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SUCCESSFUL COMPLETION OF THE COLLECTIVE SALE OF PEACE CENTRE / PEACE MANSION

On Friday 3 December 2021, it was announced that shopping mall Peace Centre and adjoining apartment complex Peace Mansion (“PCPM”) comprising 319 strata units was sold for S\$650 million to a joint venture comprising CEL Development, Sing-Haiyi Crystal and Ultra Infinity.

On Friday 17 February 2023, the sale was finally completed.

A little known fact, however, is that this monumental occasion was the cumulation of 18 years of effort, involving 5 collective sale committees and 4 marketing agents.

Although this journey spanning almost two decades was fraught with various challenges along the way, the core team at Lee & Lee acting for the successful collective sale committee, helmed by industry veterans Mr Ow Yong Thian Soo and Ms Sharon Tay remained the same for the entire journey, ably supported by the firm’s dispute resolution department specializing in strata title law & practice.

Most collective sales face six (6) major challenges:-

- (a) obtaining the support of at least 80% or 90% of the subsidiary proprietors (as the case may be);
- (b) finding a buyer at the right price and securing the best terms;
- (c) getting the sale order before the Strata Titles Board or Courts;
- (d) the sale being aborted due to conditions precedent required by the purchaser not being fulfilled;
- (e) completing the sale properly and on time; and
- (f) delivering vacant possession of all the units by the vacant possession deadline.

Start of the collective sale journey

The collective sale of PCPM began in 2005 with the requisition for an extraordinary general meeting to consider the collective sale. Unfortunately, this first attempt failed as an offer to purchase was

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entered into subject to the consensus of at least 80% of the subsidiary proprietors of the development. However, this majority was not obtained.

Although the second to fourth attempts in 2008, 2014 and 2017 finally saw the support of a requisite majority of the subsidiary proprietors, the development failed to obtain a buyer.

Finally, on the fifth attempt for which the marketing agent was Jones Lang LaSalle Property Consultants Pte Ltd, the 80% consensus was secured on 10 August 2021. PCPM was sold to a consortium of developers on 3 December 2021.

The numerous attempts at the collective sale of PCPM demonstrates how obtaining the 80% majority does not necessarily mean that the collective sale will be successful. On the contrary, the support of the requisite majority marks the start of the collective sale process.

Even after finding a buyer, the collective sale is not a done deal. A lot of work has to be put in by the lawyers behind the scene to ensure that the collective sale proceeds to completion successfully.

Obtaining the 80% majority

A requisition for an extra-ordinary general meeting of the management corporation must first be made to constitute a collective sale committee. One or more other general meetings of the management corporation must also be convened to appoint lawyers and property consultants / marketing agents to advise on the matter if the collective sale committee is not authorised to make such appointments at the extra-ordinary general meeting.

The collective sale committee, in consultation with the property consultants and marketing agents, will discuss and decide on the reserve price and method of apportionment of sale proceeds to be proposed to the owners. The lawyers will also draft a collective sale agreement ("CSA") based on the proposed reserve price and method of apportionment of sale proceeds. One or more general meetings of the management corporation will have to be convened to approve the apportionment of sale proceeds and terms and conditions of the CSA.

The challenge here, of course, is finding a reserve price and method of apportionment that will be acceptable to the overwhelming majority of the subsidiary proprietors. The marketing agent will have to garner the support of at least 80% of the subsidiary proprietors of the development.

For older developments, such as PCPM, locating owners and ascertaining that they have title to their units is a major challenge. This is exacerbated by the fact that the strata roll of such developments will not usually be updated.

The 5th attempt at collective sale for PCPM took place during the COVID-19 pandemic. Our Real Estate & Property Team was steadfast in the midst of the challenging times and swiftly revised their operating procedures for signing of the CSA with each step taken by the Government to address the need to balance the safety of the people in Singapore against the stabilising of our economy. For our Real Estate & Property Team, it was "business as usual" albeit responding quickly to the various safety measures by the Government implemented and revised from time to time during the period.

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Finding a buyer

Once the statutory majority of 80% has been achieved, the marketing agent will attempt to secure a buyer willing to pay the price sought by the owners. The collective sale committee has a duty to secure the best price and the best terms in the prevailing circumstances.

As PCPM is a leasehold estate, the remaining tenure of the state lease decreases with each collective sale attempt. This means that a prospective buyer would have to pay a higher premium to top-up the lease to 99-years, in turn affecting the sale price of the development.

Getting the sale order

Even where an agreement for sale and purchase has been entered into with a buyer, the CSC still needs to obtain a sale order from the Strata Titles Board ("STB") or the Court. Under the law, the STB or Court must not make the sale order unless the STB or Court is satisfied that the transaction is in good faith after taking into account, inter alia, the sale price for the lots and the common property in the strata title plan and the method of distributing the proceeds of sale.

The application for the collective sale is first made to the STB. However, where there are objections filed against the collective sale application, as was the case in PCPM, the STB would order mediation in an attempt to resolve the dispute between the parties.

The objectors in PCPM did not withdraw their objections before the STB and a "stop-order" was issued by the STB, putting an end to the proceedings before the STB. This meant that the majority owners had no choice but to file an application under the Land Titles (Strata) Act 1967 to the General Division of the High Court for a sale order.

An application to the General Division of the High Court is a complex one, involving numerous issues of fact and law. For PCPM, we had to file voluminous expert evidence in support of our application. Fortunately, the matter was amicably resolved before trial and the court granted the sale order for PCPM on 9 November 2022.

Our Litigation Team is experienced in applications to the Courts for a sale order. Indeed, several landmark High Court and Court of Appeal cases in the past concerning numerous collective sale issues were handled by our Litigation Team, who successfully obtained the sale order in order for these collective sales to proceed to successful completion.

Post sale order

Contrary to popular belief, the collective sale is still not complete even though a sale order is obtained. For the collective sale of PCPM to be successfully completed, we had to ensure the simultaneous completion of the sale and purchase of all 319 strata lots in the development. Fortunately, our Real Estate and Property team, helmed by our Mr Ow Yong Thian Soo and Ms Sharon Tay, both of whom have many years of experience handling collective sales and purchases and who also head the Collective Sale Practice Group in our firm, has through its extensive experience handling collective

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sale projects over the years, developed a robust set of processes and standard operating procedures to expedite matters and deal with potential problems along the way.

Our Real Estate and Property team possess not just the technical expertise required to advise on the complexities of a collective sale, but also remains committed to rendering our services with an emphasis on having a human touch.

As PCPM is an old development, numerous subsidiary proprietors had left the country and were staying overseas.

We had also encountered cases where owners had misplaced their title deeds due to the passage of time, which meant that we needed to assist in applying for a replacement Subsidiary Strata Certificate of Title from the Singapore Land Authority.

Given the long passage of time since the development was built, it is of no surprise that some owners are uncontactable or uncooperative. Our Real Estate and Property team made innumerable attempts to establish contacts with some of the owners, failing which our Litigation Team had to make the necessary applications to the Court for ancillary orders empowering some person or the representatives of the collective sale committee to execute documents on the owner's behalf.

In an old development such as PCPM, it is also not uncommon to come across owners who had since passed on, lost their mental capacity, or were bankrupt.

To exacerbate the challenges faced in the collective sale of PCPM, the collective sale process took place in the midst of the Covid-19 pandemic and even throughout the "Circuit-Breaker" imposed by the government between April 2020 to June 2020, forcing us to think on our feet and adapt our processes accordingly.

Many of the subsidiary proprietors were residing overseas when the pandemic hit. The wave of restrictions imposed by governments around the world meant that it was impossible for some of them to return to Singapore to execute the necessary documents. We therefore had to advise them on the processes necessary to execute the transfer documents overseas, before the Singapore consulate or a notary public.

Preparation of the completion accounts and finding evidence of payment of outgoings also posed a challenge as the Singapore government was in the midst of increasing the GST tax rate and the property tax regime. Our Real Estate and Property team had to work closely with owners and the various authorities (including the management corporation) throughout the Christmas, New Year and Lunar New Year festive seasons to ensure that the completion accounts were prepared and outgoings correctly apportioned.

In several cases, we also had to make applications to court for ancillary orders. In PCPM, we had to make several applications to Court for different reasons, including where:-

- (a) the owner had unfortunately passed on shortly before the scheduled completion of the collective sale and where there was no personal representative of the estate;

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- (b) the lasting power of attorney granted by an owner who had since lost mental capacity did not provide a power of sale; and
- (c) the strata lot was not sold within 6 years of the death of the owner such that an application under section 35 of the Conveyancing and Law of Property Act 1886 was necessary.

A lot of work had to be put in at short notice to ensure the smooth completion of the collective sale. However, our Litigation Team specializing in strata title law and practice was able to obtain the necessary ancillary orders for the above matters less than 4 weeks before completion.

To ensure the successful completion of a collective sale, both the Real Estate and Litigation Teams must always be ready to deal with unforeseen circumstances. Indeed, in the collective sale of PCPM we had to address a last-minute disagreement over how to split the proceeds of sale between a mortgagor and mortgagee of a unit. Since completion of the collective sale is contingent upon full and simultaneous completion of the sale of all 319 strata lots, our Litigation Team took out an urgent application in court in respect of this unit over the weekend prior to completion, and obtained the necessary order just two days before completion.

Notwithstanding the obtaining of a Sale Order, the sale may still be aborted due to conditions precedent required by the purchaser not being fulfilled. Such conditions may include redevelopment planning approval, Pre-Approval Feasibility Study (PAFS), development baseline confirmation and lease top-up approval. In such circumstances, whether the purchaser is able to rescind the agreement for sale and purchase and whether the deposit is to be refunded to the purchaser or forfeited to the owners would depend on the terms of the agreement for sale and purchase. Our Collective Sale Practice Group has, through years of experience, successfully negotiated agreements for sale and purchase with clauses that are comprehensive and clear, to ensure that a dispute does not arise over issues of whether certain conditions precedent have been fulfilled. In the unforeseen event that the dispute turns litigious, our Litigation Team is ready to take the matter further and has successfully resolved such disputes at the Courts.

Conclusion

In conclusion, although the collective sale of PCPM was an arduous one, it was also definitely a fulfilling journey. We are honoured and privileged to have played an instrumental role in the urban redevelopment of one of Singapore's most iconic buildings. We are also grateful for the strong synergy we had with the Purchaser's solicitors, Dentons Rodyk & Davidson LLP in ensuring the smooth completion of the collective sale.

If you are intending to embark on a collective sale for your development, please feel free to reach out to our Mr Ow Yong Thian Soo (owyongthiansoo@leenlee.com.sg) or Ms Sharon Tay (sharontay@leenlee.com.sg) for a discussion and consultation to better understand the process.

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About Lee & Lee

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