

MCST FORCED SALE OF INDUSTRIAL UNITS TO RECOVER ARREARS OF CONTRIBUTIONS

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Introduction

1. The day-to-day operations carried out by Management Corporations ("MCSTs") include the unenviable task of recovering the payment of outstanding management and sinking funds from subsidiary proprietors ("SPs"). In the event where the outstanding arrears remain unpaid over an extended period of time, the Building Maintenance and Strata Management Act 2004 ("BMSMA") allows the MCST several methods to protect their interests. Under section 43 of the BMSMA, the MCST is empowered to exercise a power of sale over the property as a chargee to recover arrears of contributions. After claiming the outstanding fees due to the MCST, the balance sale proceeds are treated as the sale proceeds of a regular sale and, post-deductibles, given to the SPs. This process has been termed a 'forced sale'.
2. Forced sales are typically used as a last resort by the MCST, and its rare occurrence means little literature and guidance is available. This article aims to shed some light on this nebulous process, outlining key points for SPs, MCST council members and practitioners alike. After concluding a [forced sale of a residential property](#) in 2022, Lee & Lee was appointed by the MCST of Mactech Building to carry out the forced sale of two industrial units.

Background

3. The unique circumstances of the present case presented both practical and legal challenges. Generally, SPs may, at any time before a contract for sale is signed, make their payment of the arrears owed. Successful satisfaction of the outstanding arrears will thereby halt the forced sale process. The ample opportunities afforded to the SPs to satisfy their debt thereby renders successful and completed MCST forced sales being few and far between. In the present case, however, the SP was believed to have passed away several years ago. Court searches revealed that no Letters of Administration or Grants of Probate had been taken out in respect of his estate. Thus, not only was payment of the outstanding arrears unlikely, there was also no "SP" to correspond with.

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For any queries relating to this article, please contact:

Toh Kok Seng
tohkokseeng@leenlee.com.sg

Sharon Tay
sharontay@leenlee.com.sg

Authors:

Toh Kok Seng
Sharon Tay
Enzel Tan
David Lee

Lee & Lee

25 North Bridge Road
Level 7
Singapore 179104
Tel: +65 6220 0666

For more legal updates, please visit the News & Publication Section of Lee & Lee's website at www.leenlee.com.sg, or follow Lee & Lee's Facebook page at www.facebook.com/leenlee.com.sg/ and Lee & Lee's LinkedIn page at <https://lnkd.in/g6bNfv8G>.

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4. This led to two key challenges. Firstly, there was an inability to access the property for valuation and viewing by potential buyers. This meant that the contract for sale had to adequately account for sale without vacant possession, and the purchaser had to accept the property on an as-is-where-is basis. Secondly, there would be no claimant to the balance sale proceeds owed to the SP.

Procedure of Sale

5. First, we examine the procedure for a forced sale. Unlike typical sale and purchase transactions, the MCST is not the legal owner of the property. The basis for conducting a sale as a vendor comes from the MCST's role as a chargee with security over the property. When an SP defaults on payment of the management and sinking fund fees, a debt is created, and the MCST has the right to lodge a charge over the SP's property as security for the debt owed to them. This is called a management corporation charge ("MCC").
6. The lodgment of the MCC comes with conditions. The MCST must first serve a written demand on the SP for the outstanding contributions. If left unpaid 30 days from the service of the written demand, the MCST may proceed to instruct their appointed lawyers to lodge the MCC with the Registrar of Titles.
7. The successful registration of the MCC will appear as an encumbrance in the SP's title. Should the MCST elect to pursue a forced sale, they must pass a special resolution at a general meeting for the property to be sold. The special resolution addresses the MCST's key decisions regarding the forced sale.
8. After the passing of such special resolution, the MCST's appointed lawyers must publish the intended sale in one or more daily newspapers approved by the Registrar of Titles. This is followed by a 6-week period where the SP is afforded another opportunity to make payment for his outstanding arrears. Only where no payment is made during the 6 weeks, and no legal action is pending in court to restrain the sale, may the MCST proceed with the forced sale.
9. In the present case, the SP was believed to be deceased, and no one had come forth to represent the SP's estate. As there seemed to be no way for the MCST to recover the outstanding arrears, which has crept into the range of six-figures, the MCST commenced the forced sale by way of auction.
10. The Conditions of Sale is drafted by the MCST's appointed lawyers, and this will govern the terms of the sale of the property. The Conditions of Sale must be in-depth and comprehensive, in order to account for the unique conditions of each and every case.

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Unique Conditions of Sale

11. Now, we delve further into the complexities of a forced sale with an absent SP. As noted in Paragraph 5 of this article, the MCST is not the legal owner of the property. This means that the usual items we expect to handle during a sale of property may not be in the MCST's possession. For example, the MCST may not have the property's keys or title deed. Recognising this circumstance, section 43 of the BMSMA dispenses the need for the production of the subsidiary strata certificate of title for the property when registering a Transfer instrument, pursuant to a forced sale by an MCST.
12. Secondly, as the SP was absent, the MCST has to force sell the units without vacant possession. The industrial nature of the units meant that the premises might be in a more unpredictable state than a residential unit. The fact that the state of the units in terms of cleanliness or whether they were fit for purpose was not immediately ascertainable poses both legal and practical problems. For one, the units might have heavy equipment that the purchaser would have to incur costs to remove. The problem would be complicated further if the equipment was valuable – do the purchasers have the right to sell the equipment? Or who is the rightful owner of these equipment? What of the sale proceeds? In this matter, an additional concern was added when one of the purchasers wanted to perform a pest control check on the premises. While it is usually possible with a present and compliant SP, in the event of a non-compliant SP, or in this present case, an absent SP, it begs the question as to whether the MCST had the legal right to provide access to the properties prior to completion.
13. Thirdly, upon completion, the MCST will have to deal with the various parties that may have a claim on the strata units, such as the mortgagee bank, the Comptroller of Property Tax, the Central Provident Fund Board, and the MCST themselves. The remaining sale proceeds (if any remains after the distribution) are due to the SP.
14. In the present case, with the SP and/or his estate / next-of-kin unable to be contacted, the balance sale proceeds rightfully due to them could not be released directly to the SP and/or his estate / next-of-kin. As such, an application was made to the Court to pay the balance sale proceeds to Court (subject to further deductions imposed by the Court, such as legal costs incurred in the application to Court). Pending an order by the Court, the MCST continued to hold the balance sale proceeds on trust for the SP.
15. It is not recommended that the MCST holds the balance sale proceeds indefinitely, as this means the MCST continues to hold the balance sale proceeds on trust for the SP, which raises more questions including whether the MCST needs to account for interest.

Conclusion

16. Thus, in light of these multifaceted circumstances, the process of a forced sale may appear difficult and challenging. However, these circumstances are not impossible to untangle. As with any decision for a forced sale, it is entirely achievable with proper advice from legal and other professionals.
17. If your MCST needs to consider a forced sale of a troubled unit, do feel free to contact us.

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Contact Us

18. For further information on your litigation and dispute resolution matters, please contact our Mr Toh Kok Seng. Mr Toh is a Senior Partner in the Litigation and Dispute Resolution and the Intellectual Property departments, and also the Head of the Strata Title Practice Group. He specialises in representing management corporations, managing agents and subsidiary proprietors in strata disputes.
19. For further information on your real estate & property matters, please contact our Ms Sharon Tay. Sharon is a senior partner and Deputy Head in the Real Estate & Property Department of Lee & Lee. She handles a wide range of real estate and conveyancing work and her practice covers virtually the entire spectrum of real estate and financing transactions, including the sale, leasing and purchasing of residential, commercial and industrial properties. She represents clients which have diverse interests including individuals, publicly listed companies, private corporations, banks, societies, charities, high net-worth individuals, management corporations, government authorities and associations.



Toh Kok Seng
Senior Partner
(Litigation & Dispute Resolution Department)
and
Head of the Strata Title Practice Group



Sharon Tay
Senior Partner & Deputy Head
(Real Estate & Property Department)

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The following partners lead our departments:

Kwa Kim Li
Managing Partner
kwakimli@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg

Quek Mong Hua / Julian Tay
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg
/ juliantay@leenlee.com.sg

Ow Yong Thian Soo / Sharon Tay
Real Estate
owyongthiansoo@leenlee.com.sg
/ sharontay@leenlee.com.sg

Adrian Chan / Lun Chee Leong
Corporate
adrianchan@leenlee.com.sg /
luncheeleong@leenlee.com.sg