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Court halts \$590 million collective sale of Thomson View

Judge slams marketing agent for paying some owners to back deal

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The ruling on Thomson View could have a chilling effect on the market. -- PHOTO: HSR INVESTMENT SALES



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By Melissa Tan

The High Court has halted the \$590 million collective sale of Thomson View Condominium and slammed the behaviour of marketing agent HSR, in a landmark judgment released yesterday.

Experts say the ruling by Justice Andrew Ang could have a chilling effect on the collective sales market as it means that developers will face the difficult task of keeping a much closer eye on the behaviour of sales committees and marketing agents.

Justice Ang said HSR had "egregiously breached" its duty to avoid conflict of interest during the sale process by paying some owners to back the deal. He noted that by offering incentive payments to select owners, HSR in effect was reducing its own commission from the sale, but to the benefit of only those owners.

The ultimate outcome was that HSR was acting in "bad faith" regarding the distribution of the collective sales proceeds by HSR to unit owners, he said.

The case was heard over five days in June and centred on an application by



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Thomson View's collective sales committee to approve the sale, which had stalled after some owners' objection.

The objectors - represented by law firms Drew & Napier, Daisy Yeo & Co and Kelvin Chia Partnership - told the court that the sale should be canned as it was not made "in good faith".

As well as the issue of HSR paying a few owners to back the sale, the agreed price was another bone of contention among some owners. They said the \$590 million offer accepted by the sales committee was too low in light of a government announcement in August last year of a Thomson Line MRT station to be built nearby.

However, Justice Ang ruled that the sales committee's behaviour during the sale and marketing of the property "did not amount to bad faith".

The tender for the 540,314 sq ft Thomson View site had been awarded to Wee Hur-Lucrum, a joint venture between mainboard-listed Wee Hur Development and private equity investment firm Lucrum Capital, at \$712 per sq ft per plot ratio in September last year.

Wee Hur-Lucrum's lawyer Lee Liat Yeang of Rodyk & Davidson said it needed time to analyse the judgment before deciding on its next course of action.

The Thomson View en bloc was one of the largest such deals in recent years and the owners' success in securing a buyer at \$590 million had been taken as a sign of improving sentiment.

The ruling will focus attention on another mega collective sale that has yet to close - Eunosville opposite Eunos MRT station. It went on the market in June with an asking price of \$688 million.

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PUBLISHED SEPTEMBER 04, 2013

Court quashes Thomson View sale

BY GRACE LEONG GLEONG@SPH.COM.SG

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Thomson View Condo: The High Court found that the marketing agent's offer of more than \$548,000 in incentive payments to four owners amounted to bad faith. - FILE PHOTO

[SINGAPORE] A proposed \$590 million collective sale of Thomson View Condominium is scuppered after the High Court found that its marketing agent's offer of more than \$548,000 in incentive payments to four owners to get a requisite 80 per cent majority amounted to bad faith.

Justice Andrew Ang, in a 30-page decision released yesterday, found that HSR International Realtors "egregiously breached its duty to avoid any possible conflict of interest", and also "breached its duty of transparency" by failing to disclose the incentive payments to the Collective Sales Committee (CSC) and other owners.

As such, the four owners should not be counted in the requisite 80 per cent majority for the sale to go

through, he ruled. Discounting these owners, the 80 per cent consent threshold would not be reached; the plaintiffs were therefore not even in a position to apply for court approval of the sale, he said.

Yesterday's ruling came two weeks after the Court of Appeal upheld a decision by Justice Belinda Ang to disallow a \$33 million en bloc sale of Harbour View Gardens because she found its marketing agent's offer of a \$200,000 inducement to a couple to join the sale is "commercially unacceptable", and that its CSC had failed to act in good faith.

But in Thomson View's case, although there were lapses by the CSC in the sale and marketing of the 255-unit development, Justice Andrew Ang found those lapses didn't amount to bad faith.

While he found that the CSC's failure to extend the third public tender after the Upper Thomson MRT station was announced during the property's tender period was a breach of its duty to get the best price, he found it to be "a genuine error not arising from bad faith".

Justice Ang also held that the CSC should have consulted the consenting owners about a lease upgrading premium clause, which was among amendments proposed by the buyer, a joint venture between Wee Hur Development and Lucrum Capital (Wee Hur-Lucrum).

That's because the clause gave the buyer an option to rescind if it has to pay more than \$95 million to redevelop the land - which taken together with other amendments were "materially less favourable than the collective sale agreement terms and not in line with market practice".

"Effectively therefore, the amended tender contract was more an option to purchase than a binding sale agreement," he said.

"I would therefore disagree with the advice given by (the CSC's lawyers) that there was no need to consult the (owners) regarding the amendments in the amended tender contract."

Ultimately, he found that the CSC did not act in bad faith because it had honestly relied on its lawyers' advice, and had also asked for an extension of time to accept the amended tender contract, but that was rejected by Wee Hur-Lucrum.

"We need to analyse the reasoning behind the judgment before deciding on the next course of action," said Lee Liat Yeang of Rodyk & Davidson, who represents Wee Hur-Lucrum.

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In disallowing the sale, Justice Ang held that the incentive payments had the effect of "tainting" the method of distribution of the sale proceeds.

Although it appears that the incentive payments didn't seem to affect the method of distribution because they didn't form part of the sale proceeds and were to be borne by the marketing agent, the judge held "such a view to be fallacious".

Adrian Tan and Joseph Yeo of Drew & Napier LLC represented a group of dissenting Thomson View owners.

In a statement to BT yesterday, the group's spokesman said: "We are overjoyed at the court's decision. We are glad that we are not forced to give up our homes. In fact, a number of residents who signed up for the collective sale have now given us their support, because they are unhappy with how the sale has been conducted, such as the giving of secret payments, and the hasty negotiation process."

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