Lim Li Meng Dominic and others *v* Ching Pui Sim Sally and another and another matter [2015] SGCA 54

Case Number	: Civil Appeal No 52 of 2015 and Summons No 266 of 2015
Decision Date	: 02 October 2015
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Andrew Phang Boon Leong JA; Steven Chong J
Counsel Name(s)	: Adrian Tan Gim Hai, Kenneth Chua Han Yuan and Lim Siok Khoon (Morgan Lewis Stamford LLC) for the appellants; Giam Chin Toon SC and Yeo Zhen Xiong (Wee Swee Teow & Co) for the respondents (the respondents in person before the Court of Appeal); Lim Seng Siew and Susan Tay Ting Lan (OTP Law Corporation) for the 10th to 13th defendants in Originating Summons No 982 of 2013.
Parties	: LIM LI MENG DOMINIC — LIM SUI MAY PETRINA — KOH NAI HOCK — SALLY CHING PUI SIM — WARREN KHOO

Land – Strata titles – Collective sales

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2015] 2 SLR 931.]

2 October 2015

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 This appeal concerned the collective sale of the condominium development known as Gilstead Court. In the court below, the judge ("the Judge") approved the application for collective sale, notwithstanding the fact that he had considered a number of controversial terms in the underlying Collective Sale Agreement ("CSA") to be unenforceable and had struck them out (see *Choo Liang Haw (alias Choo Liang Hoa) and others v Chua Seet Mui and others and another matter* [2015] 2 SLR 931 ("the Judgment")). The appellants, who were three of the eight subsidiary proprietors ("SPs") who did not sign the CSA, contended that the Judge's order for sale should be set aside on the following two grounds: (a) first, that the transaction was not in good faith as is required under s 84A(9)(*a*) of the Land Titles (Strata) Act (Cap 158, 2009 Rev Ed) ("LTSA"); and (b) secondly, that the respondents' application to the High Court under s 84A(1) of the LTSA for an order approving of the collective sale was made without authority.

2 After hearing the parties' submissions, we allowed the appeal. These are the detailed grounds for our decision.

The background

Events leading to the application for collective sale

3 Gilstead Court is a condominium development comprising 48 units of residential properties. After a previous attempt at a collective sale between 2005 and 2007 failed, some of the SPs decided to try again in 2008. For this purpose, a seven-member Collective Sale Committee ("CSC") was appointed on 12 April 2008.

4 For the avoidance of doubt, we use the terms "CSC" and "CSA" to refer to this particular sale committee and this particular collective sale agreement respectively, as opposed to sale committees and collective sale agreements in general.

5 The members of the CSC were as follows:

(a) Sally Ching ("Ching");

(b) Warren Khoo ("Khoo");

(c) Choo Liang Haw ("Choo");

(d) Chan Ju-Lian ("Chan");

(e) Loke Wan Tche;

(f) Lok Kok Poh; and

(g) Charles Ng Pooh Cheok.

6 Ching, Khoo and Choo were subsequently appointed as the chairperson, secretary and treasurer of the CSC, respectively, in 2009. They formed the Executive Committee ("the Exco") of the CSC. Ching and Khoo were the respondents in this appeal.

7 Khoo was the principal draftsman of the CSA. A preliminary version of that document was circulated to the SPs for their comments in May 2011. After some revisions, the final version of the CSA was released on 9 July 2011 for the purpose of procuring the signatures of the SPs. The relevant terms of the CSA are set out in Annex A to these grounds of decision.

8 The CSA contained a number of controversial clauses which the Judge termed "the Objectionable Clauses" (see the Judgment at [8]). These clauses can also be found in Annex A of these grounds of decision. We briefly summarise the Objectionable Clauses as follows:

(a) Clause 7 consisted of several sub-clauses which, when read together, essentially required each SP to pay an initial contribution of $2,000 per unit (later reduced to $1,000 (see below at [11])) towards the cost and expenses of the collective sale, which would be refunded to him with interest (of 12% per annum) should the collective sale be successful (see cll 7.1 and 7.3); however, significantly, if any SP did not pay the initial contribution amount, he would have twice this amount withheld from his share of the net sale proceeds, which would then be shared equally among the contributing SPs (see cl 7.5).

(b) Clause 11 had two key sub-clauses:

(i) Clause 11.2 operated in certain circumstances to charge to an SP who did not sign the CSA the entirety or an appropriate part of the costs and expenses of any approval proceedings before the Strata Titles Board ("STB") and/or the High Court; and

(ii) Clause 11.3 authorised the CSC to seek legal advice and then obtain approval from the SPs to sue for losses sustained from the delay in the receipt of the sale proceeds as a result of approval proceedings that had to be instituted before the STB and/or the High Court. We note that the Judge did not include cl 11.3 as part of his definition of the

Objectionable Clauses. However, as objections had been raised before the STB as well as the High Court against the *whole* of cl 11, including cl 11.3, we include cl 11.3 in all our references to "the Objectionable Clauses" hereafter.

(c) Clause 12 penalised any SP who gave, received or solicited any consideration for certain acts relating to the collective sale process by, *inter alia*, deducting a sum equivalent to twice the amount of consideration from that SP's share of the net sale proceeds.

9 On 1 August 2011, Khoo disseminated an updated "Guide" to the collective sale. The Guide was signed off by the CSC and it set out the CSC's philosophy towards the collective sale. The Guide also explained the compulsory nature of the collective sale process, using occasionally colourful language, *eg*, "The three wise monkeys' see-nothing say-nothing hear-nothing is definitely not an option for anyone in a condo undergoing a collective sale". The Guide highlighted the Objectionable Clauses and their respective effects as well.

10 The CSC, and Khoo in particular, had high hopes of obtaining 100% consent for the collective sale, which would obviate the need to apply to the STB or the High Court for an order of sale. However, the signatures did not come as quickly as they might have liked. By September 2011, the SPs of 27 units had signed the CSA and paid the contribution of $2,000 per unit pursuant to cl 7.1 of the CSA. But no more SPs came forward after that.

11 Measures were then taken in order to encourage more SPs to sign up. On 5 April 2012, marketing agents were appointed for that purpose. At an Extraordinary General Meeting ("EOGM") of the SPs on 7 April 2012, the contribution rate under cl 7.1 of the CSA was reduced to $1,000 (from the $2,000 stated in the CSA) and the closing date for signing the CSA was extended (from a date falling six months from the CSA) to 8 July 2012. Progress in obtaining more signatures, however, remained slow.

12 During this period, Khoo made attempts at persuading the SPs who had yet to sign to add their signatures to the CSA that (as we have already noted) he had drafted. In a personal note dated 28 June 2012 to one such SP, Khoo referred to certain "*sanctions*" which had been placed in the CSA:

> We had anticipated this problem of people pushing the responsibility to others while waiting to collect the rewards. *We have inserted sanctions in the CSA against such selfish behaviour.* The sanctions will apply if you do not sign before the closing date even if you do not lodge any objection to the sale afterwards. The sanctions include paying or sharing the costs of the proceedings before the [STB], as well as costs in the High Court if we have to take the matter up there. The [CSC] has no choice in the matter. [emphasis added in italics]

13 By 8 July 2012 (approximately a year after the final version of the CSA was released, and the first signature obtained, on 9 July 2011), the SPs of 43 units had signed the CSA. This represented 89.58% of the total share value and 89.41% of the total area of Gilstead Court. The statutory majority of at least 80% of the SPs by share value and total area as required under s 84A(1)(*b*) of the LTSA necessary for a collective sale had thus been obtained within the permitted time of 12 months as provided for in para 1(*a*) of the First Schedule of the LTSA.

14 Eight SPs of five units in Gilstead Court did not sign the CSA. We shall refer to them collectively as the "non-signatory SPs". They also did not pay any initial contribution to the costs and expenses of the collective sale under cl 7.1 of the CSA. The non-signatory SPs were as follows:

(a) Edric Pan ("Pan") and Quek Chia-Min Valeria – Unit 50A;

(b) Chua Seet Mui ("Chua") – Unit 50P;

(c) Loke Ah Meng ("Loke") and Soh Lay Bee ("Soh") – Unit 52A;

(d) Lim Li Meng Dominic and Lim Sui May Petrina ("the Lims") – Unit 52C; and

(e) Koh Nai Hock ("Koh") – Unit 54K.

15 The Lims and Koh were the appellants in the present appeal.

16 After fruitless efforts by Khoo to get the non-signatory SPs to consent to the CSA, the Exco wrote to all the SPs on 17 October 2012 saying that the non-signatory SPs were unwilling to sign up and that the Exco would move on.

17 Eventually, pursuant to a tender launched by the Exco themselves, a bid by Dillenia Land Pte Ltd ("DLPL") was accepted on 17 June 2013. DLPL was therefore the designated purchaser of Gilstead Court. The agreement with DLPL was contained in a document known as the Final Terms and Conditions of Tender dated 29 May 2013 ("the Terms of Tender"), which also annexed the terms and conditions of the Final Draft Sale and Purchase Agreement ("the Draft SPA"). DLPL's tender and the CSC's letter of acceptance constituted the conditional contract of sale with DLPL under cl 26 of the Terms of Tender. DLPL's bid was for the sum of $150,168,000, which was slightly over the reserve price of $150m.

18 On 22 June 2013, Chan (a member of the CSC) wrote to the Exco informing them that he had received word that the non-signatory SPs would sign the CSA if cll 7.5, 11.2 and 11.3 of the CSA were waived. Chan took the view that "this letter of comfort and assurance that these minority Owners seek is no skin off our noses" and that it was never the CSC's intention to "make money off any Owner, let alone a minority Owner". He recommended that the CSC issue the comfort letter.

19 This was followed by a letter from Pan (a non-signatory SP and a trained lawyer) to the Exco on 25 June 2013. He informed the Exco that he had managed to convince the other non-signatory SPs to sign the CSA if the CSC gave written confirmation that it would not seek to enforce cll 7.5, 11.1, 11.2 and 11.3 of the CSA.

20 Three days later, Khoo rebuffed Pan's overture, stating that those clauses were "nothing more than attempts at promoting the principle of equality" and "attempts at curbing selfish instincts of individuals". Khoo insisted that the CSC was bound by the CSA and thus powerless to give the concessions sought; he added further that the non-signatory SPs might be allowed to sign the CSA if they *each* paid $26,000 (the estimated costs incurred as a result of their failure to sign "in time") and $2,000 as a belated contribution to the common fund.

Applying for a collective sale to the STB at first instance

21 On 4 July 2013, an application to the STB was made in the names of the members of the Exco – *ie*, Ching, Khoo and Choo – pursuant to s 84A(2A)(*a*) of the LTSA and cl 13 of the CSA. Under cl 13.2 of the CSA, the members of the Exco were the representatives required to be appointed for any approval proceedings before the STB or the High Court under s 84A(2) of the LTSA. The application to the STB included a claim against each of the non-signatory SPs for $29,000, the breakdown of which was as follows: $2,000 (being twice the sum of the reduced amount of contribution of $1,000, pursuant to cl 7.5 of the CSA) and $27,000 (as disbursements incurred for the STB proceedings as calculated by Khoo, pursuant to cl 11.2 of the CSA).

22 Between 12 and 17 July 2013, the non-signatory SPs filed objections with the STB. The STB subsequently told the Exco and the non-signatory SPs to try to negotiate a settlement.

23 In the midst of this process, DLPL's solicitors wrote to Khoo communicating DLPL's offer to contribute a sum of $50,000 towards the costs of the application to the STB on certain conditions, including the requirement that the offer be disclosed to all the SPs of Gilstead Court as well as the STB. This offer was later conveyed to the non-signatory SPs. DLPL's offer was subsequently doubled to $100,000, and finally raised to $135,000.

24 On 26 September 2013, the CSC met to discuss DLPL's offer. The majority (of four) led by Choo favoured an acceptance of DLPL's proposal. Khoo disagreed and stated that the CSA did not give the CSC any power to accept the offer.

25 It was in the midst of this rift that the STB issued a stop order pursuant to s 84A(6A)(*b*) of the LTSA on 1 October 2013.

The parties' applications to the High Court to break the deadlock

26 On 7 October 2013, Choo, and the other three CSC members who were in favour of accepting DLPL's offer, filed Originating Summons No 941 of 2013 ("OS 941") before the High Court. OS 941 was filed to obtain declarations that the Objectionable Clauses of the CSA did not apply to the non-signatory SPs if they signed the CSA, that an offer by DLPL to contribute was permissible, and that, upon the non-signatory SPs signing the CSA, the collective sale should proceed on the basis of unanimous consent.

27 On 16 October 2013, Khoo commenced Originating Summons No 982 of 2013 ("OS 982") in the names of himself, Ching and Choo, *ie*, the Exco. He did this without the approval of Ching and Choo who were in fact unaware of OS 982 when it was filed. Although Ching eventually approved the use of her name, Choo remained on the other side of the fence. Khoo subsequently removed Choo as a plaintiff and added him as a defendant (in an amended OS 982 filed on 17 February 2014).

28 Besides applying for the High Court's approval of the collective sale to DLPL, OS 982 (as amended) also contained numerous other prayers (the full prayers are set out in the Judgment at [3] as well as summarised at [27]–[28]). These included a declaration that the non-signatory SPs be bound by all the terms of the CSA as if they were parties thereto, a declaration that cll 7.5 and 11 of the CSA were valid, that the non-signatory SPs make payment of the sums payable under cll 7.5 and 11, that DLPL had breached cl 37 of the Terms of Tender, and that Choo and the other majority members of the CSC who supported the acceptance of DLPL's offer were in breach of their duties as CSC members.

29 The supporting affidavit for OS 982 was only filed and served on 18 February 2014.

30 Between the filing of OS 941 and the amended OS 982, a further EOGM was held on 11 January 2014. It was requisitioned by one Gary Darwin, who was in favour of accepting the DLPL offer, along with about 16 other SPs. It was chaired by Ching. Of the 25 SPs who attended, 22 voted in favour of the resolution to allow the CSC to waive any claims against an SP arising under the Objectionable Clauses. Of the remaining three SPs, two abstained and one left early.

31 This was followed by a CSC meeting on 20 February 2014. Ching, Khoo and one other member were absent. The four members present voted in favour of resolutions to the effect that court approval for the collective sale should be sought, and that the prayers in OS 982 unrelated to the

approval of the collective sale should be withdrawn.

Decision below

32 The Judge found that cl 7 of the CSA was in effect a penalty imposed on third parties to the contract for failing to contribute to something they did not agree to. He thus struck out cl 7.5 and the related clauses pertaining to the consequences to the SPs who failed to pay contributions pursuant to cl 7.1. He also reduced the interest rate that contributing SPs would receive on their contributions pursuant to cll 7.3 or 7.4 from 12% per annum to 4% per annum.

33 In so far as cl 11 of the CSA was concerned, the Judge found that it was also unenforceable and liable to be struck out as it was unjust and impermissible for the majority to make the non-signatory SPs bear all the costs and expenses of a successful collective sale application. The effect of the clause, in his view, was to force the non-signatory SPs to agree to the sale so that there was no need to resort to the statutory scheme. Clause 11 was also flawed as it purported, by contract, to take away the power of the court to decide on the question of costs.

34 The Judge also found that cl 12 of the CSA was not triggered on the facts.

35 The Judge took the view that although the Objectionable Clauses caused an "unjustifiably unequal distribution of the sale proceeds", it was "not to the extent of impugning the *bona fides* of the transaction" (see the Judgment at [92]). Although it would be "simpler and neater" to refuse to allow the sale through, the Judge thought that to do so would not be in the interests of the signatory SPs, "not least given the present state of the property market"; hence it was fair to allow the sale through on conditions pursuant to s 84A(5A)(*c*) of the LTSA (see the Judgment at [95]), which primarily related to the striking out of the clauses as stated at [32]–[33] above.

36 In so far as the argument that the respondents lacked the authority to initiate OS 982 was concerned, the Judge stated that derailing the sale on such a technicality would be to the prejudice of most of the parties, and that it would be a waste of time and costs to ask them to go away and to regularise the proceedings.

Issues

37 There were three issues before us:

(a) First, whether the transaction was not in good faith after taking into account (only) the method of distributing the proceeds of sale under s 84A(9)(*a*)(i)(B) of the LTSA.

(b) Secondly, if the transaction was not in good faith, whether the court may nevertheless approve the sale by modifying the CSA.

(c) Finally, whether OS 982 was *ultra vires*. It should be mentioned that this issue of authority would only arise for consideration if the appellants failed on *both* the first and the second issues as set out above, which were related to the separate argument centred on good faith. If, however, the appellants were successful in establishing that the method of distribution was not in good faith and, further, that this defect could not be cured by modifications to the CSA, then, strictly speaking, this final issue on authority would be rendered moot.

Whether there was a lack of good faith in the transaction

General principles

38 OS 982 included an application for the order for the sale of all the lots and common property in Gilstead Court. As Gilstead Court was an older strata development, the application was brought by the SPs under s 84A(1)(*b*) of the LTSA which required them to have not less than 80% of the share values and not less than 80% of the total area of all the lots. Section 84A(1)(*b*) states as follows:

> **Application for collective sale of parcel by majority of subsidiary proprietors who have made conditional sale and purchase agreement**
>
> **84A.**—(1) An application for an order for the sale of all the lots and common property in a strata title plan may be made by —
>
> …
>
> (*b*) the subsidiary proprietors of the lots with not less than 80% of the share values and not less than 80% of the total area of all the lots (excluding the area of any accessory lot) as shown in the subsidiary strata certificates of title where 10 years or more have passed since the date of the issue of the latest Temporary Occupation Permit on completion of any building (not being any common property) comprised in the strata title plan or, if no Temporary Occupation Permit was issued, the date of the issue of the latest Certificate of Statutory Completion for any building (not being any common property) comprised in the strata title plan, whichever is the later,
>
> who have agreed in writing to sell all the lots and common property in the strata title plan to a purchaser under a sale and purchase agreement which specifies the proposed method of distributing the sale proceeds to all the subsidiary proprietors (whether in cash or kind or both), subject to an order being made under subsection (6) or (7).

39 The power to apply for a collective sale is an extraordinary power, for it allows the majority to compel a homeowner to sell his home against his will. But there is one crucial safeguard. The STB or the High Court shall not approve the application unless it is satisfied that the transaction is in good faith after taking into account certain exhaustive factors. Section 84A(9) of the LTSA states as follows:

> (9) The High Court or a Board **shall not approve** an application made under subsection (1) —
>
> (*a*) if 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; or
>
> (ii) the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan; or

(*b*) if the collective sale committee does not consent to any order made by the High Court under subsection (7A).

[emphasis added in bold]

40 As this court has stated in *N K Rajarh and others v Tan Eng Chuan and others* [2014] 1 SLR 694 ("*Harbour View Gardens*") (at [33]–[34]), the balance that has to be struck between the various competing interests, particularly those between the consenting majority and the dissenting minority, is at the heart of the law on collective sales; in this connection, the LTSA scheme contains the *minimum* standards of conduct, forming the baseline below which the majority owners will not be permitted to descend. It should also be noted that these standards are ***statutorily*** *circumscribed* (in contrast to the (more open) concept of good faith at *common law*, the legal principles of which have been noted by this court to be in a state of flux (see *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] 3 SLR 695 at [44])).

41 It should also be emphasised that the collective sale regime (particularly s 84A(9) of the LTSA) was promulgated with the aim of protecting the interests of the *minority* owners, and the court's primary role is to ensure that both the letter *and* the spirit of the *en bloc* process are observed in order to ensure that the minority owners are not prejudiced (see the decisions of this court in *Chua Choon Cheng and others v Allgreen Properties Ltd and another appeal* [2009] 3 SLR(R) 724 at [76]–[77] and [81] as well as in *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 2 SLR(R) 597 ("*Sassoon (CA)*") at [7]).

42 It is therefore imperative that a collective sale is conducted fairly, properly and transparently at every stage of the process. When a sale committee exercises the extraordinary power of collective sale, it is acting as the agent of *all* the SPs collectively. In practice, a sale committee usually comprises persons who have pro-sale tendencies themselves. They are subject to the all-too-human temptation to abuse their position and may (unfortunately) possibly even resort to underhanded tactics or unfair pressure against a vulnerable group of objecting proprietors in order to achieve the ends of the majority. The law therefore imposes on the members of the sale committee a number of duties in order to hold them to the high level of accountability and conduct expected of those who are entrusted with the conduct of the sale concerned.

43 The relevant principles governing the conduct of collective sales include the following:

(a) The statutory duty of good faith requires the sale committee to hold an even hand between the consenting and the objecting owners, and this duty of *even-handedness* is distinct from the sale committee's other duties of loyalty or fidelity, to avoid conflict of interest, and to make full disclosure and to act with conscientiousness (see *Harbour View Gardens* at [39] and *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Horizon Towers*") at [124] and [133]).

(b) The duty of even-handedness means the position of the sale committee is in some ways akin to a trustee who has to hold an even hand between the interests of different classes of beneficiaries (see *Horizon Towers* at [136]) and "any decision taken with the sole purpose in mind of advantaging only some without regard to the interests of the others will always be characterised as unfair" (see Paul D Finn in *Fiduciary Obligations* (The Law Book Company Limited, 1977) ("*Fiduciary Obligations*"), approved in *Harbour View Gardens* at [42]).

44 As the contention in this case that the transaction was not in good faith related to the operation of the Objectionable Clauses in the CSA, we should begin by addressing the respondents'

submission that "bad faith" in relation to the CSA cannot "taint" the conditional contract of sale between the signatory SPs and DLPL, as it is only the latter agreement which they say was subject to the court's approval. To put it in another way, was it proper for the court to have regard to the CSA when assessing the *bona fides* of the transaction?

The relevance of the CSA when assessing good faith

45 Under s 84B of the LTSA, all the SPs, including the non-signatory SPs, are bound by the court's order and are compelled to sell pursuant to the sale and purchase agreement, which in the present case is the conditional contract for sale with DLPL. Section 84B of the LTSA states as follows:

> **Effect of order of High Court or Board**
>
> **84B.**—(1) Where the High Court or a Board has made an order under section 84A(6), (7) or (11) —
>
> (*a*) ***the order*** shall bind all the subsidiary proprietors of the lots in the strata title plan, their successors in title and assigns and any mortgagee, chargee or other person with an estate or interest in land;
>
> (*b*) ***the subsidiary proprietors of the lots shall sell the lots and common property in accordance with the sale and purchase agreement*** ; and
>
> (*c*) a lease affecting any of the lots in the strata title plan (other than a lease held by a subsidiary proprietor) shall, if there is no earlier agreed date, determine on the date on which vacant possession is to be given to the purchaser of the lots and common property.
>
> (2) Nothing in subsection (1)(*c*) shall prejudice the rights of any lessee of a subsidiary proprietor to compensation from the subsidiary proprietor.
>
> (3) [*Deleted by Act 13/2010 wef 15/07/2010*]
>
> (4) The subsidiary proprietors of the lots who have not agreed in writing to the sale under section 84A and any mortgagee, chargee or other person with an estate or interest in those lots shall, for the purposes of the sale of the lots and common property, produce the subsidiary strata certificates of title for the lots to the person having conduct of the sale, the representatives appointed under section 84A(2) or to their solicitors.
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> [emphasis added in bold italics and underlined bold italics]

46 The respondents argued that an application under s 84A(1) of the LTSA was an application for approval of the conditional contract for sale to DLPL, not an application for the approval of the CSA. The CSA was thus not a relevant consideration in the context of the present case. Any attempt, therefore, to link bad faith in respect of the CSA with the conditional contract of sale was for that reason fundamentally flawed.

47 In our view, however, the respondents' submission is inconsistent with the case law of this court, which holds that, in considering or assessing whether there is good faith in the transaction, it will often be necessary for the court to have regard to the collective sale agreement to assess the conduct of the transaction (see *Horizon Towers* at [117]). The respondents' submission depends on a far too narrow interpretation of the word "transaction" in s 84A(9)(*a*)(i) of the LTSA, which is *broader*

than the word "sale" or "agreement for sale". Indeed, it includes the whole sale process, including *how* the consent for the collective sale was secured (see *Harbour View Gardens* at [53] and *Horizon Towers* at [131]–[133]).

48 Moreover, the respondents' position on appeal was at odds with their own previous conduct. The respondents had gone to the STB and subsequently to court (in OS 982) seeking to enforce the CSA against, *inter alia*, the non-signatory SPs. The respondents had sought an order in OS 982 (as amended) that the non-signatory SPs be bound by all the terms of the CSA as if they were parties thereto. It did not therefore lie in their mouths to argue that the terms of the CSA were not subject to the scrutiny of the court, when they had themselves brought these terms into issue in the first place.

49 Further, we note the express reference to the CSA in the conditional contract of sale itself. The method of distribution of the sale proceeds described in the Draft SPA (as annexed to the Terms of Tender (see above at [17])) was expressly subject to the operation of the CSA. Whilst the non-signatory SPs were not parties to the CSA, they would have been bound by its terms by effect of the order of the STB or the High Court, as all the SPs must sell the lots and common property in accordance with the sale and purchase agreement under s 84B of the LTSA.

50 We set out below the relevant terms in the Draft SPA:

> Net Sale Proceeds
>
> 27. "Net Sale Proceeds" means the Purchase Price after deducting an amount to be transferred to the Collective Sale Common Fund **for the purposes specified in the CSA**, such as the payment of fees and expenses of professionals engaged for the collective sale and the refunds to contributors to the Common Fund.
>
> 28. The amount of such transfer will be determined by the Sale Committee **in accordance with the provisions of the CSA**…
>
> …
>
> Distribution of 95% Net Sale Proceeds at Completion
>
> 30. *Subject to the provisions of the CSA*, the Owners of each of the 24 Units with a Strata Title Area of 136 sq m will receive 2.110849% of the Net Sale Proceeds, and those of each of the remaining 24 Units, with a Strata Title Area of 129 sq m, will receive 2.055818% of the Net Sale Proceeds.
>
> [original emphasis in italics; emphasis added in bold]

51 Khoo explained during the hearing that the primary terms relating to the method of distribution of the sale proceeds were found in the CSA, as opposed to the conditional contract of sale, because the latter agreement was concluded with the *purchaser* (*ie*, DLPL), who would ordinarily not be concerned with how the sale proceeds were distributed, unlike the sellers themselves

52 Whilst Khoo's explanation was literally correct, this only provided an additional reason why we had to closely examine the CSA in assessing the *bona fides* of the collective sale transaction before us. Whilst s 84A(1) implicitly requires the sale and purchase agreement that is entered into between the majority owners and the purchaser to specify the distribution method, the failure to do so is not

necessarily fatal to an application for collective sale if the method is already set out in the collective sale agreement. There is no prejudice since the SPs would have already been provided with the information necessary to decide whether or not to object to the sale and the STB would also have the necessary information to "carry out its duty under s 84A(9) to determine whether the sale was in good faith" (see *Ng Swee Lang and another v Sassoon Samuel Bernard and others* [2008] 1 SLR(R) 522 ("*Sassoon (HC)*") at [129]). What is important is whether "the amount which that owner is entitled to be paid for his unit can be ascertained from the terms of the collective sale agreement" (see *Sassoon (CA)* at [42]). In other words, if the method of distribution is found in the CSA, that is where the court will look in order to assess the good faith of the sale in accordance with the provisions of the LTSA.

Do the Objectionable Clauses form part of "the method of distributing the proceeds of sale"?

53 The respondents further argued that s 84A(9)(*a*)(i)(B) of the LTSA was not engaged as the Objectionable Clauses did not go towards the method of distributing the sale proceeds. Khoo submitted that the method of distribution related *only* to Schedule 4 of the CSA, which is titled "Apportionment of Sale Proceeds". Schedule 4 contains the principles of apportionment as well as a table of apportionment.

54 Khoo argued that there was a difference between the *amount* of sale proceeds to be received by an objecting SP and the *method* of distributing the sale proceeds amongst all the SPs. According to him, the method of distributing the sale proceeds was "a fixed formula for the apportionment of the sale process" that was contained in Schedule 4; the Objectionable Clauses, however, were extraneous to this method of distribution. He submitted that, in so far as the financial impact of the Objectionable Clauses was concerned, this should be considered under s 84A(7) of the LTSA, which states as follows:

> (7) Where one or more objections have been filed under subsection (4A) in respect of an application under subsection (1) to the High Court, the High Court shall, subject to subsection (9), approve the application and order that all the lots and common property in the strata title plan be sold unless, having regard to the objections, the High Court is satisfied that —
>
> (*a*) any objector, being a subsidiary proprietor, will incur a financial loss; or
>
> (*b*) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.

55 The respondents argued that none of the appellants would incur a financial loss from the proposed collective sale.

56 We were of the view that the respondents' submission above as to how the phrase "the method of distributing the proceeds of sale" in s 84A(9) of the LTSA should be interpreted was unsustainable both on a literal level as well as on a purposive level. What the respondents were, in effect, saying was that the majority should be free to insert financial sanctions or penalties (descriptions used by Khoo himself, see above at [12] and below at [67]) that may substantially impact the distribution of the sale proceeds to the detriment of a class of SPs as long as such clauses did not result in financial loss for those affected. At worst, the clauses might be struck out. With respect, this cannot possibly be correct. Let us elaborate.

57 In our view, when a court takes into account the method of distributing the sale proceeds for

the purpose of assessing the good faith of the transaction, it is concerned with the substance of the transaction and not merely its form. What is crucial is the actual consideration that each SP will receive and how that sum will be calculated. The purpose of s 84A(9)(*a*) is to safeguard the interests of the minority and ensure that they are treated no less favourably than the majority (see below at [93]). The court will not defeat that purpose by giving the provision a narrow and pedantic interpretation. We do not consider the phrase "the method of distributing the proceeds of sale" to be a term of art, even though the issue usually arises in the context of the amount of sale proceeds, for example, when the SPs are unable to agree on whether to apportion the sale proceeds by share values, valuation or the size of the units. The better view is that the phrase simply refers to *the entire system* by which the final shares of the sale proceeds are determined as a whole and this would cover not only the amount of sale proceeds to be received by an objecting SP *but also* the method of distributing such proceeds *as well*.

58 Accordingly, the court must necessarily have regard to *all* the terms in the contract that may have a real impact on the distribution of the sale proceeds in order to assess the good faith of the transaction. The court's supervision in this regard cannot be evaded through the use of labels.

5 9 *In any event*, Khoo himself admitted in the present case that the Objectionable Clauses undoubtedly had a potential impact on the *amount* of sale proceeds to be received by an SP – thus underscoring the point just made to the effect that the concepts of amount and method are part of *a holistic and integrated* inquiry in so far as the assessment of the good faith of the transaction was concerned. Pursuant to cl 9.3 of the CSA, Schedule 4 only distributed the "Net Sale Proceeds", which was defined as the balance of the Sale Proceeds after the "Sale Proceeds Deductions" under cl 9.2 had been deducted. Clause 9.3 was expressly subject to cl 9.4, which stated that the sums withheld from the non-signatory SPs pursuant to the Objectionable Clauses shall be paid over to the common fund (or, in the case of sums recovered under cl 11.3, to be shared by the other owners in apportionments set out in Schedule 4). The Objectionable Clauses had a real and potentially substantive impact on how much of the sale proceeds would be distributed to any individual SP, with the overall effect of benefiting the majority at the expense of the minority.

60 For the above reasons, we found that the Objectionable Clauses formed an integral part of the method of distribution in the present case.

Was the transaction in good faith?

61 As stated in Teo Keang Sood, *Strata Title in Singapore and Malaysia* (LexisNexis, 4th Ed, 2012) at p 717, the requirement of good faith in relation to the method of distribution is likely to be satisfied if it "can be justified as being rational and designed to be *as fair as possible* to all the subsidiary proprietors as the circumstances of the case would permit" [emphasis added]. To this observation, we would add that, if the method of distribution is objectively unfair and designed to prejudice the interests of a particular class of SPs, a court will not hesitate to find that the statutory duty of good faith has *not* been discharged.

62 As we have stated earlier in this judgment, the duty of good faith also includes the duty to be *even-handed* (see above at [43(a)]). The principles relating to the duty to be even-handed were in fact discussed in *Harbour View Gardens* at [42] (citing *Fiduciary Obligations* (at paras 122–123 and 125–133)), which we summarise below as follows:

(a) Fiduciaries have to act fairly and impartially when dealing with the interests of different classes of beneficiaries.

(b) There are two broad categories (*Fiduciary Obligations* at paras 122–123):

(1) where the fiduciary, whether deliberately or not, exercises a discretion for the purpose of advantaging/disadvantaging only some of his beneficiaries; and

(2) where the fiduciary, while honestly intending to act in the interests of all his beneficiaries, takes a decision which in its consequences is unjust to some of them.

(c) There may be cases where a beneficiary is prejudiced because a fiduciary "honestly believes that they can be discriminated against" or because "he fails to appreciate that he must in fact serve them". Nevertheless, "any decision taken with the sole purpose in mind of advantaging only some without regard to the interests of the others will always be characterised as unfair" (*Fiduciary Obligations* at para 125).

(d) A fiduciary must always take into account the effect his decision will have upon his various beneficiaries. The court will intervene *even if* the fiduciary (*subjectively*) *believes* his decision is in the interest of the others. However, a decision can be to the advantage of all even if it is to the *immediate* advantage of one and to the disadvantage of the other (*Fiduciary Obligations* at para 126).

(e) The court must weigh the reasons and circumstances which are said to give rise to the decision against the consequences which the decision occasions to all the beneficiaries, but particularly to the beneficiary aggrieved (*Fiduciary Obligations* at para 133).

63 In other words, the *subjective* views of the parties as to the fairness or unfairness of the method of distribution of the sale proceeds are *not* determinative. A member of a sale committee may be in breach of his or her duty even if he or she thought that he or she was doing the right thing by preferring the interests of one group over another. Further, it might be added that it is perfectly possible for a sale committee to fulfil its *other* obligations (such as the duty of disclosure) and yet *nevertheless* fail to act impartially. In this regard, open discrimination is still discrimination since the court will look to the *substance* and not merely the form of the transaction.

64 On the other hand, a sale committee is not necessarily in breach of its duty of even-handedness merely because any individual SP is (subjectively) dissatisfied with the sum he would receive due to circumstances which are unique to him. The distribution of the sale proceeds may be unfair or inequitable from the *subjective* perspective of an individual SP, *without* there being any bad faith in the process. The then Deputy Prime Minister and Minister for Law, Prof S Jayakumar ("Prof Jayakumar"), had given one such example in Parliament when alluding to certain potential amendments to the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) in 2007, as follows (see *Singapore Parliamentary Debates, Official Report* (2 March 2007) vol 82 at col 2357):

> Secondly, we intend to give the Strata Titles Board a certain power to increase the sale proceeds in certain cases. Let me explain. This concerns the distribution of the sale proceeds. We will not change the basic approach for the distribution of the sale proceeds. The basic approach is that the majority owners in the en bloc process will still have to decide on the distribution method most suitable in their particular circumstances. *The reason why we want to give this power to the Strata Titles Board is to address situations where the Strata Titles Board considers that a minority owner may not have been treated fairly or equitably in the distribution of the proceeds, although it may not be able to find any aspect of bad faith in the process.*
>
> … *Say, a minority owner does $200,000 worth of renovation when there was no en bloc proposal*

in the air. And six months later, there is an en bloc proposal which becomes successful. In fact, it means that he has enjoyed his renovated unit only for about two years before having to move out. He really does not suffer a financial loss under the terms of the Act but the Strata Titles Board may, if they have this discretion, increase his sale proceeds by an amount which it considers fair if it considers it fair and equitable to do so in the circumstances. But there will be a cap on the amount that is available to the STB to award such extra amount, and the proposed cap will be an aggregate sum of $2,000 or 0.25% of the sale proceeds from each unit or whichever is higher. So there will be a certain sum with which they can exercise the discretion. …

[emphasis added in italics]

65 The upcoming amendment Prof Jayakumar was referring to in the preceding paragraph was the insertion of s 84A(7A) under the Land Titles (Strata) Amendment Act 2007 (Act 46 of 2007) ("the 2007 Amendment Act"), which we will discuss in more detail below at [95].

66 After taking into account all the circumstances of the case, we found the following clauses of the CSA to be objectionable – (a) cl 7.1 read with cll 7.3 and 7.5; (b) cl 9.4; and (c) cll 11.2 and 11.3. These clauses may have been drafted with the goal of securing the full agreement of the SPs in the collective sale in order to avoid delays, but they unfairly prejudiced those who might have been disinclined to agree to the collective sale by penalising them for holding that view. Let us elaborate.

67 Clause 7 of the CSA had the effect of compelling a non-contributing SP to contribute double the amount of contribution ordinarily payable, which sum would then be shared amongst those who had contributed. At [74(d)] of the Judgment, the Judge described the effect of cl 7 as imposing "nothing short of a penalty" on the non-signatory SPs for having failed to contribute to what they did not agree to. In fact, Khoo himself had described cl 7 as a "penalty of 2 x contribution" at para 20 of a document titled "Meeting with Dissenters 7 Sept 2013 Talking Points" (we also note Khoo's evidence that Choo did not demur when these talking points were shown to Choo). Indeed, Khoo stated that the clause "*impliedly compels*" SPs to sign after 80% consent was achieved unless they had a legally valid ground of objection.

68 In so far as cl 11.2 was concerned, the effect was that a non-signatory SP who did not file or succeed in an objection would be made liable for potentially the entirety of the costs and expenses of the approval proceedings before the STB and/or the High Court. That sum would be withheld from his share of the Net Sale Proceeds and then paid over to the common fund. In this particular regard, Khoo thought that it was "only fair" that an SP who was unable to make good his objection to the sale be "made to compensate the other owners for the cost and expenses which are incurred for what should be unnecessary proceedings". The Judge rightly held that while it is normal and fair that all SPs are made to *share* the costs and expenses of a successful collective sale, it was "unjust and impermissible, by a contract amongst the requisite majority signatory SPs, to make the non-signatory SPs bear these costs" and that the signatory SPs were effectively "forcing the minority to agree to the sale" (see the Judgment at [81]–[82]).

69 As for cl 11.3, it had a somewhat more nuanced effect. It authorised the CSC to seek legal advice. If so advised, and if approval by special resolution of an EOGM was obtained, the CSC could take legal proceedings to seek to recover compensation from the non-signatory SPs for the loss suffered by the other SPs from the delay in the receipt of the sale proceeds as a result of the approval proceedings. At the hearing before us, counsel for the appellants, Mr Adrian Tan ("Mr Tan"), described this as a "bombshell" that could cause an SP to sign the CSA simply out of the *fear* that he or she might be liable for a large sum as compensation for delay.

70 In our view, cl 11.3 did not in itself provide the *basis* for any claim against any non-signatory SP, and it was not apparent what cause of action the majority may have against a minority simply for failing to successfully make an objection before the STB or the High Court. That said, whatever the legal basis for such a claim, cl 11.3 contained an *implicit threat* that an SP, especially one without legal training, would find hard to ignore.

71 Finally, although cl 9.4 was not identified as one of the Objectionable Clauses by the Judge below, we had some difficulty with it. Clause 9.4.1 stated that the sums withheld from the non-signatory SPs pursuant to the Objectionable Clauses shall be paid over to the common fund. Clause 9.4.2 stated that sums recovered under cl 11.3 would be shared by the other owners in apportionments set out in Schedule 4. In our view, these clauses essentially created the link between the Objectionable Clauses and the method of distribution set out in Schedule 4.

72 One might ask whether a collective sale transaction could be said to be lacking in good faith even if the collective sale agreement contained ill-intentioned clauses which have such a minimal financial effect that no SP could possibly be said to be truly prejudiced by their existence. However, this issue did not arise in the present case. Notwithstanding that it could not be ascertained in advance (with the exception of cl 7.5) what the full measure of the downside to the non-signatory SPs under these clauses would be, it was apparent that these clauses would (at the very least) have a *potentially* substantial impact on the amount that each non-signatory SP would receive as their share of the sale proceeds. They therefore hung over the head of any non-signatory SP like the sword of Damocles.

73 As it turned out, the *actual* monetary impact was *far from* being *de minimis*. On 28 June 2012, even before the STB proceedings had been initiated, Khoo had already taken the view that each non-signatory SP was on the hook for $28,000 each (see above at [20]). In this regard, we observe in passing that, before it was amended, OS 982 (at para 4) had in fact sought the payment of a total of $29,000 by each non-signatory SP.

74 At the hearing before us, Mr Tan estimated that, pursuant to cll 7.3, 7.5 and 11.2 of the CSA, each non-signatory SP would receive $38,651.75 *less* than what would otherwise be his share under Schedule 4 of the CSA. After considering that a signatory SP would receive a refund of his contribution with 12% interest, and (in addition) a share of the double contribution paid by the non-signatory SPs, a non-signatory SP would receive approximately $42,000 less than his counterpart. In fact, this last-mentioned figure was likely an underestimation since it only took into account the costs and expenses of the STB proceedings as at 4 July 2013, and did not include the expenses for the proceedings before the High Court and the appeal before us.

75 In the circumstances, we agreed with the Judge that cll 7 and 11.2 (and to these, we would add cll 9.4 and 11.3) caused an "unjustifiably unequal distribution of the sale proceeds" (see the Judgment at [92]). Khoo had deliberately crafted terms which he knew were disadvantageous to the non-signatory SPs. In his view, such discrimination was permissible in achieving his goal of 100% consent and indeed "fair". He believed that they represented the "[p]rinciple of equality of treatment". By equality it meant that he wanted to prevent "oppression by the minority".

76 Khoo's approach seemed to have been motivated, at least in part, by his rather dim view of those who were less enthusiastic about the sale than he was. He had referred to non-signatory SPs as "*selfish*" and stated that this was the reason why he inserted "*sanctions*" in the CSA (see above at [12]). Khoo also said that the Objectionable Clauses were "nothing more than attempts at curbing selfish instincts of individuals".

77 *However*, what Khoo had failed to appreciate was that an SP has the *absolute right not* to sign the CSA, for whatever reason he or she might have. The law still expects that such an SP will be treated fairly. The Judge was undoubtedly correct when he stated that s 84A of the LTSA takes away the right of an SP to refuse to sell if the requisite majority SPs wish to sell, but it does not require a non-consenting SP to sign a CSA (see the Judgment at [83]). No SP should ever feel compelled to sign a document he or she does not agree with because of undue group pressure or the fear of suffering penal consequences, whether covert or overt. Khoo had completely failed to take into account "the basic rights of objecting SPs at law" (see the Judgment at [91]), which (in turn) entailed a duty to consider the rights and interests of *all* the SPs.

78 Khoo (and the CSC) in fact went further than just drafting the impugned clauses discussed at [66]–[71] above. On several occasions, Khoo made use of those clauses to apply pressure to persons who had not signed up to the CSA. His own evidence on affidavit was that the requisite consent of 80% was achieved "[o]nly with great tact, coupled with references to Clause 11 of the CSA". We have already referred to the personal note of 28 June 2012 sent to one of the non-signatory SPs (see above at [12]), where Khoo spoke of "sanctions in the CSA against such selfish behaviour".

79 The approach outlined in the preceding paragraph continued *even after* the 80% statutory minimum was achieved. In his "Presentation" to the Lims dated 10 September 2012, Khoo described in detail the potential cost liability under cl 11 that the Lims might suffer if they failed to sign up. This Presentation (with minor amendments) was also sent to Chua, Loke, Soh and Koh.

80 Khoo and the CSC had opportunities to reverse the course which they had hitherto adopted. As noted above at [18]–[20], Khoo (with the acquiescence of the Exco) had rebuffed the offer by the non-signatory SPs to sign the CSA if the CSC gave written confirmation that it would not seek to enforce cll 7.5, 11.1, 11.2 and 11.3 of the CSA. Whilst Khoo was correct as a matter of general principle that an agreement properly entered into can only be varied if all the parties to the contract agreed, and that the CSC had no power to unilaterally give concessions that had the effect of varying the terms of the agreement, there was nothing preventing the Exco or the CSC from asking the signatory SPs if they would agree to formally vary the CSA. Further, Khoo did not always adopt such a strict stance. For example, he had acceded to an informal amendment via an EOGM, *ie*, the one convened on 7 April 2012 (see above at [11]) where the attendees voted to reduce the contribution payable under cl 7.1 from $2,000 to $1,000, even though, by that time, the SPs of 27 units had already signed and contributed.

81 In our view, the failure of the Exco (including Choo) to even attempt to reach out to the signatory SPs regarding the non-signatory SPs' offer was telling. Instead, Khoo informed the non-signatory SPs that they had *each* to pay at least $28,000 before they were allowed to sign the CSA (see above at [20]).

82 Subsequently, the Exco applied to the STB, seeking not only an approval for collective sale but also orders from the STB to withhold sums from the non-signatory SPs pursuant to cll 7.5 and 11.2 of the CSA (see above at [21]). There was no indication that the Exco was divided at the time the application was made. Choo had received the documents for the STB application and was present at the hearing before the STB.

83 As Khoo stated, the rift within the Exco and the CSC appeared to have arisen only *after* DLPL made its offer to contribute sums to the legal and necessary costs of the application to the STB if, *inter alia*, the non-signatory SPs withdrew their objections. For the sake of completeness, we were in agreement with the Judge (see the Judgment at [86]) that there was nothing improper about DLPL's offer. Whilst it was somewhat unfortunate that Choo, the other members of the CSC, as well as a

number of signatory SPs were only moved into action after the offer of a rather large sum of money by a third party, it was not too late. Unfortunately, Ching and Khoo refused to budge. Instead, they filed OS 982 (as amended), seeking to uphold, *inter alia*, cll 7.5 and 11 of the CSA.

84 To recapitulate, the statutory duty of good faith requires a sale committee to hold an even hand between consenting and objecting owners. On the present facts, the impugned clauses (which went to the method of distribution of the sale proceeds) were not only objectively unfair and intended to prejudice the interests of the non-signatory SPs who exercised their entitlement *not* to lend their signatures to a document they did not concur in, but would also, *in fact*, cause them to suffer significant detriment. To discharge the statutory duty of good faith, it is not sufficient that the majority or the sale committee had the real, but *objectively unjustifiable*, belief that they were permitted to act in a discriminatory manner. This is *a fortiori* the case when the evidence before us demonstrated that members of the majority as well as the CSC were actually discomfited by the penal nature of the impugned clauses, even if they only had these second thoughts well after they had acceded to those unfair terms.

85 In conclusion, the inclusion of the impugned clauses and the respondents' determined effort to enforce and give effect to them were contrary to the requirement that the transaction be carried forward in good faith, taking into account, in particular, the method of distribution of the sale proceeds.

Whether the court may intervene to amend the CSA to cure bad faith

86 As noted above (at [32]–[33]), the Judge held that cll 7.5 and 11 of the CSA were unenforceable. However, instead of refusing to allow the sale to go through, he decided to impose conditions pursuant to s 84A(5A)(*c*) of the LTSA to, *inter alia*, strike out cll 7.5 and 11 of the CSA. We emphasise that the Judge had done so after finding that there was *no* lack of *bona fides* in the transaction, a finding with which, with respect, we *disagreed*. The Judge therefore did *not* need to consider the specific issue before us, which was whether the court has the discretion to approve a collective sale even if it is satisfied that the transaction was *not* in good faith.

87 Section 84A(5A)(*c*) states as follows:

> (5A) Where an application is made under subsection (1) to the High Court in the circumstances described in subsection (2A)(*b*), the High Court shall, without prejudice to such other powers it may have under law, have power —
>
> > (*a*) to summon any person whom the Court is of the view is connected or otherwise related to the sale which is the subject of the application, to attend before the Court at the time and place specified in the summons and to produce such books, documents or other records in the person's custody or control which the person is required by the summons to produce;
> >
> > (*b*) to call for a valuation report or other report and to require the subsidiary proprietors referred to in subsection (1) to pay for the costs; and
> >
> > (*c*) to impose such conditions as it may think fair and reasonable in approving the application.

88 The parties were (at least initially) agreed that s 84A(5A)(*c*) of the LTSA did *not* give the Judge the power to make the changes that he did. In this regard, it is important to appreciate that the appellants and the respondents had approached the matter from *fundamentally different*

perspectives.

89 The *appellants'* argument was that, given the language and purpose of s 84A(9) of the LTSA, the STB and the court have *no* discretion to approve a sale once bad faith in the transaction is established. Such bad faith *cannot* be purged by the imposition of conditions pursuant to s 84A(5A)(*c*), *or* by the common law rules embodied in the "blue pencil" doctrine and/or notional severance.

90 On the other hand, the *respondents*' argument in their written submissions was that s 84A(5A)(*c*) cannot be used to strike out clauses in the CSA because the CSA was not before the court for review and also because it was never intended that the provision could be used for such a purpose. Once the court is satisfied that the transaction was in good faith, and that the application fulfilled the other requirements under the LTSA, the sale must be approved. The point is that the CSA cannot be amended even if the court is satisfied that the transaction is in good faith. Thus the respondents' argument actually went beyond what the appellants had submitted.

91 However, at the hearing before us, Khoo adopted a somewhat different approach on behalf of the respondents. He stated that the respondents would have no problems if the Objectionable Clauses were struck out, provided that the sale was approved. After we handed down our decision and brief grounds, the respondents filed further arguments to submit that the Objectionable Clauses are actually severable.

92 As we found the transaction *not* to have been in good faith, we did not need to consider the principles as to when a court could interfere with a collective sale agreement when the transaction was in good faith. We only needed to consider whether the court had any discretion to approve a collective sale where the transaction was *not* in good faith. In this regard, it is evident, in our view, that ***neither*** the STB ***nor*** the court has such a power. Let us elaborate.

93 During the second reading of the Land Titles (Strata) (Amendment) Bill (Bill No 28/1998) ("the 1998 Bill"), the Minister of State for Law, Assoc Prof Ho Peng Kee ("Assoc Prof Ho"), had stated as follows (see *Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at col 604):

> … The Board will look at the sale price, method of distributing the sale proceeds *to ensure that the minority owners are treated no less favourably than the majority*, and the relationship of the purchaser to the owners, to ensure that there is no collusion. If the Board decides that the transaction is bona fide and an arm's length transaction, the sale will proceed. Otherwise, the sale cannot proceed and the majority owners would have to *rework their proposal* if they still wish to sell en-bloc. ***The Board will not rewrite the agreement for the parties.*** [emphasis added in italics and bold italics]

94 This was also the view taken by the Select Committee to which the 1998 Bill was committed. The Select Committee comprised, *inter alia*, the then Minister of Law, Prof Jayakumar, as well as Assoc Prof Ho. It was stated in the *Report of the Select Committee on the Land Titles (Strata) (Amendment) Bill* (Bill No 28/98) (Parl 2 of 1999, 19 April 1999) ("the Select Committee Report") as follows (at para 22(c)):

> … The Board… will not impose its own terms and conditions on the parties. *If the Board feels that the price is too low or the method of distribution of the sale proceeds is not equitable, it will order that the sale not proceed.* The majority owners must then address this issue. [emphasis added in italics]

This point was repeated by Prof Jayakumar during the third reading of the 1998 Bill (see *Singapore*

Parliamentary Debates, Official Report (4 May 1999) vol 70 at col 1329).

95 There is also no suggestion that, when the 2007 Amendment Act (see above at [65]) was introduced, this strict position was to be departed from. Indeed, one of the purposes of the 2007 Amendment Act was to provide *additional safeguards* for all owners involved in *en bloc* sales (see, *eg*, the statement of Prof Jayakumar in *Singapore Parliamentary Debates, Official Report* (20 September 2007) vol 83 at col 1994). For example, s 84A(7A) was inserted to empower the STB, with the *consent* of the sale committee, to increase the sale proceeds to be received by an objector if the STB is satisfied that it would be just and equitable to do so. Sub-section (7B) of s 84A capped the maximum sum that the STB could order. It also introduced s 84A(9)(*b*) which stated that the STB shall not approve the application for collective sale if the sale committee does not consent to any order made under sub-s (7A) of s 84A. Parliament had introduced these provisions to strike a balance between the need to ensure that the minority is treated fairly or equitably (even where there is no bad faith in the process) and the basic approach that it is for the majority to decide on the distribution method most suitable in their particular circumstances (see above at [64]).

96 It was in this context that s 84A(5)(*c*) was inserted in the LTSA via the 2007 Amendment Act. That section amended s 84A(5) to read as follows:

> (5) The Board shall have power —
>
> (*a*) to mediate in any matter arising from an application made under subsection (1);
>
> (*b*) to call for a valuation report or other report and to require the subsidiary proprietors referred to in subsection (1) to pay for the costs ; and
>
> (*c*) to impose such conditions as it may think fair and reasonable in approving an application under subsection (1).

97 Section 84A(5)(*c*) of the LTSA was introduced with little fanfare. Indeed, the Explanatory Statement to the Land Titles (Strata) (Amendment) Bill (Bill No 32/2007) ("the 2007 Bill") made no reference to this particular amendment at all. Nothing was also said about it in the *Consultation Paper by the Ministry of Law on Review of En Bloc Sale Legislation under the Land Titles (Strata) Act* (dated April 2007) ("the Consultation Paper"). The Consultation Paper was accompanied by proposed draft amendments to the LTSA in which it was stated that the insertion of s 84A(5)(*c*) was meant to "empower the [STB] to approve the application on conditions".

98 The Land Titles (Strata) (Amendment) Act 2010 (Act 13 of 2010) ("the 2010 Amendment Act") transferred the power to increase the sale proceeds to be received by an objector with the *consent* of the sale committee, which was originally with the STB, to the High Court. Again, the strict position remained unchanged, and this is clear from the Explanatory Statement to the Land Titles (Strata) (Amendment) Bill (Bill No 9/20) ("the 2010 Bill"), which stated that:

> Both a Strata Titles Board and the High Court *must*, respectively, *refuse* a collective sale application before it if it is satisfied that the transaction is not in good faith after taking into account the sale price for the lots and the common property in the strata title plan, *the method of distributing the proceeds of sale* and the relationship of the purchaser to any of the subsidiary proprietors and not other factors, or it is satisfied that the sale and purchase agreement would require any subsidiary proprietor who has not agreed in writing to the sale to be a party to any arrangement for the development of the lots and the common property in the strata title plan. [emphasis added in italics]

99 And, as the Minister for Law, Mr K Shanmugam ("Mr Shanmugam"), put it during the second reading of the 2010 Bill, even if the overwhelming majority of owners vote for an *en bloc* sale, the sale "*still has to pass the good faith test*" [emphasis added] (see *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 399).

100 Hence, all throughout three major amendments to the LTSA, the intention of Parliament remained constant: once the court or the STB is satisfied that there is a lack of good faith in the transaction, having regard only to the factors stipulated in s 84A(9)(*a*) of the LTSA, it ***must refuse*** the collective sale application. There is no alternative, unlike, for example, s 84A(7A) of the LTSA (see above at [95]). It should always be borne in mind that the court has no power to force unwilling proprietors to sell their land in a collective sale, except to the extent provided for in the LTSA. It is ***not open*** to the court to use s 84A(5A)(*c*), or to import ill-fitting principles from the common law or equity, to let the court do what statute and Parliament has made crystal clear that the court cannot do. Let us elaborate briefly.

101 In so far as s 84A(5A)(*c*) is concerned, the *legislative history* makes it clear that it was ***never Parliament's intention*** that this particular provision be utilised in such a broad manner. This provision was in fact introduced only in 2010 by the 2010 Amendment Act (to which reference has earlier been made at [98]). Section 84A(5A)(*c*) is identical to s 84A(5)(*c*) (which was discussed above at [96]–[97]). When s 84A(5A) was introduced, s 84A(5) was also amended by the insertion of a new sub-section (*aa*). That new sub-section is identical to s 84A(5A)(*a*), which made it clear that the STB and the High Court had the power to request for information or documents in certain circumstances. The following extract from the Explanatory Statement to the 2010 Bill is particularly apposite:

> Next, section 84A(5) is also amended to expressly empower a Strata Titles Board and the High Court to request for any information or documents from any party related to a collective sale application before it, if the Board or High Court, as the case may be, deems such information relevant ***to aid in its assessment*** *of the collective sale application in accordance with section 84A(7) or (9)(*a). ***Similar powers are conferred by new section 84A(5A) on the High Court in respect of collective sale applications*** . [emphasis added in italics, bold italics and underlined bold italics]

102 Section 84A(5A) was meant to give the High Court (without prejudice to the powers that the High Court already had) the *same* powers granted to the STB under s 84A(5) – with the exception of s 84A(5)(*a*) which reflected the STB's mediatory role. Section 84A(5A)(*c*) had to be interpreted in conjunction with s 84A(5)(*c*), and it was apparent that Parliament never had any intention of giving the STB wide and unfettered powers to amend collective sale agreements, in particular, the method of distribution of the sale proceeds that the majority had already agreed upon.

103 It is therefore clear that s 84A(5A)(*c*) was ***never intended to confer on the High Court such a broad power as is contained in the "blue pencil test". It was intended to confer only a supplementary power to aid the High Court in assessing the relevant collective sale application pursuant to s 84A(1)*** (this last-mentioned provision being in fact *expressly referred to* in s 84A(5A)(*c*) itself). Indeed, this is confirmed, in our view, by the ***other (also supplementary) powers*** contained in sub-ss 84A(5A) ***(a) and (b)*** (which confer on the court the power "to summon any person whom the Court is of the view is connected or otherwise related to the sale which is the subject of the application, to attend before the Court at the time and place specified in the summons and to produce such books, documents or other records in the person's custody or control which the person is required by the summons to produce" *and* the power "to call for a valuation report or other report and to require the subsidiary proprietors referred to in [s 84A(1)] to pay for the costs", respectively).

104 For the sake of completeness, we also note the respondents' further argument that cll 7.5 and 11.2 of the CSA can "easily be blue pencilled out" and the 12% per annum interest rate on the contribution to the sale proceeds can be changed to 4% without disturbing the integrity of cl 7.3. They also referred to the existence of a severance clause in the CSA. These arguments related to *how* a discretion to amend the CSA should be exercised, and not to whether such discretion even existed in the first place. As we have found that there was ***no discretion*** in the present case, we did not need to consider this argument. In any event, *even under the common law*, the so-called "blue pencil test" has traditionally been applied only in the context of illegality and public policy in contract law in general and (mainly) with respect to the very specific sphere of restraint of trade in particular. Indeed, it has been observed thus in a local textbook (see *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract in Singapore*") at para 13.218):

> Although the point is not entirely clear from the various textbooks, it would appear that the doctrine of severance is not uniformly applicable to all categories of illegal contracts. It would appear that the doctrine would not apply to contracts involving the more extreme forms of illegality. Indeed, the vast majority of cases dealing with the doctrine of severance involve the restraint of trade doctrine, which doctrine ranks rather low on the scale of illegality. On the other hand, it is suggested that the doctrine of severance would probably not apply to contracts that are either expressly or impliedly prohibited by *statute*. The situation is probably less clear with regard to contracts that are illegal under *the common law*. It is suggested that the doctrine of severance ought to be more likely to be applicable in categories where the original rationale for holding the contract as illegal under the common law is now questionable (owing, for example, to a change in social circumstances and policy). [emphasis in original]

It is clear that the "blue pencil test" *could not possibly be applicable* on the facts as well as context of the present case.

105 We pause to note – parenthetically – that, in the context of the local law of contract, this court, in *Man Financial (S) Pte Ltd (formerly known as E D & F Man International (S) Pte Ltd) v Wong Bark Chuan David* [2008] 1 SLR(R) 663 and *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 4 SLR 308, declined to make any conclusive observations on the applicability (or otherwise) of the doctrine of *notional severance* which is a relatively novel one, although the latter decision did express the view (at [35]) that the reasons given by the Supreme Court of Canada in *Shafron v KRG Insurance Brokers (Western) Inc* (2009) 301 DLR (4th) 522 for the conclusion that the doctrine of notional severance was *inappropriate* in the employment context were "persuasive" (see also generally *The Law of Contract in Singapore* at paras 13.227–13.235; reference may also be made to the relatively recent Singapore High Court decision of *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27, especially at [174]–[186]). *However*, it is clear, in our view, that the doctrine of notional severance is, in any event, *clearly inapplicable* to the facts as well as context of the present case.

106 We therefore allowed the appeal on the ground that the transaction was *not* in good faith.

Whether OS 982 was *ultra vires*

107 Whilst we have held that the appeal should be allowed because of the want of good faith in the transaction, we should also address the appellants' argument that the respondents did not have the authority to bring OS 982 in the first place. Indeed, this particular issue was canvassed and considered in the court below (see above at [36]) as well as in the parties' respective written submissions on appeal. In our view, it would also be appropriate to furnish some guidance with respect to this issue for the future.

108 The appellants argued that since s 84A(2) of the LTSA required the authorised representatives of the majority SPs to act jointly, the application had to be brought by Ching, Khoo and Choo (*ie*, all the Exco members) together. Since the respondents constituted only two out of the three authorised representatives, OS 982 was *ultra vires*.

109 In order to address this particular issue, we need to have regard to the structure of the LTSA, as well as the legislative history of s 84A(2) in particular.

110 Under s 84A(1) of the LTSA, an application for a collective sale is made by the majority SPs (see above at [38]). However, s 84A(2) requires the majority SPs to appoint not more than three authorised representatives in connection with a collective sale application, and they must act jointly. Section 84A(2) of the LTSA provides as follows:

> (2) The subsidiary proprietors referred to in subsection (1) shall appoint not more than 3 persons from the collective sale committee referred to in subsection (1A) to act **jointly** as their authorised representatives in connection with any application made under subsection (1). [emphasis added in bold]

111 In the 1998 Bill as originally drafted, s 84A(2) was drafted in very different terms. The original draft read as follows:

> (2) The subsidiary proprietors referred to in subsection (1) shall appoint not more than 3 persons **(jointly and severally)** from among themselves to act as their authorised representatives in connection with any application made under that subsection. [emphasis added in bold]

112 After the 1998 Bill was read the second time on 31 July 1998, the draft Bill was committed to a Select Committee. The Select Committee made a number of amendments to the draft Bill, including the removal of the words "(jointly and severally)" from the proposed s 84A(2) and inserting the word "jointly" after the word "act" instead.

113 The reason for this was stated by Prof Jayakumar at p E5 of the Select Committee Report, as follows:

> Amendment Nos. 4 and 5 provide that the representatives appointed by the majority owners **must act jointly and not severally**. This is in response to a representation which was made to us. [emphasis added in bold]

114 Prof Jayakumar was likely referring to Paper 34 in the Select Committee Report, which was the only representation that made this particular recommendation. It was submitted by Assoc Prof Lim Lan Yuan, Dr Lawrence Chin, Dr Alice Christudason, Ms Anne Magdaline Netto and Ms Low Boon Yean from The School of Building and Real Estate of The National University of Singapore. That paper referred to the original s 84A(2) and stated as follows:

> This section allows the subsidiary proprietor to appoint 'not more than 3 persons' to act as their authorised representatives, jointly and severally. Therefore the subsidiary proprietors can appoint 1, 2 or 3 representatives.
>
> The introduction of the concept of 'jointly and severally' is odd. … [the authors go on to explain that the concept is usually used in the context of liability to mean liability collectively and/or individually].

In the proposed legislation, the phrase "jointly and severally", appears to be used in relation to powers exercised individually and/or collectively by appointed representatives. This presumes the appointment of more than one representative. However, the phrase 'jointly and severally' cannot be used where only one representative is appointed. It can only be used where more than one representative is appointed. As the appointment imports onerous trust obligations, it would be in the interest of the subsidiary proprietors to appoint more than one representative.

Where it is used for the appointment of more than one representative the phrase still poses problems. If the subsidiary proprietors appoint more than one representative they should want the representatives to act jointly. However, the phrase 'jointly and severally' allows unilateral acts by a single representative. **This would defeat the objective of requiring concurrence and allow for possible arbitrary conflicting acts.**

Further, the appointed representatives are placed in a position of trust. **The trust rule on unanimity requires trustees to act in concurrence.** See *Re Mayo* [1943] Ch.302. Therefore the representatives cannot act individually. There is no question of them acting "severally". **They must act jointly at all times.**

[emphasis added in bold]

115 The Select Committee met with the representatives of Paper 34 on 4 December 1998, where the following exchange occurred (recorded at C 82 of the Select Committee Report):

250. Another specific point that you made, again, to better reflect what the position should be, is new section 84A(2) where you say, currently drafted, the Bill allows majority owners to appoint "not more than 3 persons to act as their authorised representatives, jointly and severally." And you have made the argument that because they have decided to appoint 3 persons, the 3 persons should, in fact, act together, and not severally? – *(Ms Anne Magdaline Netto)* Yes.

Assoc. Prof. Ho Peng Kee] Again, that is a good point which I think the Committee can consider.

116 It is clear, therefore, that Parliament had intended the word "jointly" to mean that, if the signatory SPs decided to appoint three persons to act as their authorised representatives, they were mandated to act *jointly*, and ***not*** *severally*. This was to avoid the problem of "arbitrary conflicting acts", as the authors of Paper 34 had described it (see above at [114]).

117 Subsequently, in the 2007 Amendment Act, a new sub-s (1A) was inserted to s 84A, which read as follows:

(1A) For the purposes of a collective sale under this section and before the signing of the collective sale agreement by any subsidiary proprietor —

(*a*) there shall be constituted a collective sale committee to act jointly on behalf of the subsidiary proprietors of the lots whose members shall be elected by the subsidiary proprietors of the lots at a general meeting of the management corporation convened in accordance with the Second Schedule; and

(*b*) the Third Schedule shall have effect as respects the collective sale committee, its composition, constitution, members and proceedings.

118 This provision was added as part of an effort to enhance procedural clarity to the collective

sale regime, which also included the introduction of the Second and Third Schedules to the LTSA to regulate the formation of the sale committee and its proceedings (see *Singapore Parliamentary Debates, Official Report* (20 September 2007) vol 83 at cols 1997–1999).

119 Whilst s 84A(1A) also uses the word "jointly", this has to be read in conjunction with sub-paras 8(1) and (2) of the Third Schedule to the LTSA, which provides as follows:

> 8.—(1) At any meeting of a collective sale committee, a quorum shall consist of the majority of the members of the collective sale committee except that where a management corporation for a strata title plan has only 2 subsidiary proprietors, the presence of the member who owns more than 50% of the aggregate share value of all the lots comprised in the strata title plan shall be the quorum required to convene the meeting of the collective sale committee.
>
> (2) A decision of the *majority* of members of the collective sale committee present and voting at any meeting of the collective sale committee *shall be a decision of the collective sale committee* except that where a management corporation for a strata title plan has only 2 subsidiary proprietors, the decision of the member who owns more than 50% of the aggregate share value of all the lots comprised in the strata title plan shall be the decision of the collective sale committee.
>
> [emphasis added in italics]

120 Section 84A(2) was also amended in the 2007 Amendment Act by deleting the words "among themselves" and substituting the words "the collective sale committee referred to in subsection (1A)". There was no indication that Parliament had intended to depart from the original strict position that the authorised representatives had to act *jointly* at all times.

121 The question then arises as to what might happen if there is a disagreement or rift between the authorised representatives. Would it mean that a collective sale has no way of moving forward? That is not necessarily the case. For instance, where the collective sale agreement grants it the power (whether expressly or impliedly), a sale committee may substitute (or simply remove) one or more of the authorised representatives by majority vote (see *Sassoon (HC)* at [94]–[109], affirmed on appeal in *Sassoon (CA)* at [47]). A general meeting can also be held to vote out members of the sale committee who are not acting in accordance with the wishes of the majority pursuant to para 5(*e*) of the Third Schedule of the LTSA.

122 To summarise the analysis thus far:

(a) The application for an order for a collective sale is made by the majority SPs.

(b) Before a collective sale agreement can be signed, a sale committee must be constituted to act "jointly" on behalf of the SPs. A decision of the majority of the members of the sale committee present and voting at a meeting of the sale committee is a decision of the sale committee.

(c) The majority SPs shall appoint no more than three persons from the sale committee to act *jointly* as their authorised representatives in connection with any application for a collective sale. The authorised representatives must act together and *not* severally.

123 Leaving aside the question of whether it is possible for the majority to agree to derogate from the requirements set out in s 84A, there was nothing in the CSA indicating any intention to permit the

authorised representatives to act severally rather than jointly. Therefore, Khoo had no authority to file an application for a collective sale without the concurrence of Ching and Choo. When Khoo filed OS 982, he had also named Ching and Choo as plaintiffs, but this was done without their consent or even their knowledge. Indeed, Khoo had stated during a pre-trial conference on 6 November 2013 that he had been aware that all three of them were the proper plaintiffs in the application and that it was contemplated that "these persons would act as a unified body". Whilst Ching subsequently ratified the use of her name, Choo did not do so. Choo, and the majority of the CSC, were subsequently joined as *defendants* in OS 982.

124 Further, the orders sought in OS 982 were inconsistent with OS 941, which had been filed earlier by Choo *et al* seeking, *inter alia*, declarations that cll 7.5, 11 and 12 of the CSA did not apply to the non-signatory SPs. However, these prayers were not entirely consistent with the CSA, and a sale committee has to act within the mandate specified in the collective sale agreement (see, *eg*, the remarks by Mr Shanmugam in *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at col 406).

125 In the result, neither side could properly claim to truly represent the principal, *ie*, the signatories of the CSA. Even though both sides wanted the collective sale to go through, the result of their contradictory applications meant that the non-signatory SPs were caught in the middle of an internecine struggle between the majority members that the non-signatory SPs ought not to have been implicated in. This was an embarrassing situation leading to much unnecessary cost and delay. We do not think that this was a trivial or technical irregularity that the court ought to disregard. The foresight of Parliament in requiring *joint* action by the authorised representatives was aptly demonstrated by the procedural chaos arising from the failure of Choo, Ching and Khoo to act jointly, to the prejudice of everyone involved. There were *six* pre-trial conferences ("PTC") between 6 November 2013 and 27 March 2014 to deal with numerous procedural issues relating to OS 982 and OS 941. Authorised representatives should be ever mindful of the fact that they have no authority to act severally before embarking on any unilateral course of action.

126 This led to the question of whether Khoo's unauthorised application was, in fact, subsequently *ratified*. Arguably, an attempt to ratify the *part* of OS 982 seeking the High Court's approval for the collective sale was made at the CSC meeting on 20 February 2014 (see above at [31]) when Choo and three members of the CSC voted unanimously in favour of the following resolutions:

> …
>
> (ii) to resolve that the plaintiffs in OS 982/2013, being the authorized representatives of the collective sale committee ("Authorised Representatives"), take steps in OS 982/2013 to remove all prayers other than those related to the approval of the collective sale under s 84A of the [LTSA];
>
> (iii) to resolve that the Authorised Representatives take steps in OS 982/2013 to remove all defendants in OS 982 other than those subsidiary proprietors who did not sign the collective sale agreement;
>
> (**iv**) **to resolve that the Authorised Representatives in OS 982/2013 proceed to obtain the court approval under s 84A of the [LTSA] for the collective sale of Gilstead Court**;
>
> …
>
> [emphasis added in bold]

127 The difficulty with this particular attempt at ratification is that "where it is essential to the validity of an act that it should be done within a certain time, the act cannot be ratified after the expiration of that time, to the prejudice of any third party" (see Peter Watts and F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 20th Ed, 2014) at para 2-087). The attempted ratification, if that was the intent, was made *four months after* the statutory deadline. This time limitation was for the benefit of the minority owners, as indicated by Mr Shanmugam in his remarks below (see *Singapore Parliamentary Debates, Official Report* (18 May 2010) vol 87 at cols 376–377):

> There have been some public concerns that this Amendment will make it **more difficult and costly** for minority owners to file objections to an *en bloc* sale application. The fact is that, in contentious cases, the process is likely to be long drawn and parties may have to seek legal representation, if they want to pursue every avenue. That is already the position now. After the amendments, minority owners can continue to file their objections to the STB, and the STB will then try to resolve any disagreement through mediation. If there is no resolution at the STB's mediation stage, the STB will then issue a "stop order", as I mentioned earlier. **If the majority owners will not proceed to bring the case to the High Court for adjudication within 14 days of such a "stop order", the *en bloc* sale application will lapse .** If the case is brought before the High Court, objectors can then decide whether they wish to continue with their objections to the sale. [emphasis added in bold and bold underline]

128 In the present case, Khoo had *deliberately* not served OS 982 on the defendants at the earliest opportunity. In the PTC on 6 November 2013, Khoo stated he could not proceed unless Choo could be brought back into the ranks. He informed the court that he was "not ready to serve [OS 982] until [Choo's] position is clarified and until we get the outcome of [OS 941] and consider amendments to [OS 982]". Three PTCs and a few months later, OS 982 (as amended) was finally served on 17 February 2014 and the supporting affidavit filed and served the next day. At [40(b)] of the Judgment, the Judge had held that the service of an originating summons (and a supporting affidavit) for the approval of a collective sale is not invalid merely because it was done some four months after the filing of the said originating summons. With respect, that is not the point. Rather, OS 982 was *always* irregular and service was unduly delayed *precisely* because Khoo was *aware* of this fact.

129 The purpose of setting a time limit on the STB mediation process and requiring that an application to the High Court be filed within 14 days of the STB's issuance of a s 84A stop order is to ensure the expeditious conduct of the collective sale. As the appellants rightly submitted, as long as OS 982 was alive, none of the SPs could make plans about their own homes. They did not know if they should start carrying out repairs or searching for a new abode. If OS 982 had been authorised from the beginning, there was no reason why service would not have been effected swiftly. In such circumstances, it would be unfair to permit the CSC to belatedly ratify an irregular application *months* after the statutory deadline to the prejudice of the non-signatory SPs. Such ratification would not be consistent with the letter and the spirit of the LTSA.

130 As a final point, we note that it might be argued that the authorised representatives were under an obligation to bring a valid application to the High Court for the approval of the collective sale before the expiry of the statutory timeline of 14 days after the issuance of a s 84A stop order by the STB. As this issue was not argued before us, we did not pronounce on the matter. In any event, given that any application was doomed to fail for a lack of good faith in the transaction to which the majority had acquiesced in the first place, it is difficult to see what loss would have been caused to the majority by a breach of duty by the Exco (if any) in this regard.

Conclusion

131 For the reasons set out above, we allowed the appeal with costs, and with the usual consequential orders.

Annex A: Relevant extracts from the CSA

1. General

1.1 Definitions

In this Agreement, where the context so admits, the following expressions shall bear the following meanings:

…

"Common Fund" means the fund provided for in Clause 8 below;

…

"Net Sale Proceeds" means the Sale Proceeds less Sale Proceeds Deductions and such other amounts to be deducted or set aside under the provisions of Clause 9.3 (Distribution of Net Sale Proceeds);

"Office Bearers of the Collective Sale Committee" means the Chairman, Secretary and Treasurer for the time being of the Collective Sale Committee;

…

"Sale Proceeds" means an amount equal to the aggregate of (1) such tender fee as shall be payable on submission of any tender bid as part of the deposit required to be paid by the successful tenderer on award of the tender; (2) the balance of the Deposit; and (3) the balance of the successful bid amount;

"Sale Proceeds Deductions" has the meaning assigned to it in Clause 9.2 below;

…

7. OWNERS' CONTRIBUTIONS

7.1 Contribution Amount

As authorised by the EOGM of 2 July 2011, and as the Sellers in any event agree, each Owner shall pay an initial contribution in the sum of [$2,000] per Unit (each, a "**Contribution**") towards the cost and expenses of the Collective Sale, provided that:

(a) Any Owner who does not sign this Agreement may also pay the Contribution at any time before the Closing Date (or the Extended Closing Date, if any); and

(b) Any Owner may pay any amount above the Contribution whenever he so chooses (which total amount shall constitute his Contribution amount).

…

7.3 Refund on Completion of Collective Sale

In the event that the Collective Sale is successfully completed, and in recognition of the Owners who pay the Contribution (each, a "**Contributing Owner**") who by so doing add value to and assume risks inherent in the Collective Sale, each Contributing Owner shall be refunded the full amount of his Contribution from the Sale Proceeds, with simple interest at the rate of Twelve percent per annum (12% p.a.) on the amount of the Contribution…

7.4 Refund on Non-Completion of Collective Sale

In the event that the Collective Sale fails to be completed, the Contributions, or the remainder of the Contributions, if any, after paying off any costs and expenses incurred for the purpose of the Collective Sale, shall be refunded to the Contributing Owners in proportion to the amounts they have respectively contributed.

7.5 Defaulting Owners

Any Owner who does not pay the Contribution on or before the Closing Date, of [*sic*] the Extended Closing Date (if any) shall have an amount equal to two times the initial Contribution amount of $2,000 (in this case, a "**Default Contribution**") withheld from his share of the Net Sale Proceeds and paid over to the Common Fund to be shared equally by all the Contributing Owners, without prejudice to any other liability that such Owner may incur under any other provisions of this Agreement including Clause 11 (Abuse of Process) or Clause 12 (Sanctions Against Corrupt Behaviour) below.

8. COMMON FUND

…

8.4 Payments Into Common Fund

The following shall be paid into the Common Fund:

(a) All Contributions (as defined in Clause 7.1 (Contribution Amount) above);

(b) All Default Contributions (as defined in Clause 7.5 (Defaulting Owners) above);

…

(d) All Sale Proceeds Deductions (as defined in Clause 9.2 (Deductions from Sale Proceeds) below); and

(e) Any monies authorized or required by any other provisions of this Agreement to be paid into the Common Fund.

8.5 Payments Out From Common Fund

The following shall be paid from the Common Fund:

(a) Refund of Contributions (as defined in Clause 7.1 (Contribution Amount) above) with interest to Contributing Owners;

(b) Proportionate shares of Default Contributions (as defined in Clause 7.5 (Defaulting Owners) above) without interest to Contributing Owners;

…

(d) Costs and expenses of any proceedings before the STB or the High Court for the approval of the Collective Sale;

…

9. SALE PROCEEDS

…

9.2 Deductions from Sale Proceeds

Before distribution to individual Owners at completion of the Collective Sale, amounts sufficient or estimated to be sufficient under the following heads shall be deducted from the Sale Proceeds (the "**Sale Proceeds Deductions**") and paid into the Common Fund Account:

…

(c) the cost and expenses of applications and proceedings provided for in, or authorised under, this Agreement;

(d) the sum needed to refund Contributions made by Contributing Owners (with interest thereon);
…

…

9.3 Distribution of Net Sale Proceeds

Subject to the following Clause 9.4, the balance of the Sale Proceeds after the Sale Proceeds Deductions (as referred to in Clause 9.2 above) have been deducted (the "**Net Sale Proceeds**") shall be distributed to the Owners in the apportionments set out in Schedule 4 (Apportionment of Sale Proceeds).

9.4 Special cases

9.4.1 In the case of any Owner to whom the provisions of Clause 7.5 (Defaulting Owners), Clause 11 (Abuse of Process) or Clause 12 (Sanctions Against Corrupt Behaviour) of this Agreement apply, the amount withheld from his share of the Net Sale Proceeds shall be paid over to the Common Fund in accordance with the provisions of this Agreement.

9.4.2 As provided in Clause 11 (Abuse of Process) in the case of any Owner to whom the provisions of Clause 11.3 (Power to Institute Proceedings) apply, any amount recovered from such Owner shall be paid over to the Sale Proceeds Account and shared by Owners to whom Clause 11 (Abuse of Process) does not apply, in the apportionments set out in Schedule 4 (Apportionment of Sale Proceeds).

…

11. ABUSE OF PROCESS

11.1 Application

The provisions of this Clause apply only if the Collective Sale is approved by the STB or the High Court and to an Owner who does not sign this Agreement before the Closing date or the Extended Closing Date (if any) and who:

(a) Does not seek the assistance of the Sale Facilitation Committee or does not accept any monetary award made by the Sale Facilitation Committee;

(b) Does not file any objection to the application for approval of the Collective Sale before the STB or before the High Court;

(c) Withdraws or abandons his objection;

(d) Does not have his objection recognized expressly or impliedly by the STB or the High Court; or

(e) Obtains a monetary award from the High Court of an amount which is less than any monetary award the Sale Facilitation Committee has made which he has not accepted[.]

11.2 Liability for Costs of Proceedings and Set-off

The entirety or an appropriate part of the cost and expenses of and in connection with the approval proceedings before the STB and/or the High Court shall be chargeable to any such Owner to whom the preceding Clause 11.1 applies, and the same shall be withheld from his share of the Net Sale Proceeds and paid over to the Common Fund to account of [*sic*] the cost and expenses of the Collective Sale.

11.3 Power to Institute Proceedings

The Collective Sale Committee is hereby also authorized to seek legal advice, and if so advised, and if the Owners' approval by special resolution of an EOGM is obtained, to take legal proceedings in any court of competent jurisdiction to seek to recover from any Owner to whom the preceding Clause 11.1 applies compensation for the entirety or an appropriate part of the loss sustained by the Sellers from delay in the receipt of the Sale Proceeds as a result of the approval proceedings having had to be taken before the STB and/or the High Court. Any sum recovered shall be paid into the Sale Proceeds Account and to be shared by the Owners in the apportionment set out in Schedule 4 (Apportionment of Sale Proceeds).

12. SANCTIONS AGAINST CORRUPT BEHAVIOUR

12.1 Liability for Receiving Extraneous Consideration

Any Owner who gives to, receives or solicits from any person (including and not limited to the Purchaser) any consideration in money or in kind which is, or would be, extraneous to any rightful share in the Sale Proceeds as provided in this Agreement, or extraneous to what an Owner would otherwise properly be entitled to receive under this Agreement, as an inducement to do or abstain from doing or as reward for doing or abstain from doing any of the following things:

(a) signing this Agreement or abstaining from signing this Agreement;

(b) doing anything which he ought not to do under this Agreement or abstaining from doing anything which he ought to do under this Agreement;

(c) filing or not filing an objection in the approval proceedings before the STB or the High Court;

(d) withdrawing or not withdrawing any objection which he has filed in the approval proceedings before the STB or the High Court; or

(e) doing anything or refraining from doing anything in relation to any aspect of the Collective Sale process,

shall be liable to the sanctions provided in the following Clause 12.2.

12.2 Sanctions against Offending Owner

In addition to initiating investigations by the appropriate public authorities, a sum equivalent to twice the amount of consideration shall be deducted from the share of the Net Sale Proceeds of any such offending Owner. The offending Owner shall disclose the amount of such consideration given, received or solicited, failing which the Collective Sale Committee will estimate it and fix the estimated amount as the amount to be deducted from the offending Owner's share of the Net Sale Proceeds. The amount thus deducted shall be paid into the Sale Proceeds Account.

13. POWER TO INSTITUTE PROCEEDINGS

13.1 Proceedings for Breach or Enforcement

The Collective Sale Committee by its Office Bearers has authority and power to institute proceedings on behalf of the Sellers without joining any of the Sellers:

(a) against any Seller for breach of any obligation under this Agreement;

…

(c) against any other parties as provided for in this Agreement; and/or

(d) to apply to court or take any other proceedings required by any provisions of this Agreement.

13.2 Proceedings before STB and High Court for Approval

The Office Bearers of the Collective Sale Committee shall be the representatives of the Sellers required to be appointed for any approval proceedings before the STB or the High Court. In connection with such proceedings, the Office Bearers of the Collective Sale Committee have power:

(a) to instruct lawyers on anything in connection with the proceedings;

(b) to do such other things as are required for or in connection with the proceedings; and/or

(c) to agree and accept any terms of mediation proposed in the proceedings before the STB and to accept and agree any directions and orders of the High Court which require acceptance and agreement.

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