Property Rights: Achieving A Fine Balance in Collective Sales of Strata Developments in Singapore

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ABSTRACT

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Conventional analysis is of property rights as essentially negative and exclusory in that it comprises the right to exclude all others from the use of some thing. However the concept of “new property” indicates an intellectual shift towards the idea of property as a public right of access to socially valued resources. The former views property as a commodity while the latter, which forms this paper’s hypothesis and espouses the “property relativist” theory, considers property as open to “social needs”. In the face of Singapore’s scarce land resource, the Government has to work doubly hard to optimize land use. To this end, radical legislation was devised in 1999 to stimulate private-sector led redevelopment in Singapore through majority rule (rather than unanimity) in collective sales of strata developments. It also sought to provide a balance between the property rights of majority and minority strata owners so as to avert a “tyranny of the majority”. Together with changes to the planning framework, this legislation successfully paved the way for private-sector redevelopment in Singapore.

However, this came at a price.

At the heart of collective sales is the issue of how the respective property rights of owners could be balanced without impeding the government’s objective of land-use optimization. This paper reviews the impact of the legislation on property rights and uses case-study analysis of recurring issues brought before the Strata Titles Boards. It charts the considered response of the Government through amendments to legislation in 2004, and more significantly in 2007. While these sought to clarify and better balance up some of the rights that had been sacrificed at the altar of redevelopment and urban rejuvenation in Singapore, there still remain numerous pockets of resistance to collective sales. These still need to be addressed to reassure the minority albeit within the framework of the property relativist theory.

Keywords: Property Rights, Democratic rule, Redevelopment, Planning Law, Strata title, Collective Sale.
Introduction and Background

Property Rights

As an ex-British colony, Singapore adopted the common law system and with it, English principles of land law. By virtue of the Second Charter of Justice 1826, English statutes in force as at 26 November 1826, and the principles of common law and equity were received as part of the law of Singapore.

A fundamental concept of English land law is the existence of multiple interests in land. Hence the theory that a person owns a "bundle of rights" in the land, rather than possessing "absolute" ownership thereof. Instead of defining the relationship between a person and ‘his” (or her) things, property law considers the “way [in which] rights to use things may be parceled out amongst a host of competing resource users” (Gray, 1991; Selznick, (2002). In the words of Bruce Ackerman, there may be “holders of [a certain] bundle of rights which contains a range of entitlements more numerous or more valuable than the bundle held by any other person with respect to the thing in question”(Ackerman, 1977). The discussion that follows reveals that this holds true.

“Property Absolutist” or “Property Relativist”? (Gray, 2007)

There has been a shift towards a redefinition of property as “new property”; while the conventional analysis is of property rights as essentially negative and exclusory in that it comprises the right to exclude all others from the use of some thing (Macpherson, 1975), the concept of “new property” indicates an intellectual shift towards the idea of property rights in land as a public right of access to socially valued resources1 (Gray, 1987).While the former views property as a commodity, the latter considers property as open to “social needs”. According to this view, one can be considered either a “property absolutist” or a “property relativist” respectively (Gray, 2007). The hypothesis of this paper is that the property relativist theory underpins CS of strata developments in Singapore. This paper considers only the measures which incentivised private-sector led urban redevelopment, not redevelopment for public benefit through compulsory acquisition by the State2.

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2 Land Acquisition Act Cap 152.
The paper commences with a discussion of how, in land-scarce Singapore, “social needs” have been accorded utmost priority by the Government, and been the driving force for planning controls which stimulate urban redevelopment and rejuvenation. It next discusses strata legislation which introduced the democratic feature of majority rule and resulted in the erosion of the minority’s fundamental property rights (Christudason, 2005). The next section reviews the authorities’ responses to objections raised by the minority camp and concludes that while there is compelling evidence that the Government strives to carefully balance the minority’s property rights, there are still important unresolved issues.

**Planning and Strata Law in Singapore**

To alleviate Singapore’s land scarcity problem, Singapore’s planning agency - the Urban Redevelopment Authority, assigned higher development intensity or plot ratios for various sites in 1994. Such sites became highly prized assets overnight, and this triggered the collective sale (CS) phenomenon especially of strata developments with freehold titles. Developers were prepared to pay, and property owners could reap, hefty premiums where the value of the land exceeded the aggregate value of individual properties. However, despite such monetary incentives, numerous potential CS were thwarted as the legal requirement was owners’ *unanimous* consent. The resulting under-utilisation of scarce land resources led to Parliamentary intervention in the form of radical amendments to the Land Titles (Strata) Act (LTSA) in 1999 (Christudason, 2005).

Enacted with the objective of “facilitating CS”, the amendments removed the unanimity requirement. Upon just a *majority* obtaining an order from the Strata Titles Board (STB/Board), minority owners would be *compelled* to sell. Not unexpectedly, this led to great discontent and a slew of cases was brought by the minority before the STB and the Courts (Ter, 2008).

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3 Section 84A of the LTSA Cap 158.

4 A Strata Titles Board is a body constituted under Part VI of the Building Maintenance and Strata Management Act to hear applications:

(a) for orders for collective sales under Part VA of the Land Titles (Strata) Act; and
(b) relating to certain types of disputes or matters arising in respect of the strata units or the strata development including the common property.
Democracy, majority rule and minority protection

Lex majoris partis or majority rule is often described as a characteristic feature of democracy. Majority rule, like any other collective decision-making process short of unanimous agreement, binds some people to the decisions of others. It may generally be assumed that each person is the best judge of his own interests. In the case of landed property, each owner can only bind himself. By contrast, in a collective regime which statutorily gives effect to the majority's will, all subsidiary proprietors (SPs) would be bound by the majority’s decisions. In every setting in which majority rule is the basis for decision making, society has developed legal constraints. These are to protect minorities from overreaching by majorities so that majority rule does not translate into tyranny of the majority. Thus within Singapore’s representative democratic political system, it is not surprising that the model of majority rule and minority protection is reflected in its strata legislation.

"Minorities are SUPPOSED to lose in a democratic system - even when they want very much to win and even when they think (as they often will) that the majority is deeply wrong”

(Ackerman, 1985)

The above is referred to as “minority acquiescence” and central to democratic theory. In the CS context, Choo Han Teck J. in the High Court decision of Chang Mei Wah Selena and Others v Wiener Robert Lorenz and Others and Other Matters elaborated as follows:

“At the second reading of the 1998 Bill (which introduced s 84A (1)), Associate Professor Ho Peng Kee said:

“Firstly, the Government will not decide which developments are ready or ripe for en-bloc redevelopment. The owners will decide that for themselves..... As announced previously, what the Bill will do is peg the required majority consent to the development's age - the majority owners must account for at least 90% of the share values for developments less than 10 years old, and 80% for developments 10 years or more. This approach will facilitate the redevelopment of older buildings. It is also in line with the approach in other countries ...... A higher percentage is not practical, a lower percentage not appropriate given the importance of the matter.”

5 [2008] SGHC 97.

The above provides the background on how Parliament arrived at what it deemed to be the best workable balance between the majority and minority strata owners’ property rights, while doggedly pursuing its objective of land optimisation. So was the Government’s objective fulfilled without trampling too heavily over the minority’s property rights? The next section reviews some issues which arose in the actual implementation of the legislation.

**Issues that came before the STB**

This section considers the CS of six strata developments. They are: *Dragon Court, Parkview Condominium, Kim Tian Plaza, One Tree Lodge, Eng Lok Mansion* and *Waterfront View*. These are representative of the main types of objections raised by the minority in defence of their property rights. In particular, the issues pertained to:

(i) financial loss,
(ii) perceived unfair apportionment of sale proceeds and
(iii) lack of good faith.

**Case Analysis**

### Case 1: Dragon Court

<table>
<thead>
<tr>
<th>No. of units</th>
<th>Reserve Price</th>
<th>Final Sale Price</th>
<th>Majority SPs</th>
<th>Type of Objections</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>$12,810,000</td>
<td>$12,900,000</td>
<td>&gt;80%</td>
<td>o Low sales price&lt;br&gt;o Financial Loss&lt;br&gt;o Own formulation of allowable deduction&lt;br&gt;o Transaction in bad faith&lt;br&gt;o Relationship between owner and the purchasers prevents transaction at arm’s length.</td>
<td>STB &amp; High Court ordered CS</td>
</tr>
</tbody>
</table>

*Dragon Court* is situated at Holland Road. Philando Pte Ltd (“Philando”) owned 9 of the units and the remaining 5 units were owned by individual owners. There were two marketing attempts. The second only secured one bid of $12.9 million by Limau Heights Pte Ltd (“Limau”). The majority owners agreed on the method of distribution and for proceeds to be shared equally among all owners.
However the objector claimed to suffer financial loss. She claimed $291,943.58 for stamp duty, legal costs, interest paid on bank loan, accrued interest repayable to the Central Provident Fund (CPF) Board and renovation costs, as “allowable deductions”. In addition, as 9 of the estate’s 14 units were owned by a single company linked to the buyer, the sensitive relationship between Limau and Philando (who was the director of Limau) led to suspicion of the site’s (low) sale price, and the objection was raised of conflict of interest and lack of good faith. However the STB, noting that there had been only one bidder for that sale, decided there was no reason to suggest that the buyer was unfairly chosen. The High Court backed that ruling, saying the STB was already aware of the seller-buyer relationship prior to its decision. In the light of these, the CS was approved.

“Financial loss” is a common objection raised before the STB. The Board here strove to balance the majority’s and minority’s interests while requiring valid grounds for objections. One of the unique features of this case was that despite the very proximate relationship between the majority SPs and the intended purchaser, on the facts, the Board found no lack of good faith.

**Statutory Meaning of “Financial Loss”**

The LTSA defines “financial loss” as follows:

A subsidiary proprietor —
(a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after such deduction as the Board may allow (including all or any of the deductions specified in the C), are less than the price he paid for his lot; …..

The definition had been criticized (Lee, 2005) as the Act did not state what deductions are allowable. It was only in October 2007 that clearer indications were given on the type of allowable deductions.

**Case 2: Parkview Condominium**

<table>
<thead>
<tr>
<th>No. of</th>
<th>Types of Units</th>
<th>Final</th>
<th>Majority</th>
<th>Type of Objections</th>
<th>Outcome</th>
</tr>
</thead>
</table>

8 The Central Provident Fund (CPF) is a comprehensive social security savings plan. Under the Residential Properties Scheme, CPF savings may be withdrawn to make direct payment to buy a residential property or repay a housing loan to buy the residential property. However if the property is subsequently sold, the CPF savings withdrawn and the accrued interest have to be returned to the seller’s CPF account. See further at http://cpf.gov.sg

9 Section 84(A) (7) LTSA Cap 158.

9 By amendments to the LTSA introduced in 2007, these include stamp duty and legal fees paid in relation to the purchase of the lot…, and costs incurred pursuant to the CS which are to be shared by all SPs… as provided under the CS agreement. However the list of permitted deductions is not exhaustive.

10 Cf fn 9 above.
**Parkview Condominium** is situated in West Coast Road. 86% of the owners voted for the CS at $165million and one person pursued her objections to Court. The definition of financial loss was again raised and again narrowly defined, such that renovation and replacement cost could *not* be included as “allowable deductions”. In addition to the financial loss issue, the objector also raised the issues of low sale price, and the method of apportionment but the Board found no evidence to substantiate these. This case provides insight into the definition of financial loss where the claim involves replacement and renovation cost. It is interesting to note that despite the many STB precedents that replacement and renovation costs do *not* come within this definition, some minority owners still persist in filing objections on this ground.

**Case 3: Kim Tian Plaza**

<table>
<thead>
<tr>
<th>No. of units</th>
<th>Types of Units</th>
<th>Reserve Price</th>
<th>Final Sale Price</th>
<th>Majority SPs</th>
<th>Type of Objections</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>1. 5 lots: Shop on 1st storey</td>
<td>$44,700,000</td>
<td>$40,200,000</td>
<td>91.4%</td>
<td>o Low Sales Price o Inequitable method of apportionment</td>
<td>STB ordered CS</td>
</tr>
<tr>
<td></td>
<td>2. 11 lots: Office on 2nd storey</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. 1 lot: Office on 3rd Storey</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. 28 lots: Residential on 4th to 10th storeys</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Kim Tian Plaza is a mixed development comprising of shops, offices and residential uses located in Kim Tian Road. Mixed developments are unique in that “weighted” share values are allocated. For the same floor area, the share values of residential, office and retail units in a development are generally allocated in the ratios of 1:4:5. So a shop unit will have five times the share value of a residential unit (BCA, 2005) with the same floor area. Residential units may make up 30 or 40 per cent of the number of units or total floor area in a mixed development, but their share value can be as low as 10 to 15 per cent. As a result, when it comes to deciding on a CS, voting rights tend to be skewed in favour of the owners of shop and office units.

The method advised in Kim Tian Plaza for sale proceeds distribution was: 50% Strata Area and 50% Valuation Method. There were two main objections from the minority; first, the alleged “wrong” timing of the sale which led to the “low” price fetched for the site. The second was the inequitable method of apportionment which was not “fair and reasonable”. The STB acknowledged that while there is no best method of distribution, the method chosen should be defensible by the majority (that is at least 80%, as in this case) and must be not unreasonable. Accordingly, the STB granted its approval for the CS to proceed.

It is important to note that here, the minority owners were residential users objecting against the commercial users. The inherent discrepancy in share values led to imbalance in the voting system and is characteristic of difficulties faced by residential users in mixed-developments who wish to object to a CS. The problem has to some extent been alleviated by the amendments in 2007 introducing an additional consent requirement in terms of floor area (see below).

11 Share value determines share of common property, voting rights and amount of maintenance contribution of each subsidiary proprietor (owner) of a strata sub-divided lot (condominium units, among others, are strata sub-divided lots). The schedule of share values is filed by the developer and must be accepted by the Commissioner of Buildings (COB) before the sale of any strata lot in a development. The COB issues guidelines on the filing of the schedule of share values. In the latest guidelines, share values of condominium units are assigned based on floor-area groupings of 50 sq m intervals.

12 See Guidelines for filing of Schedule of strata units under the Building Maintenance and Strata Management Act and further at http://www.bca.gov.sg.
Case 4: One Tree Lodge

<table>
<thead>
<tr>
<th>No. of units</th>
<th>Reserve Price</th>
<th>Final Sale Price</th>
<th>Majority SPs</th>
<th>Type of Objections</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>30</td>
<td>$45,600,000</td>
<td>$38,200,000</td>
<td>93.3%</td>
<td>Low Sales Price, Inequitable method of apportionment</td>
<td>STB ordered CS</td>
</tr>
</tbody>
</table>

One Tree Lodge is yet another illustration of the interpretation of “financial loss”. One Tree Lodge had an offer price of $38.2million and the final agreed price was in response to the only bid received, but was below the reserve price. Two objectors claimed that they had suffered financial loss as their proceeds were about $350,000 below the purchase price they had paid for their units. To meet this shortfall, the majority SPs agreed to chip in. The two objectors nevertheless proceeded to file objections based on financial loss, in that the holding cost, namely, interests costs incurred in the housing loan/CPF withdrawals for the property should be considered as “allowable deductions”. The STB, confirming previous decisions, held that interest costs incurred in the housing loan/CPF withdrawals did not so qualify.

The STB stated that the allowable deductions had to directly arise in relation to the acquisition itself, and included items such as purchase price, costs incidental to the purchase and interest charges. Hence, holding cost is not an “allowable deduction”; if such costs were considered, there could arise endless claims and objections on such grounds resulting in the STB being an ineffective agent in redevelopment facilitation. It is interesting to note that the Board took a dim view of the minority owners who, hoping to gain more, were prepared to breach their agreement with the majority SPs regarding the topping up of the shortfall. Thus, STB ordered the sale and instructed the objectors to honour the earlier top-up agreements with the applicants.

Case 5: Eng Lok Mansion

<table>
<thead>
<tr>
<th>No. of units</th>
<th>Types of Units</th>
<th>Reserve Price</th>
<th>Final Sale Price</th>
<th>Majority SPs</th>
<th>Type of Objections</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>64</td>
<td>1. 48 lots: 141 to 146 m² (Large lots)</td>
<td>$96,000,000</td>
<td>$138,000,000</td>
<td>96.9%</td>
<td>Financial Loss, Low Sales Price, Inequitable method of apportionment, Technical non-compliance</td>
<td>STB ordered CS</td>
</tr>
</tbody>
</table>

10
Eng Lok Mansion was located in Napier Road. Although it comprised 48 large units and 16 small units, both had the same share value. Thus the amount of maintenance funds contributed were the same. 80% of the owners signed the CS agreement. Two dissenting minority filed objections - they were Madam Chow Ai Hwa and her son. There were two parts to their grounds of objections.

The first related to financial loss in terms of replacement cost, and lack of good faith in the transaction. The objector challenged the site’s valuation, method of distribution of the sale proceeds, and claimed improper dissemination of CS information. The last was found to be baseless, as there had been proper technical compliance by the marketing agent. The second objection pertained to the legality of the “forced” sale of their freehold property, and the allegation that that her late husband’s spirit will be “homeless and unable to locate her”. The STB declined to consider both these as they were outside the purview of section 84(A) (7) and considered only the first objection.

The objectors argued that the offer price of $138 million for the whole development was “too low”. They had bought their units back in 1969 at $40,000 and in 1981 at $281,000 respectively. They claimed to have suffered financial loss in that as owners of the larger units they were entitled to more, and that they could not obtain similar replacement properties with their sale proceeds. The STB disagreed and approved the sale. The Board took into consideration the fact that the method of apportionment had been discussed at length, that 46 of the 48 owners of the large units had consented to the method (or had not objected to it) and that four of the six members of the Sale Committee themselves owned large units.

This was not the first case which raised the issue that “financial loss” had been incurred as similar replacement units could not be obtained with the sale proceeds. However its significance is in particular regard to the objector’s sentimental reasons, and challenging the legality of majority rule and the STB’s expected rejection of the same. Another important aspect of this case is the unique formation of the development’s unit / lot sizes and share value apportionment. Though over the years, the smaller lot sizes had contributed the same maintenance funds as the bigger units, in the event of the CS, these 2 owners took issue with the smaller units’ owners over the amount of sale proceeds they were entitled to. The Board’s decision here reveals its role in balancing the rights of the majority SPs as well, to prevent a tyranny of the minority.

13 See discussion on Parkview Condominium (Case 2) above.
## Case 6: Waterfront View

<table>
<thead>
<tr>
<th>No. of units</th>
<th>Types of Units</th>
<th>Reserve Price</th>
<th>Final Sale Price</th>
<th>Majority SPs</th>
<th>Type of Objections</th>
<th>Outcome</th>
</tr>
</thead>
</table>
| 583          | ○ Sizes range from 156 to 174 m²  
○ More than half of the lots are 159 m² | $370,000,000 | $385,000,000 | 97%          | ○ Financial Loss  
○ Inequitable method of apportionment  
○ Transaction in bad faith | STB ordered CS |

**Waterfront View** is situated in Bedok Reservoir Road and all the lots had the same share value. More than 80% of the owners agreed to sell their property collectively. The main argument raised by the dissenting minority was that of financial loss. This was on the basis that the net proceeds were insufficient to settle the objector’s outstanding bank loan, and fully repay the CPF Board. As the CPF Board did not require respondents to return the shortfall in cash, the STB ordered that only the privatization cost, stamp duty and legal fee were “allowable deductibles”. Another objection pertained to the method of apportionment and that the transaction was in bad faith however the Board found both to be frivolous, and approved the sale.

Like other cases in which the minority raised objections, the above hearing led to many delays in purchase completion and had an impact on all the other SPs’ seeking alternative accommodation. The CPF loss category and inequitable method of apportionment have been a frequent basis for objections and posed stumbling blocks for CS coming before the STB. This case clearly illustrates that regardless of a interests imposed by banks or refunds due to the CPF (which on a literal interpretation, are financial losses to the owners), as long as procedures in the Act are followed, the STB will proceed to approve the CS.

In the light of the above case-studies, the next section reviews the various authorities’ roles and responses to the plight of the minority. The authorities involved include the Strata Titles Board, the Courts and Parliament. Highlighted below are the multiple considerations that obtain in balancing the minority’s property rights without losing sight of the Government’s objectives of land optimisation. The section also deals with the concessions that have been made through legislative intervention to alleviate the minority’s position.

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14 See also Gong Ing San and Others v Questvest (S) Pte Ltd and Another [2005] SGSTB4, Yong Hwai Ming and Another v Koh Gek Hwa [2003] SGSTB1.
Role of Strata Title Boards: Majority Rule with Minority Protection

The STB is an administrative tribunal comprising lawyers, architects, surveyors and other property professionals. Their duty is to ensure that for all CS, the requisite consent percentages are met, procedures followed, and that the sale is in good faith and at arm’s length. The Board must consider the interests of all owners and evaluate the minority’s objections. These pertain to matters such as the offer price, method of apportionment, and the relationship of the purchaser with other owners. In sum, the Board serves as a safeguard to protect the minority by ensuring that the minority receives a fair share of the proceeds. Once the Board is convinced that the sale is genuine, it will approve the application.

The case-studies have revealed the variety of objections: primarily monetary issues or sentimental reasons. The Board provides mediation sessions whereby some may be persuaded to withdraw their objections. It appears that in most cases, the CS is approved unless the owner suffered financial loss within the meaning of section 84(7) of the LTSA, where say, the sale proceeds are less than the purchase price, or insufficient to redeem the outstanding mortgage. The STB’s decision is final and binding on all the owners though appeals may be made to the High Court on points of law, and/or non-compliance with prescribed procedures.

The 2004 amendments

Kim Tian Plaza (Case 3 above) clearly illustrates some of the problems that arise in the context of CS of mixed-use developments. The disparity in property and voting rights (between owners of different user groups such as residential and commercial/retail) also poses difficulties in the context of property management. This is briefly discussed below.

On 1 April 2005, the Building Maintenance and Strata Management Act (BMSMA) was passed and set and several significant changes were made. The most relevant in the context of balancing property rights was the 2-tier MC scheme.

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15 LTSA Section 84A (9).
The 2-tier MC scheme

Prior to the 2004 amendments, one Management Corporation (MC) bore responsibility for each strata development’s common property. However this posed problems for mixed-use developments with various user groups having different interests. Hence, the MC often faced difficulty in obtaining consensus on various aspects of managing the development.

The BMSMA introduced an option of a two-tier MC system. By this, the owner developer may delineate specific areas to be exclusively used by one user group. A main MC with several subsidiary MCs (“sub-MCs”) is then set up. The main MC will manage the property common to all unit owners, while the sub-MCs will manage the “limited common property” intended for the exclusive use of the specific user groups (e.g. the residential, commercial or office user groups). The sub-MCs will have the right to levy contributions on SPs within their respective user groups for the maintenance or improvement to the “limited common property”. The main MC will continue to have the right to levy contributions on all SPs for the maintenance and improvement of the common property. This way, strata owners could enjoy flexibilities that are not available in the single tier format leading to fairer outcomes for the different user groups (Christudason, 2008).

The 2007 amendments

In view of all the issues arising and public discontent, the Ministry of Law held a public consultation which led to important amendments in 2007. It reiterated (MinLaw, 2007) that their guiding principle for the amendments was to provide additional safeguards, greater clarity and transparency for all owners, while not making it unduly onerous to bring about CS.

The MinLaw’s responses to public feedback are considered in more detail below. They focus on fundamental issues that manifest the extent to which the minority thought their property rights were affected.
**Additional consent requirement and consent levels**

An additional consent requirement based on the area of lots was introduced. Using this as the basis for the second consent requirement would mitigate the existing bias against residential unit owners in a mixed-use development (the case in Kim Tian), but not to the extent of causing bias against owners of commercial units with much larger areas. The requisite percentage of consent levels was maintained at the existing 80%/90% consent level for all owners. Calls to introduce a higher consent level were dismissed on the ground that a higher consent level, especially unanimous consent, would make it unduly onerous to bring about a CS, which would affect rejuvenation and redevelopment.

**Apportionment of Sale Proceeds / Replacement units**

Feedback called for a standard method for apportioning sale proceeds. However MinLaw responded that it was best to give the majority owners the flexibility to decide this. Defending this, MinLaw reiterated that in any case, the interests of minority owners would continue to be safeguarded by the STB.

**Transparency Issues and “Cooling-off period”**

Feedback also raised concerns about how owners had signed CS agreements under duress or misrepresentation. The amendments now provide that when an owner signs the agreement in Singapore, the lawyer appointed for the CS will have to be present. In addition there is a five-day “cooling-off” period during which an owner may still change his mind after he signs a CS agreement. Property analysts are of the view that the above rules would render CS more costly and time-consuming for strata owners. It is therefore not surprising that in the first four months following the amendments, there was not a single CS.

**Findings and Conclusion**

This paper has reviewed the impact of majority rule on the property rights of those involved in CS of strata developments in Singapore. The case studies provide insight into how the STB has tried to balance the majority’s and minority’s property rights to achieve a fairer outcome within the framework of the LTSA. It seems clear that in the face of Singapore’s land scarcity, the reliance on majority rule in CS transactions will prevail to fuel the government’s redevelopment and land optimization efforts.
While there may be a win-win situation for the trinity of the developer, the majority and the State in line with the “new property” and “property relativist” concepts, the minority is certainly not in a win-win situation *vis a vis* anyone. The present respective positions of the majority and minority were very recently neatly summed up in the High Court in *Tan Siew Tian v Lee Khek Ern Ken* 16. The judgment unabashedly acknowledges that the statutory scheme under the LTSA in effect constituted a “derogation of the property rights of a [SP] to his strata title unit”. However it quickly adds that the LTSA “also provided certain safeguards to ensure that such rights could not be willy-nilly overridden by a majority of those who wished to effect a CS without observing fair and due process …. both substantive and procedural safeguards had been incorporated in the legislative scheme”.

In a recent study of similar legislation in Hong Kong - the Land (Compulsory Sale for Redevelopment) Ordinance, 1999, Hui, *et al* (2008) found the pace of urban renewal activities in Hong Kong to be lagging behind the legislation’s policy goal. The study recommends that measures to stimulate private-sector led initiatives cannot succeed on their own - the Government also needs to consider complementary measures, e.g. the relaxation of such criteria as the building age, plot ratio and height limitation for a more effective process as in Singapore.

Hui *et al*’s study benchmarks Singapore’s good practices in urban renewal. But this will provide cold comfort to the minority compelled to sell through CS. When faced with the spectre of losing their freehold titles through CS, they are more likely to consider that they are suffering “property wrongs”, rather than enjoying “property rights” (Watt, 2000) and that their purchase was more the “acquisition of a bundle of limitations” (Gray & Gray, 2007b) rather than a “bundle of rights”. Addressing the minority’s concerns is thus still a work-in-progress for Parliament and the Courts.

……End…..

**REFERENCES**


16 [2008] 3 SLR 64 at paragraphs [21] and [22].


• MinLaw (2007) Ministry of Law, _Response to feedback received from public consultation on Proposed changes to the en bloc sale legislation; minlaw.gov.sg_


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