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Judicial Interpretation of Land (Compulsory Sale for Redevelopment) Ordinance
(法院对楼宇强制拍卖法例的解释)

Background (背景)

To facilitate the redevelopment of the old buildings, the Government lowers the threshold from 90% to 80% (percentage of ownership) in order for the 80% owners to apply to the Lands Tribunal (“**Tribunal**”) for the redevelopment of a building on the ground that the building is old and suffers wear and tear (磨损); and that the Tribunal shall order an auction i.e. to order a compulsory sale (强制售楼令) of the whole building. The purpose of lower threshold is to accelerate the redevelopment of the old buildings in Hong Kong and fasten our city renewal.

Application under Land (Compulsory Sale for Development) Ordinance, Cap. 545 (“Ordinance”) (土地(为重新发展而强制售卖)条例的适用)

With effect from 1 April 2010, a person, owning not less than 80% of the undivided shares in a lot (地段) i.e. any piece or parcel of ground being the subject of a land lease, may apply to court for the compulsory sale order under Section 3 of the Ordinance. It applies to the following 3 classes of lots:-

- a. A lot with units each of which accounts for more than 10 percent of the undivided shares in the lot. In such a case, the building should have less than 10 units; or
- b. A lot with all buildings aged 50 years old or above; or
- c. The building is an industrial building which is more than 30 years old and it lies within a non-industrial zone (非工业区) under a draft or approved Outline Zoning Plan prepared under the Town Planning Ordinance.

The Tribunal shall determine the application by hearing and determining the dispute when any minority owner disagrees to the ground for redevelopment, value of the building or the compensation offered for his unit. Also, the Tribunal shall not make an order for sale unless it is satisfied, among other things, that (i) the redevelopment of the lot is justified due to the “age” (楼龄) or “state of repair” (楼宇维修状况) of the existing building; and (ii) the majority owners have taken reasonable steps to acquire all the undivided shares in the lot.

Let us examine some of the interesting court cases.

Sin Ho Yuen Victor, The Administrator of the Estate of Sin Yat, Deceased v Fineway Properties Limited (“Fineway Properties Case”) (法院判例)

Fineway Properties Limited (“Fineway”) owned a block in Haven Street, apart from one unit which belonged to the deceased, Sin Yat. In order to redevelop the property, Fineway sought a compulsory sale order from the Lands Tribunal (土地审裁处). Fineway Properties Case provided judicial views on the interpretation of “age” and “state of repair” in Section 4 of the Ordinance.

The Tribunal had adopted the “economic lifespan test” formulated in *Intelligent House Ltd v. Chan Tung Shing & Ors.* On the ground of age, the Tribunal is entitled to look at whether the old building has reached the end of its physical life (建筑寿命) as well as economic lifespan (经济寿命). “*The economic lifespan comes to an end when the cleared site value of the lot significantly exceeds the existing use value of the building*”. On the ground of state of repair: the Tribunal shall consider whether the building (i) becomes a danger to the residents or the public at large; and (ii) economically unworthy to repair (在经济角度上楼宇不值得维修). On the issue as to it is economically worthy to do so, the Tribunal will look at repairs “*where the costs of repair exceeds the existing use value of the building, or...the costs of repair significantly exceeds the enhancement value arising from or attributable to the repairs*”, and (iii) whether the repairs make the building fit for the tenants to live enjoyably (这些维修是否能导致楼宇的住户得到舒适的居住环境).

For example, when a building is just 50 years old, the costs of repair (维修费用) of the building may exceed the existing use value (“EUUV”) (现壳价) of the building, the building will become uneconomically worthy to repair according to the “economic lifespan” test. The age of a building itself is an absolute term (绝对建筑概念) while the economic lifespan of a building is a relative term (相对经济概念).

This court case went from the Tribunal to the Court of Appeal (“CA”). The CA expressed its reservation on the “economic lifespan” test. CA expressed that the concept of “economic lifespan” was not clearly featured in the Ordinance. Since the correctness of the “economic lifespan” test is not the issue for the appeal, the CA said that the question of the correctness of this “economic lifespan” test will be ruled in another case later. Despite the reservation of CA, it remains now that the “economic lifespan” is the current legal test adopted by the Tribunal.

Conclusion (结论)

When a developer acquires most of the units in a building and deliberately refuses to repair the building, the building will deteriorate sharply. If the Tribunal adopts the “economic lifespan” test in these circumstances:-

1. The EUV or the selling price of the property in the open market may be made lower.
2. The cleared site value (吉地之价值) will exceed the EUV, and this can mean the “*economic lifespan will come to an end*”.
3. The costs of repair of very poor building will obviously be higher than the EUV or enhancement value arising from or attributable to the repairs (维修后带来之增值价) and this will make the building be regarded as “*economically unworthy to repair*”.

In other words, if the developer deliberately does not repair the building and let it run down quickly and seriously, such a tactic will help the developer relatively easier to obtain a compulsory sale order from the Tribunal. This can be an abuse of the law.

Although the Ordinance accelerates the urban renewal, the “age” and the “state of repair” should not, in our opinion, be judged by the “economic lifespan” test. Instead, we submit that the Tribunal should consider all relevant and reasonable circumstances. One may argue that this “all circumstances” test is relatively vague. However, as some developers may abuse the law, the law must be flexible enough to allow a good judge to protect the minority owners of a building.

Nothing shall constitute legal advice to any person by Messrs. Maurice WM Lee Solicitors (Tel: (852) 2537 5833) (Website: www.wmleehk.com)

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