# LDCS 21000/2022

**A**

**B**

**C**

**D**

**E**

**F**

**G**

**H**

**I**

**J**

**K**

**L**

**M**

**N**

**O**

**P**

**Q**

**R**

**S**

**T**

**U**

**V**

**A**

**B**

**C**

**D**

**E**

**F**

**G**

**H**

**I**

**J**

**K**

**L**

**M**

**N**

**O**

**P**

**Q**

**R**

**S**

**T**

**U**

**V**

[2024] HKLdT 75

### IN THE LANDS TRIBUNAL OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

### LAND COMPULSORY SALE MAIN APPLICATION NO 21000 OF 2022

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BETWEEN

|  |  |
| --- | --- |
| DREAM BIG DEVELOPMENTS LIMITED | Applicant |

|  |  |
| --- | --- |
| and |  |
| LIN MEI HUA (林梅花) | 1st Respondent |
| JOINT SUCCESS LIMITED (合順有限公司) | 2nd Respondent  (Discontinued) |
| CHEN PAOCHEN (陳寶珍) | 3rd Respondent  (Discontinued) |
| YANG MAN (楊滿) | 4th Respondent  (Discontinued) |
| YANG HSIUYING (楊繡霙) | 5th Respondent  (Discontinued) |

Before: Mr Alex Ng, Member of the Lands Tribunal

Date of Trial: 26 July 2024

Date of Judgment: 4 September 2024

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

JUDGMENT

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Background***

1. This is the applicant’s application for an order for sale, for the purposes of redevelopment under the Land (Compulsory Sale for Redevelopment) Ordinance, Cap 545 (“the Ordinance”), of all the undivided shares of and in two adjoining lots.
2. The first lot comprises the Remaining Portion of New Kowloon Inland Lot No 1961 and the Remaining Portion of Kowloon Inland Lot No 1962 (the 1st Lot”) together with a building erected thereon known as Hoi Sang Mansion, Nos 54 & 56 Fuk Wa Street, Kowloon (“the 1st Building”). The second lot comprises the Remaining Portion of New Kowloon Inland Lot No 1959 and the Remaining Portion of Kowloon Inland Lot No 1960 (the 2nd Lot”) together with a building erected thereon known as Nos 58, 58A & 60 Fuk Wa Street, Kowloon (“the 2nd Building”). In this judgment, the 1st Lot and the 2nd Lot are collectively referred to as “the Lots”, and the 1st Building and the 2nd Building are collectively referred to as “the Buildings”.
3. The 1st Building is a 6-storey tenement block served by a common staircase. An occupation permit No NK26/77 was issued for the 1st Building on 22 March 1977, granting permission to occupy its ground floor as 2 shops for non-domestic use and its 1st floor to 5th floor as 4 flats on each floor for domestic use. According to the approved building plans, there are 2 shops planned on the ground floor and 4 flats planned on each of the 1st to 5th floors. In addition, a yard is attached to each of the 2 shops on the ground floor, a flat roof is attached to each of the 4 flats on the 1st floor, and a roof is attached to each of the 4 flats on the 5th floor.
4. The 1st Lot together with the 1st Building standing thereon is allocated with 24 undivided shares. Each of the 2 shops is given 2 undivided shares and each of the 20 flats is given 1 undivided share, making up a total of 24 undivided shares.
5. The 2nd Building is also a 6-storey tenement block served by a common staircase. An occupation permit No NK 116/72 was issued for the 2nd Building on 10 October 1972, granting permission to occupy its ground floor as 2 shops for non-domestic use, its 1st floor to 2nd floor as 2 offices per floor for non-domestic use and its 3rd floor to 5th floor as 3 tenements per floor for domestic use. According to the approved building plans, there are 2 shops planned on the ground floor, 2 offices planned on each of the 1st to 2nd floors and 3 flats planned on each of the 3rd to 5th floors. In addition, a yard is attached to each of the 2 shops on the ground floor, a flat roof is attached to each of the 3 flats on the 3rd floor, and a roof is attached to each of the 3 flats on the 5th floor.
6. The 2nd Lot together with the 2nd Building standing thereon is allocated with 40 undivided shares. Each of the 2 shops is given 5 undivided shares, each of the 4 offices is given 3 undivided shares and each of the 9 flats is given 2 undivided shares, making up a total of 40 undivided shares.

***SECTION 3 OF THE ORDINANCE – OWNERSHIP OF THE APPLICANT***

1. The applicant filed a Notice of Application (“NOA’) on 23 September 2022, and has subsequently amended it on 4 July 2024 pursuant to the Order of the tribunal dated 13 June 2024. At the time of filing of the NOA, there were 5 respondents and the applicant owned 22 over 24 (i.e. 91.67%) undivided shares in the 1st Lot and 37 over 40 (i.e. 92.50%) undivided shares in the 2nd Lot.
2. Section 3(1) of the Ordinance prescribes that the minimum percentage of undivided shares that an applicant or applicants should possess before making an application under the Ordinance is 90%.
3. I am satisfied that as at the date of application, the applicant owned more than 90% of the undivided shares in each of the Lots. I am therefore satisfied the applicant is entitled to make the present application under section 3 of the Ordinance.

***The Remaining Respondent***

1. After the filing of the NOA, the applicant acquired Flat D on 1st Floor of Nos 54 & 56 Fuk Wa Street (i.e. the 1st Building) owned by the 2nd respondent and 2nd Floor of No 58 Fuk Wa Street (i.e. the 2nd Building) owned by the 3rd, 4th and 5th respondents, and have discontinued the proceedings against them. All opposition and evidence filed on behalf of the 2nd, 3rd, 4th and 5th respondents had also been withdrawn before the trial.
2. By the purchases of the units owned by the 2nd, 3rd, 4th and 5th respondents, the applicant becomes the 95.83% (i.e. 23 over 24 undivided shares) owner of the 1st Lot and the 100% owner of the 2nd Lot.
3. The 1st respondent, who owns Flat A on 1st Floor of the 1st Building (i.e. 1 over 24 undivided share in the 1st Lot), is a missing owner in these proceedings. Substituted service of the application on the 1st respondent was effected on 2 December 2022 pursuant to the Order of the tribunal dated 21 November 2022. No one has shown up after the expiration of the 21-day period as specified in the notices.

***Issues for Determination by the Tribunal***

1. The remaining issues to be decided in this case are as follows:
   1. What was the respective market value of each property in the Buildings as at 11 August 2022, the valuation date adopted in the application valuation report dated 17 August 2022, as assessed in accordance with Part 1 of Schedule 1 of the Ordinance?
   2. Whether the redevelopment of the Lots is justified due to age and/or state of repair of the Buildings in accordance with section 4(2)(a) of the Ordinance?
   3. Whether the applicant has taken reasonable steps to acquire all the undivided shares in the Lots on terms that are fair and reasonable in accordance with section 4(2)(b) of the Ordinance?
   4. If an order for sale should be granted, what should be the reserve price for the purpose of auction sale?
2. While one of the Lots is now wholly owned by the applicant, the applicant asks in these proceedings for an order of a combined sale of the Lots in one public auction. The applicant also asks for the reserve price to be set at the redevelopment value (“RDV”) of the Lots as a merged site and the respective market value of all properties in the Buildings as assessed in accordance with Part 1 of Schedule 1 of the Ordinance to be adopted for apportionment of the expenses and proceeds of sale of the Lots. The tribunal is required to determine whether these suggestions are acceptable.

***Determination of the market value of each property in the Buildings***

1. Pursuant to section 4(1)(a)(i) of the Ordinance, if there is a dispute between the parties on the market value of the properties as assessed in the application, the tribunal shall determine the proper value. Section 4(1)(a)(ii) further provides that, in the case of any minority owner of the lot who cannot be found, the majority owner of the lot is required to satisfy the tribunal that the value of the minority owner’s property as assessed in the application is: -

*“(A) not less than fair and reasonable; and*

*(B) not less than fair and reasonable when compared with the value of the majority owner’s property as assessed in the application.”*

1. The 1st respondent cannot be found in these proceedings.
2. The applicant relies on the reports and valuations of Mr Charles Chan of Savills Valuation and Professional Services Limited. Mr Charles Chan prepared the application valuation report on 17 August 2022, which assessed the market value of all properties in the Buildings as at 11 August 2022 in accordance with Part 1 of Schedule 1 of the Ordinance. He subsequently prepared a supplemental report on 28 April 2023, which reviewed the market value as initially assessed by him.
3. In the application valuation report, Mr Charles Chan adopted direct comparison method to assess the market value of each property in the Buildings. In the supplemental report dated 28 April 2023, Mr Charles Chan assessed the reference shop unit (i.e. Shop on Ground Floor of No 54 Fuk Wa Street) at $184,000 per square meter saleable, the reference office unit (i.e. 1st Floor of No 58 Fuk Wa Street) at $64,000 per square meter saleable, and the reference domestic unit (i.e. Flat B on 3rd Floor of Nos 54 & 56 Fuk Wa Street) at $83,000 per square meter saleable. He had then compared the reference units with the other properties in the Buildings.
4. In the absence of contrary evidence, I accept the market value of each property in the Buildings as assessed by Mr Charles Chan (i.e. the scenario as adopted by the applicant in these proceedings, which disregards the unauthorized building works in the Buildings). I am satisfied that the value of the property owned by the 1st respondent is not less than fair and reasonable and not less than fair and reasonable when compared with the value of the applicant’s properties.
5. The market value of all properties in the Buildings as at the relevant date of valuation, i.e. 11 August 2022, are appended below: -





1. I accept the total market value of the Buildings is $178,270,000 (i.e. $88,940,000 + $89,330,000).

***SECTION 4(2) OF THE ORDINANCE - JUSTIFICATION AND REASONABLE STEPS***

1. Section 4(2) of the Ordinance provides as follows: -

*“2. The Tribunal shall not make an order for sale unless, after hearing the objections, if any, of the minority owners of the lot the subject of the application under section 3(1) concerned, the Tribunal is satisfied that—*

*(a) the redevelopment of the lot is justified (and whether or not the majority owner proposes to or is capable of undertaking the redevelopment)—*

*(i) due to the age or state of repair of the existing development on the lot; or*

*(ii) on 1 or more grounds, if any, specified in regulations made under section 12; and*

*(b) the majority owner has taken reasonable steps to acquire all the undivided shares in the lot (including, in the case of a minority owner whose whereabouts are known, negotiating for the purchase of such of those shares as are owned by that minority owner on terms that are fair and reasonable).”*

1. The applicant must satisfy this tribunal the above statutory requirements are met; otherwise, an order for compulsory sale would not be granted.

*Whether development of the Lots is justified due to the age and/or state of repair of the Buildings*

1. The applicant adduces expert evidence of Mr K S So, a structural engineer, of K S So & Associates Limited and Mr Benson Wong, a building surveyor, of Benson Wong & Associates Limited. Mr K S So conducted a structural survey of the Buildings and prepared a Structural Assessment Report dated 27 April 2023. Mr Benson Wong conducted a condition survey of the Buildings and prepared a Condition Survey Report dated 2 May 2023.
2. No expert evidence has been adduced to rebut the reports complied by Mr K S So and Mr Benson Wong.
3. Having considered the reports of Mr K S So and Mr Benson Wong, I accept their expert opinion. The Buildings, being erected of about 47 and 52 years ago respectively, are in poor condition and have come to the end of their design working life. The designs of the Buildings have become obsolete over time in many aspects, both physically and functionally, and fail to conform to modern safety standards and statutory requirements.
4. I am also of the view the Buildings are in poor state of repair and the costs of repair to bring the Buildings to tenantable condition is disproportionate to the costs for reconstructing new similar superstructures. Even if repair works are carried out, such works will bring about a modest improvement only to the existing condition of the Buildings and the Buildings will continue remain a sub-standard one.
5. By reason of the matters set out above, I am satisfied the redevelopment of the Buildings is justified.

*Whether the applicant has taken reasonable steps*

1. Given that the 1st respondent is a missing owner, Mr Mok Yeuk Chi, counsel for the applicant, submits that the applicant has no obligation under the Ordinance to negotiate with the 1st respondent to acquire the 1st respondent’s undivided share on terms that are fair and reasonable. Section 4(2)(b) of the Ordinance imposes the obligation to negotiate only in respect of “*a minority owner whose whereabouts are known*”. I agree.
2. Nonetheless, before the applicant discovered that the 1st respondent is a missing owner, the applicant had made a written offer to the 1st respondent and sent it to the 1st respondent’s property on 23 August 2022. The offer price at $4,900,000 had made reference to the valuation of Mr Charles Chan and had also reflected the then pro-rata share of the RDV.
3. On the evidence available, I accept that the offer price had reflected the proportionate share of the RDV of the Lots and do fall within the range of what may broadly be regarded as fair and reasonable compensation for the interest in question.
4. By reason of the matters set out above, I am satisfied the applicant has taken reasonable steps to acquire all the undivided shares in the Lots.

***Rdv of the lots as at 2 july 2024***

1. By reason of being satisfied that redevelopment of the Lots is justified and that the applicant has taken reasonable steps to acquire all the undivided shares in the Lots, I am satisfied an order for sale should be granted in favour of the applicant.
2. In the supplemental report dated 4 July 2024, Mr Charles Chan assessed the RDV of the Lots (i.e. a Class A site of 429.21 square meters) as at 2 July 2024 by residual method at the plot ratio of 8.4375 (i.e. non-domestic plot ratio of 0.9375 and domestic plot ratio of 7.5) and the total gross floor area of 3,621.46 square meters (i.e. excluding exempted green features). He proposed to build a 25-storey commercial/residential composite building with retail units, plant room and domestic entrance lobby on ground floor; retail units, clubhouse and plant room on 1st floor; and 90 residential units from 2nd to 24th floors.
3. In the residual valuation, Mr Charles Chan assessed the gross development value (“GDV”) by direct comparison at $539,578,991 (i.e. average ground floor retail unit rate at $184,000 per square meter saleable, average 1st floor retail unit rate at $61,333 per square meter saleable and average domestic unit rate at $197,000 per square meter saleable). He adopted (i) demolition cost at $2,200 per square meter gross; (ii) construction cost at $54,601 per square meter gross; (iii) development period of 2.5 years (i.e. demolition period of 6 months and construction period of 2 years); (iv) marketing cost at 3% of the GDV; (v) professional fees at 6% of development costs; (vi) interest rate at 5.5% per annum; and (vii) developer’s profit at 18% (i.e. with additional allowance for stamp duty at 4.25% and legal cost at 0.1% on residual land value). Finally, he assessed the RDV of the Lots as a merged site at $183,000,000 (i.e. accommodation value of $50,532 per square meter / $4,695 per square foot)
4. Having gone through Mr Charles Chan’s assessments in his supplemental report dated 4 July 2024, I accept his residual valuation. Although I may not agree with him each and every item in his valuation, I am of the opinion that the overall result is fair and reasonable and reflects the market value of the Lots as at the valuation date. I consider that the interest rate as adopted by him at 5.5% per annum is relatively high, but I am of the view the developer’s profit at 18% is relatively low.
5. Mr Charles Chan had previously assessed the RDV of the Lots as at 11 August 2022 at $290,000,000 and as at 27 April 2023 at $227,000,000, which are higher than his latest assessment as at 4 July 2004 at $183,000,000. Nonetheless, given that property price had been dropping and the property market was uncertain as at the valuation date, I share his view that land price had been dropping too.
6. Based on the residual valuation of Mr Charles Chan and my above determination, the Lots as at 2 July 2024 is assessed at $183,000,000.

***sale of the lots as a merged site***

1. Given that the applicant is now the 100% owner of the 2nd Lot, the applicant applies at trial for an order for sell of the undivided shares of and in the 1st Lot for the purposes of the redevelopment of the 1st Lot pursuant to the Ordinance. Further and/or alternatively, the applicant also applies for an order (i) to sell the 1st Lot together with a direction under the Ordinance to the trustees (to be appointed) to sell the 1st Lot together with the 2nd Lot in one public auction under one single reserve price for both the 1st Lot and the 2nd Lot; and (ii) if necessary, to apportion the net auction proceeds and the expenses of the public auction between the 1st Lot and the 2nd Lot according to the ratio of the market values of all properties in both the 1st Lot and the 2nd Lot as determined by the tribunal.
2. From valuation perspective, the value of a merged site, which would release marriage value in most cases, is generally higher than the aggregate of individual site values of the lots thereof. By looking at the achievable auction price alone, a higher reserve price in public auction that can increase the minimum share of the minority owner in monetary terms would generally not prejudice the interest of the minority owners. Hence, subject to a fair and equitable apportionment of the sale proceeds that will be discussed in the paragraphs below, I agree that the Lots be sold together in one public auction and the RDV of the Lots as assessed at $183,000,000 on a merged site basis should be the reserve price for public auction of the Lots.
3. Nonetheless, since both the 1st Lot and the 2nd Lot are put up for sale together in one public auction for redevelopment purposes, it is justified that both the 1st Lot and the 2nd Lot, instead of the 1st Lot only as proposed by the applicant, be subject to a 6-year building covenant in their proposed sale.

***apportionment of the sale proceeds and Expenses***

1. Even though the reserve price is set on a merged site basis, there are questions on apportionment of sale proceeds and expenses. In these proceedings, the applicant applies for an order to adopt the ratio of the market value of each property in the Lots over the total market value of all properties in the Lots as determined by the tribunal for the apportionment.
2. I note in these proceedings that the site areas of the 1st Lot and the 2nd Lot are the same, the difference in building density of each of the Buildings is not substantial, and the difference in aggregate market values of all properties in each of the Lots (i.e. $89,330,000 - $88,940,000 = $390,000) is minimal. Whilst, the financial benefits from marriage value on a merged site basis could outweigh the inequality in this regard if any on apportionment. In this connection, I am of the view that the sale proceeds and the expenses could be apportioned in accordance with the respective market value of each property in the Buildings and such apportionment on a merged site basis would not prejudice the interest of the 1st respondent.

***Orders***

1. For reasons given in this judgment, I have set out reasons why I am satisfied an order for sale should be granted and I therefore make the following orders: -
   1. All the undivided shares in the Lots, the subject of the application, be sold by way of one public auction under one single reserve price for the purposes of redevelopment of the Lots;
   2. Mr Ma Ho Fai and Ms Kung Ying Chang, nominated by the applicant, be appointed the trustees (“the Trustees”) to discharge the duties imposed on them as trustees by the Ordinance in relation to the sale of the Lots and as directed by the tribunal;
   3. The Trustees be authorized to charge such remuneration for their services in accordance with the terms set out in the letter of Messrs Woo Kwan Lee & Lo dated 21 June 2024;
   4. For the purposes of the sale of the Lots by public auction: -
      1. the sale of the Lots be on the particulars and conditions of sale the same or substantially the same as those set out in the draft Particulars and Conditions of Sale to be approved and initialed by the tribunal;
      2. sections 6 and 7 of the Ordinance shall apply to the sale of both the 1st Lot and the 2nd Lot;
      3. the reserve price for the Lots be set at $183,000,000;
      4. The ratio of the respective market value of each property in the Lots over the aggregate market value of all properties in the Lots as determined by the tribunal be adopted for apportionment of the expenses and proceeds of sale of the Lots; and
      5. subject to further extensions that the tribunal may subsequently allow upon the application of the purchaser of the Lots or its successor in title, the redevelopment of the Lots and the Buildings shall be completed and made fit for occupation within a period of 6 years after the date on which the purchaser of the Lots becomes the owner of the Lots;
   5. The applicant do publish notices once in a Chinese newspaper (and in the Chinese language) and once in an English newspaper (and in the English language) circulating generally in Hong Kong within 7 days from the date of the sealed judgment informing the 1st respondent and all persons claiming to be the owners of the Lots: -
      1. that the tribunal has made an Order for sale of the Lots;
      2. that the Lots be sold by one public auction; and
      3. where and the times during which a copy of the Order for sale can be obtained;
   6. Liberty to the applicant, the 1st respondent, their respective successors in title, and the Trustees to apply to the tribunal for further directions.

***Costs***

1. I make a costs order *nisi* that there be no order as to costs. Unless any parties apply by summons to vary, the costs order *nisi* shall be made absolute upon expiry of 14 days from the date of this judgment.

|  |  |
| --- | --- |
|  | (Alex Ng)  Member  Lands Tribunal |
|  |  |

Mr Mok Yeuk Chi, instructed by Mayer Brown, for the applicant

The 1st respondent was not represented and did not appear