



Legal Pitfalls In Enbloc Sale Transactions

A Dissenter's Perspective

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Welcome and Introduction

- Reserve Price and Valuation Issues – Residual Land Value/Market Value.
- Collective Sale Committee and the MCST – Powers and Duties
- Issues Arising From The Collective Sale Agreement (CSA)
- Remedies for “Oppressed” Minority
- Anticipating the Market’s Rise/Fall
- Transparency and Accountability
- Proposed Changes to the law – Adequate?



Welcome and Introduction

- “It is no secret that collective sales of developments continue to strike raw nerves, especially from those who do not view their property as investments but as homes to be kept....current legislation safeguarding the interests of minority may have to be strengthened...One might ask: if Parliament is already amending the relevant legislation, which **implicitly acknowledges** that the present regime (is) anaemic in some way.....” Asst Registrar Paul Tan in [2007] SGHC 84 – Collective Sale of Lincolnvale
- Theme: Would it be better to revert to the original position before the 1999 changes, ie with 100% consensus?

Reserve Price And Valuation Issues (I)



Ever wondered why developers would pay above Market Value?

Ans: They're usually not keen on the existing buildings in the strata development; they want it for redevelopment. Accordingly, the residual method of valuation, used for properties ripe for redevelopment should apply. *Chew Ming Teck v Collector of Land Revenue and Anor* [1991] SLR 8

Reserve Price and Valuation Issues (II)



- Admittedly, no one has **yet** raised this point before the Strata Titles Board.
- However, the ever-more knowledgeable property owner, with the help of blogs and internet forums, should soon catch on to this concept, if not intuitively on their own. (*cf recent letters to forum of the Straits Times concerning interest on stakeholders' money*)



Collective Sale Committees and the Management Corp.

- Section 29(1)(a) of the Building Maintenance and Strata Management Act 2004 (BMSMA) provides that “it shall be the duty of a management corporation – (a) to control, manage and administer the common property **for the benefit of all the subsidiary proprietors constituting the management corp..**”
- Sed Quaere (is it true): A MC Council member can abdicate ***all*** responsibility of overseeing the conduct of the CSC?
- Can management corporation’s sinking fund be used for expenses incurred by the CSC under S39(2)(e)?



Issues Arising From CSAs (I)

- CSAs with no named solicitors and/or Marketing Agents
- 2 or more rival CSCs and different CSAs
- Abortive charges: who pays for it when a subsidiary proprietor refuses to sign the CSA
- Professional Negligence in the Application to the Strata Titles Board (cf Horizon Towers saga)
- EOGM to “consider the collective sale”: should resolution be passed to comply with para 1 (c) Schedule to Land Titles (Strata) Act? (Consider Sim Lian (Newton) Pte Ltd v Gan Beng Cheng Raynes and Anor [2007] SGHC 84)
- *Post* Horizon Towers considerations: title searches, execution by persons with powers of attorney, checking terms of tender against CSA etc



Issues Arising From CSAs (II)

- Conclusion: Many unanticipated issues cropped up during the saga concerning Horizon Towers. Fees and professional charges are expected to be on the rise.
- Is the present regime manifestly superior to the pre-1999 position where 100% consensus is required?

Remedies For “Oppressed” Minority



- Strata Titles Board seen to be in favour of granting the applications (cf proposed addition, s 7C of the (First) Schedule)
- Presently, many proactive “opposers” of enbloc sales create their websites, blogs, forums etc
- Application for Declaratory Orders is another proactive approach where the actions by the pro-sale groups is clearly out of order
- Combination of the above

Anticipating Market Movements



- Disclaimers as to valuation, validity, applicable laws are recommended for consultants involved with CSCs
- Considering the impact of the (Aug 11) time limit for Horizon Towers
- Impact of outflows of foreign funds financing recent purchases by local property developers



Transparency and Accountability Issues

- It is inevitable that information favoring the “pro- and anti-” sale groups will be received by any person, esp CSC members
- When in doubt, all information should be forwarded to the MCST Council’s Secretary under s56(d) BMSMA
- Quaere: Information relating to relationship between any subsidiary proprietor and purchaser?



Upcoming Legislative Changes

- Increasing the amount payable to objectors: a limited re-writing of the terms of the contract
- No provisions regarding oversight of CSC by MCST/Council?
- No clear provisions relating to professional duties of valuers, solicitors and Marketing Consultants
- Controversy on interest on stakeholders' money unresolved
- Implied criticisms of Strata Titles Board?



Conclusion

- Unlike policies which are both initiated and driven by government agencies, the enbloc legislation was largely a public-private initiative. For instance, the members sitting in the Strata Titles Boards are all volunteers.
- The task of drafting laws relating to enbloc sales is no less one of re-writing contracts , even for people who do not wish to sell their properties.