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Impediments to the success of collective sales: lessons for the property consultant

Alice Christudason
Department of Real Estate, School of Design and Environment, National University of Singapore, Singapore

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Abstract

Purpose – The paper aims to consider how collective sales may be achieved more effectively and speedily in the Singaporean context.

Design/methodology/approach – Through an examination of Singaporean legislation, cases, market conditions and the residential price index, a range of factors has been identified as affecting the success rate of collective sales.

Findings – The paper shows that in the face of radical legislation that aimed to facilitate collective sales, there were various other factors that impeded the success rate of collective sales. Some of these factors were within the control of parties, whereas some were not.

Practical implications – The paper points to the flashpoints in the collective sale process which property consultants can be mindful of during negotiations. Suggestions are made for the property consultant to adopt mediation techniques to expedite the process. This will result in time and cost savings for the parties involved.

Originality/value – The paper highlights the interplay of various factors other than legislation to facilitate collective sales. The paper will be of particular value to property consultants involved in negotiating collective sales, and owners of strata titled properties who wish to engage in collective sale of their development.

Keywords Sales management, Singapore, Economic resources, Property finance, Negotiating, Laws and legislation

Paper type Research paper

Introduction

Legislation pertaining to land use and development in Singapore

Much of the legislation pertaining to real property in land-hungry Singapore has been enacted as a result of the need to optimise the use of this scarce resource. To this end, legislative controls in the form of (among others) the State Lands Act[1], Residential Property Act[2], Land Acquisition Act[3], Planning Act[4], and *Land Titles (Strata) Act* (1988) have been imposed over a variety of matters ranging from land ownership and land acquisition, to land use and development.

Major amendments which radically altered fundamental and vested rights of ownership in strata-titled property in Singapore were made to the Land Titles (Strata) Act (LT(S)A) (1999) with the professed objective of optimization of land use. This was to be aqchieved by allowing a majority of owners' decision to prevail in the sale of a subdivided building (Christudason, 1996). Formerly, such a sale would have required unanimous agreement among the owners. The rationale for the amendments had been to make it easier for *en bloc* (collective) sales to succeed if the majority of homeowners

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in a development wanted it and thereby make available more prime land for higher-intensity development to build more quality housing in Singapore (*Urban Redevelopment Authority Report*, 1999/2000).

Scope of paper and methodology

The amendments to the LT(S)A were considered radical in nature because they sought to facilitate collective sales by the removal of the requirement for unanimity among individual unit-owners often holding freehold titles. Despite this facilitation, market indicators and property consultants' views demonstrate that the outlook for collective sales is bleak. Despite the number of available collective sale sites in the year 2000, there was relatively little collective sale activity; in the first nine months of 2000, only 14 out of the 54 collective sale sites put on the market had been sold. As at the end of 2000, 62 sites with *en bloc* potential were still left without takers. Deals closed up to November 2000 totaled about $1.01 billion. This is a far cry from the $2.41 billion worth of property sold collectively in 1999, that is, before the drastic amendments to the LT(S) A had been put in place. In view of this, the question arises as to whether the severe amendments to the LT(S)A which have been described as an "abrogation of fundamental property rights" (Christudason, 2000) were justified.

Property consultants have cited various non-legal problems that have stood in the way of the progress of collective sale negotiations. Thus, during the 18 months following the passing of the amendments, a variety of other types of difficulties have surfaced to pose obstructions on the long road leading to the successful conclusion of a collective sale. Such problems have resulted in an inordinate (and expensive) delay or even in the proposed sale being aborted. The paper suggests that an awareness of the common problems in the collective sale process can assist property consultants and other professionals involved in negotiations, to avert or take measures to better manage or alleviate such problems. In this regard, the paper recommends that the property consultant can play a more facilitative role during the possible "flashpoints" in the collective sale process, particularly by adopting techniques and strategies used in mediation. It is submitted that if the path to a successful collective sale is less fraught with difficulties, the efficacy of the collective sale process could be enhanced, resulting in savings in terms of cost and time for the parties involved. This could in turn lead to an even higher success rate for collective sales so that the intended objective of the amendments, which was to maximize the development potential of *en bloc* sale sites and rejuvenate old estates, may be fulfilled. In the face of such an outcome, the severity of the amendments to the LT(S)A may then be said to be justified.

The discussion in this paper incorporates cases which have come before the Strata Titles Board ("the STB") and the High Court of Singapore, after the amendments to the LT(S)A. Reference is also made to information gleaned from interviews with property consultants (Sai, 2001). It is noted that other than data compiled mainly by property consultancies, there is to-date relatively little published material on the matter. These provide mainly factual information (such as identification of sites which may be/have been sold *en bloc*, their site area, price per square foot and permissible plot ratios) and analysis thereon.

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Nature of collective sales

A collective sale is often interchangeably referred to as an *"en bloc"* sale. However, the latter usually refers to the situation where a building is sold as a block as if it is a single unit, whereas a collective sale is a type of real estate transaction whereby individual owners in a development band together to sell their properties jointly as an entity to a single buyer. These owners typically consist of different individuals who may own condominiums units, apartments or adjoining landed properties. Their subject properties are private residential developments, often having freehold titles and located in prime districts.

Freehold titles in Singapore have significantly dwindled in number. This is due to the aggressive mechanism for compulsory purchase in the form of the Land Acquisition Act which facilitated Singapore's highly successful public housing programme, and the State Lands Act, which made 99-year leasehold titles the predominant method of landholding. While collective sales are possible for developments with 99-year leasehold title, they are seldom transacted due to the lack of financial incentives to redevelop such sites; in fact, additional costs have to be borne by developers in the form of a differential premium that must be paid to the Government in order to renew the lease for the land.

We now consider the reasons for the collective sale phenomenon in Singapore.

Factors which led to the collective sale phenomenon

Several factors triggered the phenomenon of collective sales in Singapore in the mid-1990s. They include the following.

Release of development guide plans and enhancement of plot ratios

The Urban Redevelopment Authority (URA) released 55 Development Guide Plans (DGPs) in 1993. Each of the DGPs released represents the planning vision for its area, and sets out the control parameters such as land use, plot ratio building height, provision of facilities and amenities. The DGPs have the objective of guiding the physical development in a specific planning area and have unlocked the redevelopment potential of many freehold and 999-year leasehold land parcels. In order for redevelopment of a site to be viable, the net residual value of land if developed optimally must exceed the gross residual value. Thus, the relative physical obsolescence of the building and the availability and proximity of infrastructure (for example, schools and public transport) may point to the financial advantage of a greater intensification of land use and maximization of land resources through a collective sale and redevelopment.

It follows from the above that if an existing development is sold jointly by individual property owners to a developer in the open market, there is the possibility of reaping windfalls in excess of what would accrue were the individual units sold individually; this is because the higher development potential arising from the enhanced plot ratio enhances the value of each individual owner's interest. Where properties had previously been assigned a lower plot ratio, there is still room for maximising the land potential for these developments if the maximum plot ratio stipulated in the DGP is higher than what had been built on the existing plot of land. Thus, for example, the original plot ratio for properties in Walshe Road had been fixed at 1.04, subject to a two-storey height control. However, under the revised Tanglin DGP

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(which Walshe Road falls within) the land can now be developed to a maximum plot ratio of 1.6 with a ten-storey height control. Hence, there is potential for further development of the land, making it a worthwhile investment for the developer.

The Land Titles (Strata) Act in Singapore

The LT(S)A in Singapore is based on the Conveyancing (Strata Titles) Act 1961 of New South Wales Australia. Buildings that are brought within the scope of the Act are those that are divided both horizontally and vertically in accordance with an approved strata title plan. Such subdivision facilitates dealings or disposition by the individual owners of their interests in the units that have been created by the subdivision. In addition, the LT(S)A contains provisions relating to a system of managing such buildings. (Christudason, 1996).

Background to the amendments to the Land Titles (Strata) Act (LT(S)A) 1999

At the time when collective sales appeared in 1994, there was the requirement for *unanimous* consent among property owners within the development before they could collectively put up their properties for sale. Therefore, in those developments where one person or a minority refused to give their consent to sell their unit, the collective sale could not materialize. As a result of this, there were many situations where a majority of the owners lost the opportunity to realise the capital gains from such a sale. In response to the numerous and frequent complaints and appeals received from frustrated owners whose efforts to complete such sales had been thwarted by a (very often) small minority, a proposal was made by the Minister of State for Law and Home Affairs in June 1998, to amend the LT(S)A so as to facilitate collective sales. The concerns of the majority were accepted by Parliament as legitimate and the actions of the dissenting minority were described as "[impeding] efforts to maximise the development potential of *en bloc* sale sites, and [preventing] the rejuvenation of older estates" (*Land Titles (Strata) Amendment Bill*, 1999). This led to the radical amendments to the LT(S)A, the implications of which are considered in more detail below.

Revision of development charge (DC) rates

The development charge is a central part of the Singapore planning framework; it has been described as an example of a betterment tax system. (Grant, 1999) It was imposed with a view to securing to the State the increases in the value of land brought about by community development rather than through the efforts of the landowner. The Government decided that a development charge should be levied on all written permissions for the development of land beyond the existing permitted use. Thus, land owners or other interested persons who benefit from the grant of permission for development have to pay to the State a part of this benefit, in the form of a "development charge".

With effect from 1 March 2000, development charge rates were revised on a half-yearly basis. The government intervened to make development charge rates more responsive to changes in land value by the reduction in the rates in September 2000, as opposed to the steep hike that had been effected in March 2000. The reduction was made to reflect the moderation in land values over the six months between March to September 2000. Significant decreases in the development charge rates would decrease

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development costs and thereby render sites with *en bloc* potential more attractive to developers. This would in turn influence developers in their decisions on whether to purchase collective sale sites.

Government land sales (GLS) programme
As a result of Singapore having inherited the English doctrine of tenures and estates in land, all land belongs to the State. Accordingly, the State assumes responsibility for the release of land for development as well as for the annual review of the pattern of supply and demand. These form the basis for the Government Land Sales (GLS) Programme, which is administered by the URA of Singapore. The GLS programme has a direct impact on collective sale activities, depending on the amount of land released and the demand and supply conditions at that point in time. An oversupply of land is likely to result in a lower incentive for individual property owners to sell their units. Developers may also start to pace their supply.

Ever since the onset of the Asian financial crisis and ensuing property slump in 1998, there had been a gradual halt of the GLS programme and it only resumed in early 2000. A supply of land for 9,000 private homes and executive condominiums was released in 2000. This was scaled down to 6,000 – 7,000 units for 2001, when the residential property market was expected to remain slow. (Knight Frank Research Report, 2000) This adjustment by the Government to the annual quantum of supply of land was in response to market conditions over the year and in order to keep the supply of homes at a moderate level over the medium to long-term, to ensure stable private housing prices. (*Urban Redevelopment Authority Report*, 1999/2000). However, supply from the private sector in the form of collective sales and private treaty sales had not been factored in. In view of this and considering the lacklustre market and ample supply, (Knight Frank, 2000) the above measures taken in relation to the GLS programme may not be adequate to lift the ailing property market.

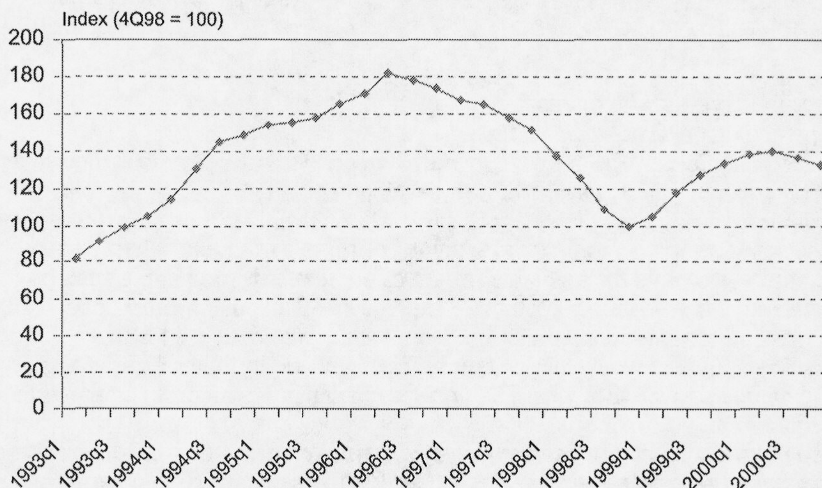

Figure 1.

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Market conditions

Figure 1 depicts the private residential property price index for the years 1993 – 2000. The discussion that follows will demonstrate the link between the property cycle and the level of collective sale activity.

Between 1994 and 1997, while the property market was enjoying a boom period, the collective sales phenomenon caused the private property market to peak in terms of number and value of transactions (see Figure 1). This was particularly so between late 1996 and early 1997. In 1997 alone, S$1.12 billion worth of property was sold collectively. This was the time when investors' confidence was at its peak, and developers seized the chance to purchase available redevelopment sites to build up their land banks.

However, that situation was not to continue for much longer; a number of factors affecting the demand and supply for private properties caused the Singapore private residential property to start descending to an inactive state in 1998; one of these factors was the regional financial crisis towards the end of 1997. In this year, the overall property price index fell by 12.1 per cent and in the first quarter of 1998, it fell by a further 8.9 per cent (Grant, 1999). The property bubble eventually burst in the fourth quarter of 1998. In that year, it appears that no collective sales were transacted.

Subsequently, as the state of the economy improved in the second quarter of 1999, collective sales also began to make a significant comeback. Thus, in the first ten months of 1999, S$2.41 billion worth of property were sold collectively. These transactions formed a major portion of residential land sales in 1999. However, the momentum in the private housing market slowed down and prices dipped by a total of 5.3 per cent within the last six months of 2000 and quite predictably, this led to an abatement of the collective sales fever – in contrast with 1999, collective sale deals closed in 2000 totalled S$1.01 billion (Jones Lang Lasalle, 2000). This was so, despite the removal of the legal impediments by virtue of the amendments to the LT(S)A in October 1999. The above discussion shows that there is a close link between the stages of the property cycle and the level of collective sale activities.

With the understanding of the circumstances discussed above that led to the collective-sale phenomenon, the steps involved in concluding a collective sale are outlined below.

The collective sale process

Preparation stage – site identification

A collective sale may be initiated by the owners of a development, developers or property consultants. However, before a development may be put up for collective sale, a preliminary study of the site is necessary. Although this can be done by the owners themselves, due to the complexities involved, this is normally left to the property consultants who have the available resources and expertise to handle such projects.

In the course of identifying suitable sites for redevelopment, property consultants have first to examine the planning guidelines that have been set for these sites. Such sites are usually those developments with freehold title in the prime districts as they form the bulk of properties where the increase in density is highest compared to other suburban areas.

The redevelopment potential for the site is then determined by the difference in the development baseline, set in the 1958 Master Plan, and the maximum permissible plot

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ratio in the Development Guide Plan (refer later). A collective sale will be deemed viable only if the difference shows a potential for better utilisation of the existing site, that is, between the value of the existing development as a whole and its value as a redevelopment site. In addition, a site visit should be made so as to confirm the redevelopment potential of the land as there are situations whereby the actual sites have shown a higher potential than what has already been built on the site. In other words, a site may already have been underutilized within the existing plot ratios prior to the revised DGPs.

A survey will also have to be carried out among the individual property owners once the preliminary study is able to identify a site with the potential for collective sales. At this stage, only the individual property owners of the identified development and property consultants are involved in this exercise. This initial phase of collective sales can be very time-consuming, depending on how successful the submission of the outline planning permission and other searches are. This whole process can take between 12 and 15 months to complete.

Feasibility study

In conducting the feasibility study for a site, a financial evaluation will be carried out in order to determine the monetary benefits accruing to the owners, as well as indicating how viable the collective sale will be.

To conduct the financial evaluation, it is necessary to establish the value of the land, usually through the residential method of valuation. A comparison between the existing open market value for the development site and the collective value of the individual units in a development is carried out. The former is determined via the residual method of valuation in which the highest and best value of the land is assumed. The latter is usually done using suitable valuation techniques such as the market comparison method. This will be the premium which the estate commands, thus giving rise to the existing value of the development. The viability of a collective sale is therefore determined and the individual owners are then notified and recommended by consultants to go for a collective sale for their development.

Pre-launch stage

At this time, a survey is undertaken to establish the owners' interest in the collective sale. A meeting is conducted with all owners and the collective sales process is explained to them. There will also be proposals to the owners on how the sale price for the site will be apportioned among them. The property consultants will address any concerns and reservations that they have towards the sales. This is a tedious and time-consuming process, as consultants are required to approach individual owners and the developers in order to convince them of the advantages of a collective sale.

Following the amendments to the LT(S)A in October 1999, a minimum per centage (90 per cent or 80 per cent, depending on the whether the building is ten years old and more, or less than ten years old, respectively) of the owners' consent is required in order for the collective sale to go through. On receiving the level of consensus needed for a collective sale, an Extraordinary General Meeting involving all the owners must be conducted, and a Sale Committee as well as property consultants and solicitors appointed.

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The Collective Sale Agreement (CSA) is then drafted. The CSA includes items such as the reserve price, mode of sale, time frame for completion of sale, apportionment of proceeds and delivery of vacant possession. Once the draft is prepared, the property consultant undertakes the task of obtaining owners' signatures for the CSA. This is one of the most time-consuming stages in the whole collective sales process. It can take about nine months to a year before completion.

Tender launch

This stage involves a press release, informing all interested parties about the collective sale of the site and is followed by the marketing of the site to developers or other parties. Marketing of the particular redevelopment site may be done through a tender system or a private treaty. Although in a buyers' market, selling by way of private treaty may be the better option, the norm is for a collective sale to be by tender.

When the sellers accept a bid, a 10 per cent deposit for the price has to be paid. Completion of the sale may take about three months, with the signing of the Sale and Purchase (S&P) Agreement.

Post tender – evaluation/negotiation

Bids received are valid for a month once the tender is closed. During this period, negotiation between the property consultants and tenderers is possible if the reserve price is not met. If the negotiations fail, the sellers can still look for other tenderers who are interested and willing to forward a better offer for the site. Otherwise, once the one-month period ends, the sellers may have to resort to other methods of sale, as the bids would have expired.

Completion stage

Once the Sale and Purchase Agreement is signed, the successful tenderer completes the sale within three months. During this period, the proceeds will be payable to the individual property owners, depending on the apportionment. This usually amounts to 90-95 per cent of the price.

Vacant possession

After the completion of the sale, owners are required to deliver vacant possession, usually within six months. By then, the remaining 5-10 per cent of the sale proceeds accruing to them will be received from the purchaser. During this stage, owners have time to look for other premises where they can relocate, while others may use the profits for other investments. A tabulation of the various stages and parties involved in a collective sale process is given in Table I.

Nature and effect of the amendments to the Land Titles (Strata) Act

The earlier section examined the various stages involved in the collective sale process. Where there exists unanimity among the unit owners, it is simply a matter of time before title is transferred and the unit owners receive their share of the proceeds of sale. However, where there is no unanimity, it is necessary to obtain the approval of the Strata Titles Board (STB) before the sale can proceed. In this regard, the nature of the radical amendments to the LT(S)A are considered in some detail below.

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Stage	Activities	Parties involved
1. Preparation	Site identification Preliminary study of property Baseline search Survey among owners	Owners Property consultants
2. Pre-launch	Reserve price Drafting collective sales agreement	Owners Property consultants Lawyers
3. Tender launch	Press release Direct marketing	Property consultants
4. Post-tender	Evaluation/negotiation	Property consultants, owners
5. Completion	Payment of proceeds	Lawyers, owners
6. Delivery of premises	Vacant possession Relocation Reinvestment	Property consultants, owners

Table I.
Stages in the collective sale process

The role of the Strata Titles Board (STB) in the collective sale process

As has been stated earlier, the upshot of the amendments to the LT(S)A was that a minority of owners could be compelled to agree to the collective sale. In this regard, it was felt that this made a mockery of their "freehold" titles. Nevertheless, it is noted that such sales were still subject to the approval of the STB. The STB, which is modeled on the Strata Titles Board of New South Wales, was the tribunal set up for resolving disputes (*Land Titles (Strata) Act* (1988), sections 94-107) relating to strata-type properties.

The Board's primary role (in this context) is to determine whether the required majority consent and other procedures prescribed in the LT(S)A have been met. Thus, an application to a Board for an order for the sale of all the lots and common property in a strata title plan may be made by 90 per cent of the owners where a building is less than 10 years old, and by 80 per cent of the owners where the building is more than 10 years old. The Board would not itself review or intervene to set the terms of the sale. If no objection is made by the minority, the sale would proceed. If there is an objection from the minority, the Board will consider the objection, but only in the light of whether the proposed sale is in good faith and at arm's length (*Land Titles (Strata) Act* (1988), section 84A(9)).

Cases brought to the Board after the amendments

Cases which have come before the Board for consideration following the enactment of the amendments have raised procedural as well as substantive issues. Procedural issues have centred around the fulfillment of requirements, such as the holding of an extraordinary general meeting in accordance with the Fourth Schedule of the LT(S)A[5]. With respect to this, the Board has taken the view that it is in order to facilitate full, fair and orderly discussion of issues by all subsidiary proprietors that the LT(S)A has imposed stringent advance notification procedures and specific documentary formalities to be observed with reference to every subsidiary proprietor in a development before the holding of such a meeting. This will also ensure that everyone in the development would be aware of the collective sale prior to an application being made to the Board. Accordingly, the Board has held that in order

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to be consistent with that legislative objective, an extraordinary meeting must be held after the subsidiary proprietors owning not less than 80 per cent or 90 per cent as the case may be, of the share values have agreed in writing to sell their development to a specific purchaser[6].

Substantive issues which have come before the Board in relation to collective sales have related to the meaning to be attributed to "financial loss" and "good faith" as used in section 84(A) (7) -(9) of the LT(S)A[7]. These subsections deal with the circumstances under which a minority may successfully object to a collective sale and the circumstances under which the Board may, or may not, approve of the sale.

With regard to the meaning of "good faith", the Board has likened the duties of the Committee entrusted with making decisions pertaining to the price in a collective sale to the duty of a mortgagee exercising a power of sale. The Board held that the two broad areas of enquiry which determine whether a mortgagee has breached his duty to act with reasonable skill and care or to take reasonably adequate steps to ensure a fair price in relation to a sale were equally relevant for the purposes of determining the "good faith" of the sales committee with regard to the price[8].

The above cases are informative in that they bring home the importance of adhering to the procedural requirements spelt out in the Fourth Schedule and the likely interpretations which would be accorded to critical sections of the LT(S)A in collective sale applications to the Board. They can be instructive to the property consultant in the management and conduct of the collective sale process and obviate the need to appear before the Board, thereby saving time, effort and money.

"Flashpoints" in the collective sale process

There is no doubt that the amendments to the LT(S)A have in fact facilitated collective sales – since the amendments were effected, 21 collective sales have been approved by the Board and all these were the result of majority decisions. Despite this, interviews conducted with property consultants (Sai, 2001; Teo, 1999) have shown that typically, there are various other problems which may arise, posing obstacles during the process and often causing unnecessary delay and expense. These may be categorized as follows:

Human factors. The very fact that a large number of individual owners is involved, creates problems for property consultants tasked with negotiating a collective sale. It is inevitable that conflicts and difficulties arise in trying to meet the demands and expectations of a large and diverse group of people. Some of these have been discussed in the previous section, on cases that have been brought before the STB.

As a result of the windfalls reaped by owners in previous collective sale transactions, other property owners become more demanding, as they expect similar or even higher profit margins for their units by way of a collective sale. There are other owners who speculate in properties with potential for collective sale and refuse to let go of their units, in the hope of negotiating for a higher price. Yet another category includes owners who have set an unrealistic reserve price, which deter interested developers. Where the owners are unable to agree to reduce the reserve price, the whole collective sale exercise has to be aborted.

Administrative factors. One frequently mentioned problem in relation to the administration of collective sales is its gestation period. Due to the variety of disagreements and conflicts which may arise among the unit owners, *inter se,* or lack of

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consensus between the unit-owers and the developer, the negotiation span can be stretched indefinitely; there is no fixed period of time within which the deal has to be closed. Even in the event an offer is received and the contract signed, the exercise can still be aborted if the sale has been made contingenton certain events, such as the obtaining of planning approval.

Practical difficulties. One of the practical problems that may arise is that of having to contact all the property owners, particularly where the property is tenanted. This can lead to a delay in obtaining approval from all owners within the shortest possible time.

Reaching agreement and fixing a date for delivery of vacant possession to the developer is yet another practical difficulty in negotiating a collective sale. It is a Herculean task to get all the unit owners to agree on the same date as they have to make alternative arrangements for the time when the sale is completed.

Applications to the Strata Titles Board constitute another reason the collective sale process may be delayed. The earlier discussion on the nature of cases brought before the STB highlights some of the procedural and substantive issues that have been raised in relation to collective sale applications.

Financial factors. The critical (if not the most important) factor that both property owners and developers are equally concerned about is price. If agreement cannot be reached on this matter, it is almost impossible for the collective sale to be successfully concluded.

Thus, for example, some owners may be reluctant to sell their units as they are concerned about their tax exposure on the capital gains made where their units were purchased within the last three years; as a result of anti-speculative measures introduced in 1996, capital gains from properties sold within three years of purchase were taxable. In addition, an *ad valorem* stamp duty is payable by both the buyer and seller on the purchase of the property.

Yet another critical concern is the method of apportionment of sale proceeds and costs. While there is no standard method of apportionment, there are three that are commonly used in the industry for this purpose. These are apportionment by strata floor area, share value and general valuation. In addition, owners may agree to apportion the sale proceeds based on the average of the figure derived from the strata floor area and share value. This is especially so for properties that have a wide range of unit sizes and share values. Whichever method is used, it is still necessary to get the full consensus of the owners; this may yet again give rise to problems, as a particular method of apportionment may prove favourable to some unit owners while another method may favour the others. This may lead to the failure among the owners to reach agreement.

Changing market conditions. Market indicators in Singapore such as cautious market sentiment, the weak stock market, uncertainties in the region and most notably, concerns over the slowing economy in the USA, have been cited for the general slow-down in market momentum (Knight Frank, 2000). It has been shown above that collective sale activities have closely followed real estate market trends. Thus, whether a collective sale can be successful or not is therefore very much dependent on the prevailing state of the economy.

Such a situation arose in the case of *Ong Khim Heng Daniel* v. *Leonie Court Pte Ltd* [2001], 1 SLR 445. In this case, the buyers in an *en bloc* sale agreement attempted to back out of a sale and asked for the return of a $7.85 million deposit paid. This attempt

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was made, purportedly on the basis that the Board had not approved the application for the sale to proceed but there was evidence to show that property prices were also plunging at the time. It was clear on the facts that the reason the Board had not approved the application was due to a (rectifiable) procedural defect: this was that at the time when the Extraordinary General Meeting had been held, the per centage of subsidiary proprietors who had agreed in writing to the sale of the development owned less than the requisite 80 per cent of the share values (as required by section 84A of the LT(S)A). Thus, the Board held that the application was an invalid one. In the subsequent hearing before the High Court, it was held that the agreement continued to be valid and binding until the Board ruled on the matter after a second application by the requisite majority. This case clearly illustrates problems that can arise in the face of changing market conditions.

A suggested solution for dealing with flashpoints – the property consultant as mediator

The discussion above has considered the nature and types of some of the common problems that arise during the course of negotiating a collective sale. These factors are very much within parties' control. Research has shown that property consultants find the "human factor" the most difficult to manage (Sai, 2001; Teo, 1999). It is here suggested that in relation to this particular difficulty, as well as the others highlighted, the property consultant may well use to advantage, some of the techniques and strategies which have been developed in relation to mediation as an informal mechanism, to bring about a speedier conclusion to the collective sale negotiations.

Mediation has been described as "the intervention into a dispute or negotiation by an acceptable, impartial and neutral third-party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute: (Moore, 1986). It is submitted here that property consultants can be this "impartial and neutral third-party" and their proficiency in mediation techniques and strategies will prove to be useful. While the role that a mediator plays differs according to the type of dispute in question, there is a veritable smorgasbord of established mediation techniques (McLaughlin *et al.*, 1991; Wall and Callister, 1999), which property consultants can draw from in their role to facilitate the speedier conclusion of the collective sale. The following section, in which "mediator" refers to the property consultant negotiating a collective sale, considers some of the mediation techniques that may be adopted.

Studies on the experiences of Asian community mediators from Malaysia, South Korea, Japan and China (Wall and Callister, 1999; Kim *et al.*, 1993; Callister and Wall, 1997; Wall and Blum, 1991) indicate that it would be useful for the "opposing" factions to meet with the mediator, gather information and have the mediator to assist, educate and argue for concessions. Another feature of the Asian culture is the emphasis on not "losing face". This refers to a situation where parties are hesitant to accept certain proposals because they think that the other party may perceive them as weak or even wrong, and as a result, have to face humiliation. In negotiations, parties may sometimes find themselves in a position where they are unable to exit without "losing face" and it is here that the skilful mediator can steer parties away from issues which will lead to direct confrontation and from which they will be reluctant to back down, so as to avoid humiliation (*Singapore Academy of Law Newsletter*, 1998).

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The mediator has to be adept at prioritising and clarifying issues, so that a compromise may be facilitated (Kolb, 1983). Where the disputants are inexperienced in bargaining the mediator may assist to develop a coherent approach (Bethel, 1986). This is particularly relevant and important with regard to securing agreement on the purchase price of the collective sale site. The mediator may also attempt to "create impressions that the consequences of not agreeing to an alternative are not good" (Carnevale, 1986) and the possibility that there may be a need to engage other more costly dispute resolution methods, such as appeals to the Board.

In addition, the mediator can accurately analyse the disputants, in particular the parties' level of emotions, their perceptions, the degree of miscommunication and repetitive negative behaviour that may affect the dynamics of the negotiation (Moore, 1986). Thus, the mediator can assess, from the parties' attitudes, their willingness to resolve and the likelihood of reaching resolution; it requires some skill for the mediator to recognise which parties can be moved from their original stance and how. The mediator will also have to, as a fundamental strategy, press for a compromise. This may be the only way to discover disputants' true demands and bottom line (McLaughlin *et al.*, 1991). In order to do so, the mediator may have to hold separate caucuses with the parties. This is particularly useful where the parties appear aggressive and it also serves more than one strategic objective, such as to avoid confrontation, gather confidential information and for mediators to test the water for their recommendations (Carnevale, 1986).

Of course, the property consultant may already be (knowingly or unknowingly) utilizing such techniques and strategies or hybrids of these in negotiating a collective sale. However, it is submitted that property consultants who have acquired greater, and perhaps even formal exposure to mediation techniques, will be much better equipped to defuse tense situations, handle personality clashes and some of the other common difficulties encountered at the various stages of negotiating a collective sale. This will serve to smoothen and therefore expedite its conclusion.

Outlook for collective sales

The current weak market sentiment has caused many property owners to delay disposing of their units. At the same time, most people are cautious and selective when making purchases in the private housing market with prices expected to decline further by 4 per cent to 7 per cent in the first half of 2001 (Knight Frank, 2000). As discussed earlier, this is mainly due to the volatility of the stock market, the recent hike in oil prices and uncertainties in the political and economic wellbeing in the region, an example being the unstable political situation experienced in Indonesia in 1999/2000. All these have shaken the confidence of many property owners in Singapore, dampening the sentiment of most investors.

Developers have also become cautious in their bidding for land. When the GLS programme was announced in late 2000, it created competition for the developers' dollar. The mass of sites with potential for collective sales after the amendments to the LT(S)A only served to increase supply, and in turn, depressed land values. Thus, collective sale activities continue to remain subdued with the hike in the development charge rates in March 2000 and the collective sale market does not appear to be promising with the prospect that the number of sites with potential are likely to be left on the shelf for some time to come.

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Summary and conclusion

It may have been expected that the radical amendments to the LT(S)A would result in a deluge of collective sales in the property market. While the amendments have indeed facilitated collective sales, based on cases which have come before the STB and interviews with property consultants, this paper has identified some of the other common problems which may arise in the course of negotiating a collective sale. Such problems have resulted in inordinate delay and expense, and even in the proposed sales being aborted, thereby affecting the success rate of such sales. Of course, some of these problems are quite outside the parties' control, an example being the regional financial crisis that blighted the Singapore property market in 1998. However, the point remains that the full potential and objective of the amendments have not been unleashed due to various (non-legal) problems. Because the mere removal of legal obstacles (through radical amendments affecting fundamental property rights) has not yielded optimal results, the severe amendments could be likened to having used a Nasmyth hammer to crack a nut.

Nevertheless, it is clear from the paper that some of the problems which arise at the various stages of the collective sale may (at best) be averted, or (at least) be better managed if the property consultant assumes a more proactive and focused approach. In this regard, it is suggested that property consultants be well versed in mediation strategies and techniques so that they can be catalytic in steering a collective sale to a speedier and successful conclusion. This could lead to a higher success rate of collective sales and justify the means used (radical amendments) to achieve the end (optimization of land use).

Notes

1. Cap 314, Revised Edition, 1985
2. Cap 274, Revised Edition, 1985
3. Cap 152 Revised Edition, 1985
4. Cap 232, Revised Edition, 1990
5. See STB Nos 12 of 2000 and 19 of 2000. See also *Ong Khim Heng Daniel* v. *LeonieCourt Pte Ltd* [2001] 1 SLR 445.
6. See STB No 12 of 2000 paragraphs 45 and 46.
7. See STB Nos 14 of 2000 and 19 of 2000.
8. See STB No 19 of 2000 at paragraph 24.

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