it would have no choice but to

discharge itself from further conduct of the matter. In the same letter, it also asked Mr Goh for further funds if he wanted to retain the firm as his solicitors for the conduct of OS 1627.

16 On 4 March 2009, Mr Goh filed a Notice of Intention to Act in Person in OS 1627. He duly represented himself at the hearing of OS 1627 before Andrew Ang J between July and October 2009. On 27 October 2009, Andrew Ang J provided his written grounds dismissing Mr Goh's appeal. The reasons for his decision are set out in *Goh Teh Lee HC*. Mr Goh was not happy with this outcome and filed an appeal to the Court of Appeal. Again, he acted in person. The Court of Appeal's written grounds for dismissing his appeal were released on 26 April 2010. The judgment of the Court of Appeal is reported at *Goh Teh Lee v Lim Li Pheng Maria and others* [2010] 3 SLR 364 ("*Goh Teh Lee CA*").

These proceedings

17 This action was commenced by the firm on 22 May 2009 in the Subordinate Courts as MC Suit 15426/2009. Mr Goh filed his defence and counterclaim on 3 August 2009. In August 2010, pursuant to an application made by Mr Goh, the action was transferred to this court. Subsequently, Mr Goh made an application to join Ms Tan as the second defendant to his counterclaim. This application was allowed and from 29 November 2010, Mr Goh's counterclaim has been against the firm as the first defendant and against Ms Tan as the second defendant. The reliefs sought are, however, the same.

18 The statement of claim filed by the firm is short and straightforward. The amount claimed is $27,203.66 as being the outstanding total sum payable by Mr Goh for professional services rendered to him and expenses incurred by the law firm as Mr Goh's solicitors for and on his behalf and/or at his request including services rendered by Merill Legal Solutions for the audio transcription of the hearing before the Board.

19 By his Defence and Counterclaim (Amendment No 1) filed on 2 June 2010, Mr Goh denied he was liable to pay the sums claimed. He asserted the following:

(a) He had not engaged the firm to act for him in STB 33 or in OS 1627.

(b) The firm had voluntarily acted for him on the mutual understanding that they would win STB 33 and 70% of their professional fees would be paid from the costs which would be awarded to him.

(c) The firm had not quoted its professional fees to Mr Goh for representing him in relation to STB 33 prior to filing his objection to the collective sale.

(d) The firm had not quoted its professional fees to Mr Goh for representing him in the High Court prior to filing OS 1627.

20 As an alternative to his assertions that the firm had acted without instructions, Mr Goh averred that the firm was negligent in discharging its duties to him and/or had failed to properly advise him. The following particulars of negligence/failure to provide proper advice were given:

(a) The firm had never pointed out to Mr Goh and had not advised him that he had no right or *locus standi* to file objections to the collective sale. The firm should have advised him that as a joint tenant of his property, Mr Goh could only raise and file objections with the participation of the other joint tenant. The other joint tenant was his estranged wife who had already signed the collective sale agreement therefore making any objection impossible. In the event, the Court of Appeal ruled as a preliminary point that Mr Goh had no right or *locus* to file any objection because

all the joint tenants of a property had to act together to object to the en bloc sale. The fact that joint tenants had to act together in a cause of action concerning the property of which they were joint tenants was an established principle of law.

(b) Mr Goh had raised and filed the Objections and proceeded all the way to the Court of Appeal because Ms Tan had advised him that he had a good case. However, both the High Court and the Court of Appeal subsequently said that Mr Goh's case had no merits.

21 Mr Goh gave the following particulars of loss and damage that he had sustained by reason of the firm's negligence/failure to give proper advice:

(a) If he had been properly advised that he had no *locus* to object to the collective sale and/or that his case was weak, Mr Goh would have been able to make a properly informed decision whether to proceed before the Board, the High Court and the Court of Appeal.

(b) The work done by the firm in preparing and filing the Objections was unnecessary and unjustified and was done for a case that was hopeless from the start and therefore the firm should not be entitled to claim any fees for work done.

(c) Mr Goh had incurred unnecessary disbursements and expenses including stamp fees for which he was entitled to be indemnified by the firm.

(d) As a result of his not being properly advised, Mr Goh had turned down an offer by the purchasers in collective sale for pay him an additional $200,000 as an incentive to sign the collective sale agreement. If Mr Goh had known of his problems over *locus* and/or the weakness of his case, he would have accepted the money.

22 Mr Goh then put in a counterclaim. He claimed an indemnity from the firm against payment of all unnecessary disbursements and expenses and payment of the sum of $200,000.

23 The Defence quoted above was the defence to the original action by the firm. Subsequently, Mr Goh put in a separate Counterclaim against Ms Tan. The issues raised by the Counterclaim are in essence the same as those raised by the Defence and the claim made is also similar so I will not set out the allegations in the Counterclaim in detail.

24 At the trial of the action before me, three witnesses appeared for the firm namely, Ms Tan and Mr Au and Mr Leong. Mr Goh was the only witness for the defence.

Issues

25 The issues arising in this case may be considered under three heads:

(a) In relation to the firm's claim, what were the terms on which the firm was engaged to act for Mr Goh?

(b) In relation to Mr Goh's defence and counterclaim:

(i) Were the firm and Ms Tan negligent in the discharge of their duties to him because they never pointed out to him that he had no *locus standi* to file objections to the collective sale; and

(ii) Did the firm and Ms Tan act to the standard of a reasonably competent and diligent

advocate and solicitor in advising Mr Goh on the merits of his objections to the collective sale?

(c) In the event Mr Goh has no valid defence and counterclaim, is the firm entitled to the full amount claimed?

Was the firm instructed and authorised to act for Mr Goh in the conduct of STB 33?

26 This issue arises from Mr Goh's denial in his Defence and Counterclaim (Amendment No 1) that he engaged or authorised the firm to act for him in the collective sale of the development and in OS 1627. The further elaboration of this point as set out in the Defence and Counterclaim (Amendment No 1) has been set out in [19] above.

27 In his closing submissions, Mr Goh did not deal with these points at all. Further, since the firm obviously acted for him before the Board and in filing OS 1627 and Mr Goh's main complaint is that it and Ms Tan acted negligently in the course of so doing, it would seem that these complaints are baseless. However, since Mr Goh was not represented, it would probably be useful to consider whether he was able to substantiate any part of his pleadings on this point in the course of the trial.

28 From the averments in paras 2, 3, 4 and 5 of his Defence and Counterclaim (Amendment No 1), Mr Goh's position seems to be that he did not engage or authorise the firm to act for him but that they "voluntarily act[ed]" on the understanding that they could win the case and recover 70% of the costs of so doing from the costs to be awarded to Mr Goh. Further, the firm did not quote its professional fees for representing Mr Goh before the Board or before the High Court before taking action in relation to these two matters. Mr Goh seems to be implying from these pleadings that there was no contract between him and the firm and that any representation which the firm undertook, it undertook as a volunteer and therefore would not be entitled to be paid.

29 As a preliminary point, I note that this position is a difficult one to establish because in the ordinary course of business, one would not expect a solicitor's firm to represent a client who has not instructed it or to volunteer its services. Solicitors' firms are in practice to do business and do not, in general, undertake to provide their services on a voluntary basis to persons who have no connection with them and are engaged in property disputes. Further, solicitors are well aware that it is against the rules of practice to provide services on a contingency basis.

30 In support of his contention that he did not instruct and authorise the firm to act for him in the conduct of STB 33, Mr Goh stated in his affidavit of evidence-in-chief ("AEIC") that Ms Tan had filed his objections to the collective sale on 24 April 2008 without discussing her legal fees with him or asking for a deposit. He concluded from this that Ms Tan had moved to secure herself to act in his case and had left him with no opportunity to decide whether to appoint her or not. He said that since she did not mention fees, she had volunteered to act for him without any agreement or fees. Mr Goh's exact allegations (at [6]-[8]) are as follows:

> [Carolyn Tan] then prepared my objections to the application for a collective sale order. She filed my objections on and about 24 April 2008 without first mentioning or discussing her legal fees with me, without asking for any deposit and without asking me to sign a warrant for her to act.
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> So Carolyn had moved to secure herself to act in my case and left me with no opportunity to decide whether to appoint her or not. Since *she did not mention fees*, she had *volunteered to act* for me without any agreement on fees.

> In the course of our meetings, Carolyn was full of confidence in winning my case and told me that upon winning the other side would pay 70% of my costs i.e. 70% of the actual legal fees that I would have to pay. At the same time, she did not ask me for a deposit. This gave me the impression that I would only have to pay 30% of my actual legal costs and could expect that 70% would be paid by being claimed from the other side. I completely believed in the confidence Carolyn projected in winning my case.
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> [emphasis original]

31 The objective evidence was, however, that by a letter dated 29 May 2008, the firm gave Mr Goh an estimate of its legal fees for representing him in the conduct of STB 33, which involved their preparatory work, attending two mediation sessions and one day of hearing. Mr Goh received this letter and subsequently asked for a discount to which the firm agreed on 10 June 2008. In its letter of that date, the firm lowered its fee estimate by $1,500. The firm's reason for giving Mr Goh its fee estimate only after the Objections to the collective sale were filed was that STB 33 was commenced on 16 April 2008 and the firm had only ten days in which to put in the Objections. It therefore prepared these on an urgent basis first, leaving the issue of fees to be sorted out later.

32 The fact that the firm did not quote its fees or have a warrant to act signed before the Objections were filed with the Board does not mean that Mr Goh had not authorised it to do so. He admitted receiving the letter of 29 May 2008 which contained the original fee estimate. He must have known then that the firm expected to be paid for its work. In fact, he did know it because he asked for a discount which he was given subsequently. At that stage, Mr Goh could have informed the firm that it was not entitled to charge him anything because it had acted without authority in filing the Objections and/or because it had agreed to conduct his case on a voluntary basis. He took no such action. I do not accept that he genuinely believed at that time that the firm was acting either without authority or as a volunteer.

33 As seen from the quotation above, Mr Goh also took the position that there was an agreement between him and the firm that he would only need to pay 30% of the firm's actual professional fees. Mr Goh was not, however, consistent in this position. In his Defence and Counterclaim (Amendment No 1), he alleged that the firm acted voluntarily for him on the "mutual understanding" that it would win before the Board and an estimated 70% of the firm's fees would be paid from the costs awarded to him. Subsequently, on 6 January 2011, in his Reply to the Second Defendant's Defence to Counterclaim, Mr Goh alleged that there was a "verbal agreement" between Ms Tan and himself that he would only have to pay about 30% of the costs before the Board if he did not succeed. In his AEIC, Mr Goh retreated from his allegation of a verbal agreement and instead said that because first, Ms Tan had told him that upon his winning, the other side would pay 70% of his costs and second, she did not ask him for a deposit, he was given the "impression" that he would only have to pay 30% of his fees.

34 There is no evidence of any such agreement on fees. First, there was nothing in writing. Second, Mr Goh did not even cross-examine Ms Tan during the trial as to the existence of the alleged verbal agreement. Third, in his own AEIC, the existence of an agreement was not asserted. Fourth, Mr Goh had first approached the firm for legal advice in June 2007 and shortly thereafter, in July the firm asked him for a deposit of $1,000. He paid this deposit. Then, on 24 April 2008, immediately after filing the Objections, the firm sent Mr Goh a letter seeking "a further $5,000 to account of [their] costs and disbursements". On 13 May 2008, the firm sent him a chaser asking for this money. At the start of the trial therefore, the evidence appeared to show that the firm did want a deposit contrary to what Mr Goh had said in his affidavit.

35 During cross-examination, Mr Goh admitted that the firm had, on and off, asked him for payment. He agreed that it had, on and off, also billed him for work done and chased him for payment when he had not paid. He admitted that when he was asked for payment, he did make some payments. He also agreed that he had never challenged the firm in respect of its requests for payment by saying that he was only supposed to pay 30% and the remaining 70% would only be recovered if he won.

36 There was also a letter from the firm to Mr Goh dated 30 June 2008 which told him that in the event that he won the case before the Board, the firm would make an application for costs to be awarded to him. The letter went on to warn him "But from our experience, the award of cost [*sic*] by the Tribunal is on a discretionary basis". Mr Goh admitted in court that he had received this letter and that the firm had advised him that costs would only be awarded by the Tribunal on a discretionary basis. He was asked whether he agreed that it was quite clear from the letter that the firm was not saying that it was willing to accept only 30% if the case was lost. Mr Goh's reply was "It's not mentioned here about the 30%". He further agreed that he did not respond to that letter to say that he disagreed with its terms and the firm could only charge him 30% in that event.

37 On the evidence, it is clear that there was no agreement between the firm and Mr Goh that he would only be liable to pay 30% of the legal costs incurred and that too only if he won his case before the Board.

Was the firm instructed and authorised to act for Mr Goh in the conduct of OS 1627?

38 In his Defence and Counterclaim (Amendment No 1), Mr Goh also denied officially engaging the firm to act for him in OS 1627 and alleged that prior to filing OS 1627, it had failed to provide him with an estimate of its professional fees for doing so. OS 1627 was filed on 29 December 2008. In his AEIC, however, Mr Goh's evidence did not support this allegation. He said there that after the Board dismissed his Objections, Ms Tan had advised him that he could make an appeal to the High Court and she sent him a written quotation dated 19 December 2008 on her professional fees for this appeal. Mr Goh asserted that up to the date of his AEIC, he had not agreed to or accepted the quotation. This evidence contradicted his pleading that he did not obtain an estimate of the firm's professional fees before OS 1627 was filed. There was also evidence that on 19 December 2008 itself, after being asked by the firm to place it in funds, Mr Goh had a conversation with an employee of the firm in which he said the firm put payment at "number one" and that in priority his case only came after the payment. During this conversation he also indicated that he wanted OS 1627 filed by 26 December 2008.

39 Mr Goh subsequently sent an email to the firm (on 24 December 2008) in which he noted that if the matter proceeded all the way to the Court of Appeal, and the collective sale order was set aside, there would be three sets of costs averaging about $15,000 each which the firm could recover from the sales committee. He then proposed that if he were to lose before the Court of Appeal, he should only have to bear the costs incurred up the hearing before the Board. About a month later, the firm informed Mr Goh that it could not agree to totally waive its costs for the conduct of the High Court and Court of Appeal cases but would, as a gesture of goodwill, significantly reduce its usual costs for him.

40 Whatever Mr Goh may have said in his pleadings, the evidence shows that he did engage the firm to act for him in OS 1627 and that he was given an estimate of its costs. The fact that he did not expressly accept it makes no difference. He knew what the estimate was and he allowed the firm to proceed with the filing and indeed he wanted the case to be filed quickly so that there would be no difficulty meeting the time limit. Subsequently, Mr Goh asked the firm for a draft of his affidavit in

support of OS 1627 for his review as it was important to him to have it filed in accordance with the time lines set by the High Court. The contention that the firm was not authorised to act for him in OS 1627 has no merit at all.

Care and conduct of the proceedings

41 The law relating to the standard of care and skill required of solicitors in the conduct of professional business was reiterated recently in *Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534 ("*Zhou Tong*"), by V K Rajah JA (at [15]):

> In particular, I made the following general observations on the standard of care and skill required of solicitors in the decision of *Lie Hendri Rusli v Wong Tan & Molly Lim* [2004] 4 SLR(R) 594 at [42]-[44]:
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> > 42 It is hornbook law that a solicitor is expected *to exercise the care and skill of a reasonably competent solicitor in discharging his duties* under the retainer. In assessing the standard of care to be reasonably expected of a solicitor, the *factual backdrop is of paramount importance*. Abstract notions of skill and competence often add little to resolving the situation and have to be applied with vigilance when meandering through the undergrowth of facts. It must be appreciated that there is no magic formula that can reconcile the myriad of case law principles and any attempt to distil such principles must be tinged with pragmatism. In other words, no single touchstone will suffice to illuminate or unravel the existence and extent of a duty in any given matrix.
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> > 43 In reality the so-called *reasonably competent solicitor* is a mere legal fiction judiciously deployed from time to time to justify risk allocation. The court is ever anxious to *maintain and police the standards of the legal profession*, which performs a vital role in a society that is predicated, and places a premium, on the rule of law. In the discharge of its duty to uphold the legal system, *the legal profession must seek not only to jealously maintain high standards but to unfailingly remain alert and acutely conscious of the fact that the public perception and the standing of the profession is indivisibly determined by the standards it embraces and observes*. Rule 2 of the Legal Profession (Professional Conduct) Rules 1998 (Cap 161, R 1, 2000 Rev Ed) ('Professional Conduct Rules') explicitly prescribes that solicitors have the following obligations:
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> > (a) to maintain the Rule of Law and assist in the administration of justice;
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> > (b) to maintain the independence and integrity of the profession;
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> > (c) to act in the best interests of his client and to charge fairly for work done; and
> >
> > (d) to facilitate access to justice by members of the public.
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> [...]
>
> > 44 The real issue, in any given case, *is whether the court views the standards applied and skills discharged by the particular solicitor as consistent with the legal profession's presumed responsibilities and obligations to its clients*. This is not a fossilised concept and standards periodically evolve as well as vary in different factual matrices. It bears mentioning that adopting the practice of the entire profession does not by itself exonerate a solicitor from the acid test of reasonableness measured by adequate competence and skill: *Edward*

Wong Finance Co Ltd v Johnson Stokes and Master [1984] AC 296. The efflux of time or general acceptance cannot legitimise any neglect of duty by the profession as a whole.

[Emphasis in original]

42 Mr Goh's counterclaim against the firm and Ms Tan was based on his assertion that they had not met the necessary standard of care in two respects *viz* in relation to the basic issue of whether he was entitled to object to the collective sale at all and, second, in relation to their general care and conduct of his file especially since they wrongly advised him that he had a good case.

43 Mr Goh's case turned to a large extent on the applicability and the interpretation of s 84E of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) (the "Act"). For convenience, the relevant provisions of s 84E are set out below:

Application for collective sale where proprietors of flats own leasehold estate of at least 999 years or other estate in flats not registered under Act but do not own the land

84E.-(1) This section shall apply where there are subsisting leases of flats in a development registered under the Registration of Deeds Act (Cap. 269) or the Land Titles Act (Cap. 157) for a leasehold estate of 999 years or more or for such other estate as the Minister may, by notification in the Gazette, specify and where the proprietors of the flats do not own the land comprised in the development.

(2) The proprietors of 25% of the flats to which this section applies may apply to the Registrar for notional shares in the land to be assigned to each of the flats based on the method used by the Commissioner for the allocation of share values.

(3) An application to a Board for an order for the sale of all the flats and the land in a development to which this section applies may be made by -

(a) ...

(b) the proprietors of the flats who own not less than 80% notional share of the land where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building comprised in the development or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building comprised in the development, whichever is the later,

who have agreed in writing to sell all the flats in the development to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the proprietors of the flats (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

...

(5) A proprietor of any flat in the development who has not agreed in writing to the sale referred to in subsection (3) and any mortgagee, chargee or other person (other than a lessee) with an estate or interest in the flat and whose interest is notified on the land register for that flat may each file an objection with a Board stating the grounds for the objection within 21 days of the date of the notice served pursuant to the Schedule or such further period as the Board may allow.

Locus standi

44 The issue of Mr Goh's ability to lodge objections to the collective sale in accordance with s 85E(5) of the Act was not raised before the Board or in OS 1627. In fact, it was not raised in either the Appellant's Case or the Respondent's Case prepared for the purpose of Mr Goh's appeal to the Court of Appeal against the High Court decision. This issue was raised by the Court of Appeal itself when, prior to the scheduled hearing of the appeal, it asked the parties for submissions on whether it was necessary, under the existing scheme for collective sales, for co-owners (whether by way of joint tenancy or common tenancy) to act together if they wanted to either support or oppose the sale. The Court of Appeal described the answer to this question as being "pivotal" because it determined Mr Goh's ability to put his objections before any tribunal.

45 In the result, after analysing and considering the submissions of both parties, the Court of Appeal concluded that all co-owners had to act together to either support or oppose a proposed sale. The relevant conclusions of the Court of Appeal are summarised in the headnote of *Goh Teh Lee CA* as follows:

> (1) All co-owners had to act together to either support or oppose a proposed sale. As Mr Goh's ex-wife, the other co-owner of Unit 136D, did not object to the collective sale, and had in fact agreed to the collective sale, Mr Goh did not have the *locus standi* to appeal against the Board's order (be it before the Court of Appeal or the High Court) or to object before the Board: at [7].
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> ...
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> (5) The definition of "subsidiary proprietor" in s 84E(5) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") required the relevant person to be proprietor of the *entire* estate. In cases where a flat was co-owned by tenants in common, a single tenant in common would not be a "subsidiary proprietor" for the purposes of ss 84E(3) and 84E(5) of the Act as he would not be the owner of the entire interest but merely an owner of a distinct portion of the estate. All tenants in common of a particular flat would thus have to act in concert before that unit could be reckoned to have supported or opposed a proposed sale under ss 84E(3) and 84E(5) of the Act: at [16].
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> (6) In situations where a flat was co-owned by joint tenants, which was the situation at hand, since the interest of each joint tenant was the same in extent, nature and duration, a necessary consequence was that each and every joint tenant must partake in any dealings with the whole legal estate before such dealings might effectively bind the entire estate. An action by one joint tenant, or even by some joint tenants but short of all of them collectively, would not suffice to bind the estate, as the whole estate did not reside in the single joint tenant or the select few (as the case may be). In the context of a collective sale, the implication was that where a flat was held jointly, none of the joint tenants was allowed to support or oppose the proposed collective sale unilaterally. Since all must act together, where one objected to the sale and the rest did not object (or even supported the sale), the preference of neither side could trump the other: at [17], [21] and [24].
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> (7) A jointly held unit, where one co-owner had objected to the collective sale whereas the other had agreed to the collective sale, should not be regarded as having objected to the collective sale *per se*. Such a unit had simply not taken a position as to the collective sale, *ie*, it neither supported nor opposed the sale: at [25] to [26].

Parties' arguments

46 In this action, Mr Goh argued that the defendants were negligent in their handling of the issue of *locus standi*. He asserted that Ms Tan was negligent because she did not exercise due diligence in relation to this issue. She should have been aware that it was established law that a joint tenant must always act together with other joint tenants. Even if she could not be expected to remember all of the law all of the time, Ms Tan should have acted with due diligence to refresh her memory of that established law through research in order to equip herself to advise him properly and competently.

47 Mr Goh further argued that the defendants' assumption that he had standing was below the standard of care of a reasonably competent and diligent advocate and solicitor. He argued that the true position was that he did not have *locus standi* under s 84E(5) of the Act to file objections to the collective sale. Ms Tan should have placed this consideration before him in order to enable Mr Goh to make an informed decision whether or not to proceed with the hearing before the Board or to accept the offer of the additional $200,000 for his unit.

48 In furtherance of his arguments, Mr Goh stated that a reasonably competent and diligent advocate and solicitor would have:

(a) Done proper and adequate research which would have reminded him or her that joint tenants had to act and sue together;

(b) Asked himself or herself whether anything in s 84E(5) or any other part of the Act showed a clear and unambiguous intention to depart from this established rule of law;

(c) Concluded that there was no such clear and unambiguous intention to depart from the established law that joint tenants had to act together and sue or be sued together;

(d) Concluded that Mr Goh did not come within any established exception to the common law rule requiring joint tenants to act together; and

(e) Concluded that the responsible advice to be given to Mr Goh was that, because of points (a) to (d), he, acting alone, did not have *locus standi* to file an objection under s 84E(5).

49 The defendants submitted that they had exercised the reasonable care and skill required of a reasonably competent and diligent solicitor, and so were not negligent. They contended that the position they took was defensible. This was clear from paragraph 21-23 of Ms Tan's AEIC, which read:

> Neither Tony nor I had any doubt that [Mr Goh] was entitled to object to the collective sale. We believed that, as joint tenant of the Property, he was entitled to the rights to the whole of the Property, just as his ex-wife was, and could speak to the same.
>
> We also relied on Section 84E(5) of the Land Titles (Strata) Act, which stated that a proprietor of any flat in the development who has not agreed in writing to the collective sale may file an objection to the sale, upon stating the grounds of objection.
>
> *Accordingly, we did not advise [Mr Goh] that, as a joint tenant of the Property, he would have to act jointly with his ex-wife at the STB Hearing. The issue never came up. Further, we believed, that, under the Mareva Injunction [taken out by Mr Goh's ex-wife], as [Mr Goh's ex-wife (the other joint tenant)] did not wish [Mr Goh] to deal with the Property at all until the injunction was lifted, she did not support the collective sale as well and that we could take the view that both co-owners wanted to maintain status quo.*

[emphasis added]

50 These arguments were adopted by the defendants in their submissions as well. Accordingly, the defendants argued that they had reasonable basis for construing the Act in the fashion they did, and there were tenable bases for them to take the views they did. They then argued that the fact that a solicitor had erred in construing or in advising on the construction of a statute or document is unlikely to constitute negligence, so long as the construction which he favoured was a tenable one.

51 Second, the defendants argued that the law was uncertain and any error was an error of judgment on the part of the defendants which did not amount to negligence. This second argument does not, however, appear to have much substance as even an error of judgment may be negligent. This was clearly pointed out by Chao Hick Tin J in *Wai Wing Properties Pte Ltd v Lim, Ganesh & Liu (a firm)* [1994] 1 SLR(R) 1004 (at [62]):

> *I would hasten to add that a solicitor cannot escape liability by merely labelling a mistake as an error of judgment. It depends on the nature of the mistake.* I would like to quote the speech of Lord Fraser in *Whitehouse v Jordan* [1981] 1 All ER 267 at 281:
>
> > Merely to describe something as an error of judgment tells us nothing about whether it is negligent or not. The true position is that an error of judgment may, or may not, be negligent; it depends on the nature of the error. If it is one that would not have been made by a reasonably competent professional man professing to have the standard and type of skill that the defendant held himself out as having, and acting with ordinary care, then it is negligent.
>
> [emphasis added]

Accordingly, the court cannot exempt the solicitor from liability by simply describing his error as an error of judgment. It has to undertake the inquiry necessary to determine whether the error arose from negligence.

Analysis

52 In the analysis of the issue, the first thing to consider is whether the defendants should have alerted themselves to the law regarding joint tenants. This question arises from Mr Goh's assertion that the defendants should have performed research, should have sought to have informed themselves of the law and should have avoided making assumptions as to his standing.

53 The evidence was that the defendants did not, in the course of advising Mr Goh on his objections to the collective sale, research the law on joint tenants. That area of the law appears not to have entered their minds at all.

54 Ms Tan conceded that she did not advise Mr Goh that he had no *locus standi* to oppose the collective sale before the Board Proceedings. This was clear from paragraph 21 of her AEIC, which read:

> Neither Tony nor I had any doubt that [Mr Goh] was entitled to object to the collective sale. We believed that, as joint tenant of the Property, he was entitled to the rights to the whole of the Property, just as his ex-wife was, and could speak to the same.

55 She further set out in her evidence:

Frankly, the issue just never arose as a point of contention because, we had reasons to believe, prior to the Court of Appeal Decision, that any joint tenant of a property had the right to object to a collective sale.

56 Instead, the defendants' advice to Mr Goh was simply based on a literal reading of s 84E(5) of the Act. The defendants' interpretation of the statute was that Mr Goh was a 'proprietor' within the meaning of s 84E(5). Ms Tan also stated that if it was the case that Mr Goh had to act with his ex-wife to fall within the meaning of 'proprietor' in s 84E(5), the defendants would have thought that it was arguable that as co-owner Mr Goh would have still had *locus standi* as an "other person (other than a lessee) with an estate or interest in the flat and whose interest is notified on the land-register for that flat".

57 As it turned out, this literal interpretation of the statute was an erroneous interpretation. However, the key question to be answered here is: has Mr Goh been able to show that the error was one which no reasonably competent solicitor would have made? I turn to the evidence.

58 At the hearing before the Board, the Board only reviewed the case on the merits, and dismissed the Objections accordingly. This was repeated at the hearing of OS 1627 before the High Court Judge. In neither of these proceedings was the issue of standing brought up by opposing counsel. In neither of these proceedings was the issue of standing brought up by the Judge or the Board. This is some indication that the issue of standing was not an obvious one that would raise a red flag to persons who had possessed ordinary skill and care. In particular, it is noteworthy that opposing counsel who would have had every reason to assert a lack of *locus standi* on the part of Mr Goh failed to take this point before the Board, before the High Court and before the Court of Appeal until the latter coram specifically directed him to file submissions on the point.

59 Much was made by Mr Goh about the fact that there were points in time prior to the hearing of STB 33 when the defendants should have been alerted to the issue of standing and acted accordingly. He submitted that they should have been alerted by the knowledge that Mdm Sng, the other joint tenant of the property, had given her consent for the sale to proceed. The defendants, it was argued, should have noted this and considered the issue of standing. In my view, this is not a strong argument because at the proceedings before the Board and the High Court, the Board and the Judge respectively had that particular piece of information, yet failed to realise that it might give rise to any issue about standing.

60 Unfortunately, there was no evidence from any solicitors apart from Ms Tan and Mr Au regarding whether at the material time practitioners in this field would have been alert to the possibility of the existence of an issue regarding Mr Goh's *locus standi*. However, some assistance may be gleaned from two articles that were subsequently written about the decision in *Goh Teh Lee CA*.

61 In *En Bloc Sales and Joint Tenancy* [2011] Sing. JLS 564, Associate Professor Barry Crown ("Prof Crown") states that "[i]n *Goh Teh Lee v Lim Li Pheng Maria* the Court of Appeal had to consider a *novel* point relating to the law of co-ownership". The article goes on to state that the approach taken by the Court of Appeal "seems to place too much emphasis on the doctrinal nature of joint tenancy". Prof Crown takes the view that Section 84E(5) can be read so as to include a single joint tenant, and argues that this can be supported by discerning legislative intent and by considering policy objectives.

62 The purpose of citing Prof Crown's view is not to endorse its merits, on which I make no comment, but to demonstrate what the state of the law could have been viewed to be prior to the

Court of Appeal's decision. His view lends credence to the argument that a reasonably competent solicitor could have taken the stand that one of several joint tenants acting singly was allowed by s 84E(5) to lodge an objection to a collective sale. Whilst the defendants did not articulate that perspective to Mr Goh, it was obviously the view that they took and acted upon in lodging the Objections before the Board.

63 It might be argued that Prof Crown only reaches his conclusion after applying considered thought to the matter, as opposed to the less rigorous process the defendants undertook in reaching their interpretation. As such, he did ask himself the questions that Mr Goh argued Ms Tan should have asked herself (see [48] above). The situations before Prof Crown and the defendants were, however, somewhat different.

64 First, Prof Crown had the benefit of reading the Court of Appeal's judgment and then making arguments on it. He knew, at the point of writing his article, that the "novel" point was resolved in a particular fashion. The defendants did not. As stated in *Jackson & Powell on Professional Liability* (Sweet & Maxwell, 7th Ed, 2012) at [11-092]:

> In determining whether the solicitor has exercised reasonable skill and care, he should be judged in the light of the circumstances at the time. *His actions or advice may, with the benefit of hindsight, be shown to have been utterly wrong, "but hindsight is no touchstone of negligence*".
>
> [emphasis added]

65 In a similar vein (albeit in the context of auditors), the Court of Appeal in *PlanAssure PAC (formerly known as Patrick Lee PAC) v Gaelic Inns Pte Ltd* [2007] 4 SLR(R) 513 ("*PlanAssure*") held, (at [54]):

> Second, in evaluating whether there is an irregularity which would have put the auditor in question on inquiry, the court should guard against using its *ex post facto* knowledge of the existence of fraud to impute on the auditor a level of inquiry that would have been unreasonable in the circumstances. The court should refrain from assessing the situation with the benefit of hindsight, and should instead place itself in the shoes of a reasonably skilled auditor at the time the audit was conducted.

66 Prof Crown had the benefit of hindsight, the defendants did not.

67 Second, the defendants as practitioners faced pressing time constraints. Baroness Hale, in assessing a claim against counsel for negligence in *Moy v Pettmann Smith* [2005] 1 WLR 581 ("*Moy*"), reaffirmed the position set out by Lord Hobhouse in *Arthur JS Hall & Company v Simons* [2002] 1 AC 615, where the learned Law Lord said:

> The standard of care to be applied in negligence actions against an advocate is the same as that applicable to any other skilled professional who has to work in an environment where decisions and exercises of judgment have to be made in often difficult and time constrained circumstances. It requires a plaintiff to show that the error was one which no reasonably competent member of the relevant profession would have made.

68 Accordingly, although Prof Crown showed more rigor and thought in coming to the same conclusion, the defendants, who had to make their decision and exercise their judgment in difficult circumstances, did not breach their standard of care and skill in not going through the same analytical process as he had done in writing the article.

69 Quite apart from Prof Crown's case note, there was a case note on *Goh Teh Lee CA* by two lawyers in private practice in Rodyk & Davidson. These lawyers argued that policy considerations and legislative intent must allow a single joint tenant to object to a collective sale. Otherwise, he would be deprived of his right to protect his interest in the property. They contended that each co-owner was no less an owner of the property concerned and should be entitled to raise valid grounds of objection to a collective sale. The conclusion drawn by these practitioners was the same as that reached by the defendants *albeit* that they had the benefit of hindsight and undertook more analysis in coming to their conclusion than the defendant had.

70 One of Mr Goh's main points supporting his contention that Ms Tan did not act with due diligence because she failed to pay attention to the law of joint tenancy and advise him on the requirements of joint tenants to act jointly was that this was an established legal point which would have been obvious to her had she paid attention to this area of the law. It is not so clear, however, that the principles laid down in *Goh Teh Lee CA* were simply reiteration of established law.

71 First, Prof Crown has described it as a novel point. Second, in *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012), Professor Teo Keang Sood described the Court of Appeal judgment as such (at 683-685):

> The question whether all co-owners in a joint tenancy or tenancy in common have to act together to either support or oppose a proposed collective sale *was considered* in *Goh Teh Lee v Lim Li Pheng Maria & Ors.*
>
> ...
>
> It was also *made clear* by the Court of Appeal that in a joint tenancy, where one co-owner had objected but the other co-owner had agreed to the collective sale, the unit cannot be regarded to have either objected or agreed to the sale.
>
> [emphasis added]

It would appear from this passage that the interpretation of s 84E(5) was clarified by the Court of Appeal and was not established law prior to the decision.

72 An analysis of the Court of Appeal's judgment also indicates that its conclusion was a new point. The Court of Appeal first laid out the principles of joint ownership of land and then said at [24]:

> From this brief survey of the jurisprudence of England, Singapore and Hong Kong law, it was clear to us that joint tenants must act jointly in order to effectively bind the whole estate which they hold jointly, whether the act is by way of a disposition of the said estate (*Leek and Moorlands Building Society* ([18] *supra*) , *Mookka Pillai Rajagopal* ([20] *supra*)) or a suit (*Williams* ([21] *supra*), *Lui Yuk Yin* ([22] *supra*)).

Having laid out the general common law principle that joint tenants had to act jointly in order to effectively bind the estate that they owned, the Court of Appeal went on to apply this principle to a collective sale in the following way:

> *In the context of a collective sale, the implication of this requirement is that where a flat is held jointly, none of the joint tenants may support or oppose the proposed collective sale unilaterally. Since all must act together, where one objects to the sale and the rest do not object (or they might even support the sale, as is the present situation), the preference of neither side may*

trump the other. This explains why Mr Goh's ex-wife could not, on her own, consent to the collective sale of the Development on behalf of Unit 136D. It would be recalled that the effect of Mr Goh's refusal to sign the CSA (even though his ex-wife had appended her signature to the same) was that Unit 136D could not be taken to have contributed to the requisite 80% under s 84E(3)(*b*) of the Act. In the same way, it should also not be possible for Mr Goh to file an objection to the sale with the Board by himself under s 84E(5) of the Act. Mr Goh will not have the necessary *locus standi* to object to the sale, unless his ex-wife joins him in his objections. Unit 136D must act together with one voice. If Mr Goh is allowed to object to the sale before us (and indeed before the Judge below and the Board), we will be disregarding the interest of Mr Goh's ex-wife altogether.

[emphasis added]

73 The application of the established law on joint tenancy to the Act was, before the Court of Appeal's decision, unexplored. The result was reached via an *implication*; that is, it was not clear on the face of the legislation that joint tenants had to act together in opposing a sale. It was stated as much in the judgment (at [17]):

In the situation where a flat is co-owned by joint tenants, which was the situation at hand (it was not disputed that Mr Goh and his ex-wife both hold Unit 136D as joint tenants), *prima facie*, *one joint tenant may, on his own, support or oppose a collective sale order under ss 84E(3) and 84E(5) respectively*, since each joint tenant owns the whole of the interest together with the other joint tenants. However, this cannot be right, as it directly contradicts the nature of a joint tenancy. Joint tenants hold just one estate.

[emphasis added]

74 On the face of the legislation therefore, the interpretation which the defendants gave to s 84E(5) was a correct one and where they differed from the Court of Appeal was that they did not take the additional step of applying the principles of joint tenancy to the Act and modifying the plain wording of the Act in accordance with those principles.

75 The interpretation given by the Court of Appeal was not shown by Mr Goh to have been common knowledge or the prevalent view held by other practitioners in Singapore at that time. In cross-examination, Mr Goh asserted that it had been an established legal principle for a long time and indeed had been established since Singapore was a British colony. However, when he was questioned further on this issue, he admitted that the only reference that he had for alleging that this principle was established was the Court of Appeal decision. On the other hand, the members of the Board included prominent members of the legal fraternity to wit Professor Tan Sook Yee who has published an authoritative text on land law in Singapore and District Judge Seng Kwang Boon. They would have known if it was an established legal principle that in a collective sale situation a single joint owner could not object to the sale. Yet, they did not raise the issue of *locus standi*. The same reasoning applies to the High Court judge who was a well known practitioner in, *inter alia*, commercial and land law before he was elevated to the bench. He would certainly have been aware of such an established principle.

76 The defendants cited the case of *Ridehalgh v Horsefield* [1994] Ch 205. This case involved a claim against solicitors' negligent conduct and for wasted costs, by reason of the solicitors' erroneous interpretation of a certain land law statute. The English Court of Appeal held that the solicitors' error could not be stigmatized as being negligent because:

(1) *This legislation is very far from straightforward*. Mann L.J. commented on the complexity of section 34. Judge Holt commented that she couldn't make head or tail of it. We sympathise with her. It is unfortunate that legislation directly affecting the lives of so many citizens should not be more readily intelligible. (2) *The solicitors do not appear to have approached the case in a careless way*. There is nothing to contradict their statements that the textbooks they consulted did not give a clear answer to their problem. They could not be expected to bring the expertise of specialist counsel to the case. Nor could they reasonably expect to be remunerated for prolonged research. We do not think their error was one which no reasonably competent solicitor in general practice could have made. (3) *It is significant that a most experienced county court judge saw no reason to cavil at the basis upon which it had been agreed to conduct the case*. Had the error been egregious, it is hard to think the judge would not have corrected it. (4) Counsel appearing for the tenants on appeal from Judge Holt did not regard the basis on which the case had been argued below as unsustainable. ... *We think it significant that experienced counsel did not discard the argument as obviously wrong*.

[emphasis added]

Of the four reasons given in that case for the finding that the solicitors were not negligent, the last two definitely apply here. As regards the first reason, the situation here is even more in favour of the solicitors in that the plain reading of the statute is in favour of the interpretation that they held. Whilst the second reason does not apply in that there is no evidence that any research was done apart from looking at the language of the section, I do not think that balances the scale against the defendants.

77 I hold that the defendants and Ms Tan in particular did not act negligently in failing to advise Mr Goh that he lacked the *locus standi* necessary to object to the collective sale.

Negligent advice in relation to the merits of the case

78 Mr Goh took the position that the defendants failed to act to the standard of a reasonably competent and diligent advocate and solicitor in advising him on the merits of his case. They had advised him that he had a good case when they should have advised him that his objections to the collective sale had no merit. He pointed out that Ms Tan had admitted in court that she had considered that his case was a good case and she was confident and felt that he had a good chance of succeeding. Yet, his case had failed at every level.

79 The defendants replied that they only informed Mr Goh that they were confident of his case insofar as STB 33 was concerned. They said that for the proceedings in OS 1627, they acted under Mr Goh's instructions when they filed the appeal because they had advised him that an appeal against the sale order made by the Board would be an uphill task. Whilst Ms Tan was confident, based on procedural irregularities, that Mr Goh had a good case before the Board, she did not use percentages to gauge his chances of success and she did not guarantee success as there could be no guarantee in litigation.

Analysis

80 The objections to the collective sale that Mr Goh placed before the Board were recorded in the Grounds of Decision of the Board in *Lim Li Pheng Maria and Others v Goh Teh Lee* [2009] SGSTB 2 (at [9]):

The Objections

The 1st Respondent (who co-owns a unit) objected to the sale on the following grounds:-

(i) the method of distribution was unfair;

(ii) 80% share value was not obtained;

(iii) the application to STB was out of time;

(iv) procedural irregularities;

(iv) injunction against Respondent; and

(vi) the owner of terrace houses was not entitled to proceed as he cannot participate in the sale

81 From the closing submissions of Mr Goh at STB 33 (where he was still represented by Tan & Au LLP), it emerges that though there were six grounds of objections as set out in the decision of the Board, the defendants were emphasising the following in particular:

(a) The method of distribution of sale proceeds was unfair;

(b) The nine terrace structures were not entitled to participate in the collective sale;

(c) The threshold 80% of signatures to the Collective Sale Agreement had not been obtained.

82 All the Objections as put forward by the defendants were rejected by the Board. That in itself does not mean that the defendants were negligent in advising Mr Goh that they had confidence in his case. The question that arises is whether the advice that these lines of argument had merit was so erroneous that the quality of advice fell below the standard required of a reasonably competent solicitor.

83 In *Zhou Tong*, the court set out what was required of a solicitor in assessing the merits of a client's case (at [19]-[20]):

Duty to conscientiously assess merits of a client's case

All solicitors have an obligation to carefully assess the merits of their clients' cases before engaging in court proceedings. As discussed above, there are two facets to this duty. The first facet is the duty owed to clients. Solicitors who recklessly institute legal proceedings without a thought to the merits of their clients' case run afoul of the most basic tenets of ethical conduct; such solicitors in essence improperly take their clients' money and abuse the trust and confidence reposed in them. Depending on the severity of neglect or indifference on the solicitor's part, there could be different civil and/or disciplinary consequences. The second facet of the duty is that owed to the court. Solicitors who pursue appeals without adequately considering the merits of their clients' cases would be misusing the court's time, as they would not be able to constructively assist the court in evaluating the merits of the matter.

This is not to say, however, that solicitors should be on tenterhooks about whether or not the court might ultimately rule against their clients. There is a marked difference between adequately *considering* the merits of a client's case and *adjudicating on* them, see *Bachoo Mohan Singh v PP* [2010] 4 SLR 137 at [113]-[119]. The essential question is whether the solicitor had faithfully

and diligently directed his mind to the facts of his client's case, and to the applicable law. If solicitors make the effort to conscientiously consider and evaluate all pertinent aspects of their clients' cases, there is no need for undue concern even if the court determines that there is ultimately no merit in the case. Solicitors are not expected to always "get it right". Some astute observations on the solicitor's duty to carefully assess the merits of their clients' cases can be found in Prof Jeffrey Pinsler's seminal text, *Ethics and Professional Responsibility* (Academy Publishing, 2007) at para 08-017:

> [T]here may be circumstances in which the advocate and solicitor must inform his client that it would not be appropriate to pursue the case in accordance with the latter's allegations where they are baseless, illogical and/or unsupported by evidence. The advocate and solicitor has a duty to avoid acting in a manner which is motivated by the intention of obstructing due process (for example, by distracting the court and/or delaying proceedings through the presentation of irrelevant or baseless issues) as opposed to pursuing the merits of his client's case.

[emphasis in original]

84 A relevant (but not conclusive) factor to take into account in assessing whether a solicitor's advice on the merits of a case has been so erroneous that it breaches the relevant standard of care is to assess whether the arguments as set out in the advice gained any traction with the court or tribunal in question. In this regard, it would be helpful to set out the reasons the Board gave for approving the sale and rejecting Mr Goh's arguments:

> **Findings & Board's Decision**
>
> 10. On the evidence adduced and the documents and reports tendered at the hearing, the Board's findings are as follows:-
>
> (i) On the 80 % objection
>
> (a) We find that at the onset before the notional share values were allotted, more than 80% of the owners of the property (9 terrace houses and 18 apartments) had agreed to a collective sale of the property;
>
> (b) After the notional share values were allotted, there was still more than 80% who wanted the sale;
>
> (c) In fact when this case came up for hearing, except for the 1st Respondent, all owners, including the co-owner of the unit owned by the 1st Respondent, had agreed to the sale and had signed the documents; and
>
> (d) We therefore find *in substance* that the 80% rule had been satisfied.
>
> (ii) On the application to STB being out of time
>
> We are of the view *that it is not necessary to go into when the time for application to STB started to run* – on 29 December 2006 (1st signature of the Collective Sale Agreement) or 24 March 2007 (1st signature of the Supplemental Collective Sale Agreement) or any other dates. The fact was that the delay (if any), was due to

extraordinary circumstances of this case and there was no inordinate delay on the part of the majority. *More importantly, we find that the delay (if any) did not prejudice or disadvantage the 1st Respondent in anyway. In fact, no one was prejudiced or disadvantaged by this.*

(iii) Other procedural irregularities

The Board finds that all the owners were aware of the enbloc sale and were kept informed by the Sale Committee ("SC") on the progress of the sale. We find that meetings were held although the recording of the minutes could be improved. As we have stated above, *the irregularities (if any) did not prejudice or disadvantage anyone*

(iv) The injunction

The issue is not relevant in an application for an enbloc sale before the Board

(v) Owner of terrace houses not entitled to process

We disagree with 1 st Respondent's Counsel's arguments, as the terrace houses and apartments sit on the same plot of land under a single title

(vi) Method of distribution was unfair

a) The crux of this whole exercise is the objection that the method of distribution was unfair;

b) *There is no single method of distribution nor a combination of recognized methods that can be fair in every case.* Whether the method employed is fair or not in a given case must depend on the facts of the particular case;

c) In this case, we have carefully considered the evidence of the 2 experts and their reports;

d) *We find that the method of distribution – equally among the units (9 terrace houses and 24 units) - agreed to by the majority is fair in the circumstances of this case*; and

11. Accordingly, the Board approves the sale.

[emphasis added]

85 As mentioned above (at [81]), there were three lines of argument which were emphasised more than the rest. Even on a cursory glance, it is evident that:

(a) For the 80% objection, the procedural argument that was mounted by the defendants was disregarded because the relevant rule had been satisfied "in substance". The Board made no finding on the validity of the procedural argument itself.

(b) On the argument that the owner of the terrace houses were not entitled to process, the Board simply stated that they disagreed with counsel's arguments, as the terrace houses and apartments sit on the same plot of land. Suffice to say, a disagreement by an adjudicatory body

with an argument proffered by counsel does not mean that the argument was unmeritorious to the point that no reasonably competent solicitor would advise that the point be taken.

(c) On the argument that the distribution method was unfair, the Board weighed competing arguments mounted by both sides and came to a finding that the distribution method of the majority was fair. Again, the fact that the defendants' arguments did not succeed in persuading the Board does not mean that they were negligent in their advice that there was a case to be mounted.

86 Before the defendants were discharged, they provided Mr Goh with advice relating to the setting aside of the order by the Board. The defendants informed Mr Goh that his chances of succeeding on appeal were slim. The specifics were as follows: On 12 January 2009, Mr Goh wrote to the defendants. The letter read:

> At this point in time, it is of importance that I need to know your assessment of the chance of winning my appeal at the High Court. I appreciate your true opinion in this matter and kindly reply me in writing. If you have any useful suggestions, please do keep me inform as well.

87 In a reply dated 29 January 2009, the defendants stated:

> As per our legal research given to you earlier on recent decisions on enbloc sale cases, an appeal against a sale order is uphill.

88 This advice was very different from the earlier advice given to Mr Goh, in that the defendants' confidence in the case had evaporated. In short, the advice was that the appeal would be uphill, and, as it turned out, the appeal was unsuccessful. There is no merit to any criticism of this second round of advice as negligent. In fact, this advice was realistic. In any event, this advice that the appeal was difficult was not heeded, as Mr Goh conceded repeatedly while being cross-examined before me.

89 Whilst the appeal did not succeed, Andrew Ang J made a thorough analysis of Mr Goh's arguments which were not very different from those mounted before the Board. His analysis is interesting in that it shows that in certain respects, at least, the arguments mounted by the defendants in STB 33 were plausible arguments.

90 Dealing with the argument before him that the owner of the terrace houses was not entitled to process and that the method of distribution between the landowner and the unit owners was unfair, Andrew Ang J held (see *Goh Teh Lee HC* at [27] – [32]):

> 27 It is clear that the paradigm case which s 84E caters to is one where the only premises on the land are the flats each of which has been leased for 999 years. In these circumstances, given that the reversionary interest of the landowner is *de minimis*, it is not unfair to require, as sub-s (11) does, that once the Board makes an order for collective sale of the flats, the landowner is deemed to have transferred his estate and interest in the land to the purchaser without consideration. (Exceptionally, where the landowner retains ownership of one or more of the flats, he is deemed to be the proprietor of those flats and would be entitled to a share of the *en bloc* sale proceeds as such: see sub-s (14).)
>
> 28 It might be argued, on a strict interpretation, that s 84E does not apply to a mixed development such as the present one, where the terrace houses are part of the freehold land. In such a case, the landowner owns more than a reversionary interest in the land. Section 84E, which contemplates the landowner giving up the land without consideration, therefore would

appear inapplicable.

29 However, to achieve a sale of the flats together with the terrace houses on the land, a two-stage approach could have been adopted. First, the owner of the land could have sold to the developer the land (together with the nine houses thereon) subject to the existing leases. For the developer's protection the sale would be on condition that the flat owners agreed unanimously to sell, or that an order for collective sale was obtained. Failing unanimity, the flat owners could have applied for notional share values under s 84E(2) and, after having attained the agreement of flat owners holding not less than 80% of the aggregate notional share values, gone on to apply for a collective sale order pursuant to s 84E. However, that was not the approach adopted. Had it been adopted, there would have been no doubt as to s 84E's applicability.

30 As noted, the Board nevertheless allowed the application under s 84E. Despite the wide definition of "flat", it was inappropriate that the terrace houses were assigned notional share values; in my view, the wording of s 84E(2) contemplated assignment of share values only to the leasehold "flats". The question I faced was whether I ought to overturn the Board's decision on the basis that the owner of the terrace houses should not have shared in the proceeds of sale nor have been counted amongst the majority agreeing to the sale. After deliberation, I came to the conclusion that I ought to uphold the Board's decision and thereby give effect to parliamentary intention. In arriving at that conclusion, I took into account the fact that there would be no prejudice either to the flat owners or to the landowner if I allowed the sale to proceed. Firstly, with or without the landowner's nominal share value, the requisite majority had been attained in any event. Leaving the landowner out, by 6 September 2007 (which was within the time allowed for the supplemental agreement to be executed), all but the owners of two flat units had signed the agreement. Second, as to the sharing of sale proceeds, the landowner would have been able to achieve the same via the two-stage method in any event.

31 On the other hand, if I overturned the Board's decision, the parties would have had to go back to the drawing board and start the process of collective sale all over again adopting the two-stage approach as outlined above. Assuming the majority remained resolute, that would result in the same outcome.

32 I was fortified in my view that the collective sale order should be upheld when I considered the overall purpose of the legislation. From a perusal of ss 84A to 84FA, it was clear that Parliament intended to facilitate collective sale in various conceivable settings.

91 It can be seen from the above discussion, that Andrew Ang J was fully aware that there was a serious argument to be made that s 84E did not apply to the development and that because of the way in which the collective sale had been conducted the landowner was not entitled to process under that section. It was because the judge considered that the same objective could have been achieved by resorting to a two-stage approach which would have the result of making s 84E applicable and because he was alert to the parliamentary intention behind the legislation, that Andrew Ang J decided to give a wide interpretation to the section and to reject the defendants' argument. It was not a foregone conclusion by any means that the judge would have upheld the Board's determination since, as he pointed out himself in [30], it was inappropriate that the terrace houses were assigned notional share values.

92 In addition, Andrew Ang J also addressed his mind to the contention that the method of distribution was unfair (at [41]-[44]):

Whether the transaction was in good faith given the method of distribution of the sale

proceeds

The plaintiff alleged that pursuant to s 84E(9)(a)(ii) of the Act, the Board erred in approving the collective sale because the transaction was not in good faith due to the unfair method of sharing the share proceeds. In his view, the method of distribution of the sales proceeds stipulated in the CSA (which was that each unit of flats or terrace house took an equal share of the sale proceeds) departed from the established methods of distribution, ie, by share value, strata area, valuation or a combination of all three. The plaintiff (relying on his valuer's evidence) contended that the valuation method would be the best method of distribution because the terrace houses were built separately from the flat units and were of a much poorer condition, and the owner of the terrace houses did not contribute to the maintenance or upkeep of the common property.

The Board found that, on the facts and upon consideration of the opinion of expert witnesses, the method of distribution agreed to by the majority was "fair" in the circumstances of the case.

In the context of en bloc sales, the concept of fairness is often both an elusive and subjective one. As between different owners, each might argue that his unit deserves a larger share of the sale proceeds by reason of its larger area, greater share value, superior view, better state of repair or commanding height. If they remained intransigent, no en bloc sale could ever be achieved. For this reason, in successful en bloc sales, disparate individualistic ambitions give way to group realism in recognition of the fact that no unit sold piecemeal would fetch as much as in a collective sale. Instead of prescribing "fairness" as such, s 84E(9)(a)(ii) provides that the Board shall not approve an application if the Board is satisfied that the transaction is not in good faith. (This does not mean that fairness has no part to play. A transaction struck down for lack of good faith will inevitably reveal aspects of unfairness whether in the sale price or in the manner that it was arrived at or in the method for sharing of the sale proceeds.) *For the purposes of this appeal, the relevant question was whether the Board was in error when it determined that the transaction was fair (and therefore presumably in good faith).* In this connection, I refer to my earlier decision in *Dynamic Investments Pte Ltd v Lee Chee Kian Silas* [2008] 1 SLR(R) 729 ("*Dynamic Investments*"), where I held at [14]-[15]:

> 14 But in a particular set of circumstances the question whether a transaction was lacking in good faith nevertheless requires an application of the primary facts to the legal criteria as to what 'good faith' is. As such, it is traditional (if somewhat inexact) to describe it as a question of fact. The Board's holding that it was not satisfied that the transaction was not in good faith (regard being had to the method of distributing the proceeds of sale) was a decision on the facts of the case and could not be challenged unless there was an error of law either ex facie (as to which there was none) or such as was described in *Edwards v Bairstow*.
>
> 1 5 *I note also that whether or not the transaction was lacking in good faith was something on which the Board had to be 'satisfied'.* To my mind, that further suggested that the Legislature, recognising an element of subjectivity in such a decision, intended to preclude challenge to the Board's finding save where there was an error of law.

As I explained in [28] to [30] above, the owner of the terrace houses was entitled to payment for sale of the same. Without his agreement to sell his freehold interest (subject to the leases of the flats), en bloc sale of the flats with a view to redevelopment of the land could not proceed: (see [33] above). In any event, comparing the terrace houses' "footprint" on the land with that of the block of flats, it was incomprehensible how the division of sale proceeds could be assailed.

It was significant to note that none of the other flat owners (including those with flats similar in size to the plaintiff's) objected to the method of distribution.

Bearing that in mind, I found that it was not possible to say that the Board made an error of law or that the Board's finding was such that "no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal": see *Edwards v Bairstow* [1956] AC 14 at 36; *Dynamic Investments* at [16]. There was therefore no basis on which the finding of the Board could be impugned.

[emphasis added]

93 It is worth reiterating that once the proceedings went on appeal to the High Court, Mr Goh's case had to be approached from a different angle because the High Court, under s 98(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) which provided the avenue for appeal, could only set aside the Board's decision if it was satisfied that the Board had made an error of law. As the judge pointed out, it was not possible for him to say that the Board had made an error of law in relation to whether or not the transaction was lacking in good faith. Whilst that argument might not have flown at the High Court level because of this restriction it was, however, an arguable point on the facts, which was correctly argued before the Board.

94 From this analysis, it can be seen that some at least of the points brought up by the defendants before the Board were points that were arguable and which could possibly have succeeded. They were not points that no reasonably competent solicitors would have brought up. Accordingly, the defendants' advice to Mr Goh to argue these points was not negligent. Even if the other points did not have much merit, these points on their own show that the defendants were not negligent. Solicitors cannot be held negligent because not all the points they put across for a case are winning or even good points. Unsuccessful arguments are a daily occurrence but that does not mean the solicitors proffering them are substandard practitioners much less negligent ones.

95 As regards the point about the 80% share value not having been obtained, this was rejected by the High Court in the following terms:

39 The plaintiff contended that it was not possible to determine if the requisite majority by share value had been obtained on the CSA because the notional share values had not been obtained prior to the execution of the CSA by the majority.

40 I dismissed the plaintiff's contention. There is no requirement that the notional share value must be obtained before the owners appended their signatures to the collective sale agreement, in this case the supplemental agreement. What matters is that when the application is made to the Board for a collective sale order, it must be shown that the collective sale agreement (in our case the supplemental agreement) had been signed by the requisite majority (such majority being computed by reference to the notional share values).

96 It would seem that the High Court had little difficulty in finding that the point had no substance. However, there is textbook support for the defendants' position in raising the point as a procedural objection. In *Tan Sook Yee's Principles of Singapore Land Law* (Tang Hang Wu and Kelvin FK Low gen ed) (LexisNexis, 3rd Ed, 2009), the learned authors state (at [22.106)]:

Collective Sales of Subdivided Buildings Where No Strata Titles Issued

...

Where the owners own leasehold estates of 999 years or other estate in the flats, but do not own the land, section 84E *first* permits an application to be made to the Registrar of Titles for notional share to be allocated to the land as a *first step* to the collective sale. Only 25% of the owners of the flats need so agree to this. *After this, section 84E(3) provides for an application for a collective sale to be approved by the Board where the majority of the owners of the flats so agree.* The majority required is the same as that for the other situations. Special provisions are made for the proprietor of the land to be bound by the Board's approval by his being deemed to have transferred his estate and interest in the land to the purchaser without consideration.

...

[Emphasis added]

97 The Board did not comment on the procedural objection. It preferred to decide the application on the substantive points. Since the procedural objection did have some academic support, it should not be considered so unmeritorious that the defendants should be held to have provided negligent advice because they put it forward.

The amount of the firm's claim

98 As I have now found that Mr Goh's defence and counterclaim cannot be sustained, I turn to the specifics of the firm's claim for unpaid fees and disbursements.

99 The outstanding fees amounting to $27,048.47 are shown in the two invoices mentioned in [3] above. The additional $155.19 comes from the interest that Merrill Legal Solutions had charged the firm for late payment for the transcripts of the proceedings in STB 33 that Merrill Legal Solutions had provided to the firm, for and on behalf of Mr Goh.

100 The firm argued that it is properly entitled to payment of its unpaid bills for its representation of Mr Goh in STB 33. In addition, the firm argued that until its retainer was terminated by Mr Goh, it carried out its work in respect of OS 1627 with expediency and competence and ought to be paid its outstanding bills.

Mr Goh's arguments

101 In his submissions, Mr Goh stated that:

T&A's claim for costs

1) *It would be fair to pay T&A* for work done and disbursements incurred only up to the point when the offer for $200,000 additional was made to M/s Leong Kwok Yan on behalf of their clients. At that point, if Goh had been competently advised, Goh would have accepted the offer and T&A's work would have stopped.

2) Beyond this, any costs and disbursements should not be allowed to T&A because if Carolyn and T&A had competently advised Goh that on a balance of probability he did not have locus standi, Goh would not have proceeded beyond the point mentioned in 1) above.

3) Goh also expended money unnecessarily on disbursements in the proceedings before the High Court and the Court of Appeal because he had not been competently advised on his locus. Goh should be entitled to recover this from Carolyn and T&A.

[emphasis added]

102 It would appear that Mr Goh had, over the course of the trial, moved to take a new position, that he was willing to pay the firm for work done up to the point where he suffered from the lack of advice on standing, and that this was a fair position. This would imply that Mr Goh considered that if there was no negligence, it would only be fair to pay the firm for all work done.

103 I have found that Mr Goh engaged the firm's services right up to the stage that it discharged itself. Accordingly, Mr Goh must pay for the work done. The only question is as to quantum.

104 For convenience, I set out the relevant bills:

No.	**Bill Number**	**Date issued**	**Fees**
1	**Bill no. 4374**	1 October 2007	$1,000
2	**Bill no. 4479**	13 June 2008	$5,104.20
3(a)	**Bill no. 4602**	25 November 2008	$8,240
3(b)	**Bill no. 4602 (Amended)**	25 November 2008	$11,740
4	**Bill no. 4661**	23 March 2009	$16,894.27
5	**Interest charged by Merrill**		$155.19

It can be seen from the above that the firm rendered two bills numbered 4602, the first for $8,240 and the second, replacement, bill for $11,740, an increase of $3,500. The total amount billed by the firm was $34,738.47. As against this sum, Mr Goh paid the firm a total of $7,690 between July 2007 and February 2009. The firm is accordingly claiming the balance of $27,048.47.

105 The question is whether it was reasonable for the firm to amend its bill 4602 from $8,240 to $11,740. This bill was for work done between 31 May 2008 and 25 November 2008. Mr Goh pointed out that no reason had been given for the change in the amount charged for this work. He cross-examined Ms Tan about this but she was unable to offer any reason why the sum charged had been increased by $3,500. Instead, she pointed the finger at her partner, stating that he was in charge of the sums:

Q This bill was dated 25th November 08. What is the amount of this invoice?

A Erm, it appears at 5270. It's for a sum of 8,000, your Honour.

Q 8,240?

A Yes, with disbursement at page 52741---5271.

Q This invoice was later amended and you call it 4602 (Amended).

A Yes, that is correct. Page 5272.

...

Q Erm, the original is, er, 8,240 and the amended one is 11,740, so there was an increase of 3,500.

A There was an increase, yes. I'm very poor in maths as to the figure, yes.

...

Q It's 3,500. Can you tell the Court what is the---why was such a---a---a amended figures, you know, from elev---8,240 to 11,740? What is the reason for having an amended invoice?

A I can't quite reme---member, your Honour. I would like to point out that all the billings are done by my partner. I do the work. Someone else prices my---my work.

Q So you do not know the reason?

A Mm, I can't remember, your Honour.

106 However, while he was being cross-examined, Mr Au was equally unable to give a complete explanation for the difference in the fees. He stated that he amended the original bill because it did not sufficiently reflect the time taken and work done:

Court:Okay. The next question is: Why did you amend?

Q Why did you amend? Yes.

Witness:I amend it because I felt that the bill 8,000 is---is, er, does not reflect the---enough the time and the work done, your Honour.

He did not, however, give a reason why the original figure did not reflect the amount of time taken or the work done. No breakdown was given of either component.

107 Mr Au then attempted to explain the increase by stating that it was in response to Mr Goh saying that the bill was too low:

Defendant:Erm, the bill was amended because, er, Mr Goh was at the office on and off and then talking about bill being, er, you know, on the---

Court:Being what?

Defendant:On the low side.

This was not a believable explanation. It was clear from Mr Goh's conduct throughout the case that he wanted to be charged less rather than more. He would never have complained that a bill was too low. However low it was, he would have asked for a discount. Since neither partner of the firm was able to explain why bill no 4602 had to be increased by $3,500 from the original charged, I cannot accept the amended bill as being a reasonable reflection of the work done. I will therefore assess the firm's fees on the basis of the original bill no 4602 which was for $8,240. Using this figure, the total amount remaining payable to the firm would be $23,548.47. No questions were raised about the reasonableness of the other bills.

Conclusion

108 In the result, judgment is given to the plaintiff for the sum of $23,703.66 (inclusive of the interest charged by Merrill Legal Solutions as claimed in the statement of claim) and costs. The defendant's counterclaim is dismissed with costs.

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