



Alone or together? Part I

Could an applicant apply under section 3(2) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) for an order of compulsory sale of lot or lots that are not 100% owned together with lot or lots that are already 100% owned? This question was answered by the Court of Appeal (CA) in *Bond Star Development Limited v Capital Well Limited*¹ in the negative. However, the Court of Final Appeal (CFA) when giving judgment on the appeal from CA commented *obiter* that the question should be kept open². CFA thought that if the power under section 3(2)(a) was so confined as CA had held, the policy intention of the Ordinance might be undermined.

The comments of CFA led to different decisions by the Lands Tribunal. One line is represented by *Supergoal Investment Limited v Five F Ming House Limited & Ors*³ and *Many Gain Investment Limited v Chan Fai Ho & Ors*⁴. The Tribunal took the view that the comments of CFA had undermined the binding authority of CA decision and the Tribunal was therefore free to depart from it. Accordingly, it answered the question in the positive. The other line is represented by *Day Bright Development Limited & Ors v Choi Pak Ling & Ors*⁵ and *First Kind Limited & Ors v Liu Keng Chor, Administrator of the estate of Li Fung Man, deceased & Ors*⁶. A differently constituted Tribunal applied the principle in *Commissioner of Inland Revenue v Indosuez WI Carr Securities Limited*⁷ and considered itself bound by CA decision in *Bond Star* as the comments of CFA had not doubted the reasoning or the interpretation process of CA.

It seems that we have to wait for the final word of CFA on the contested issues.

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¹ [2003] 4 HKC 22.

² *Capital Well Limited v Bond Star Development Limited* (2005) 8 HKCFAR 578.

³ [2014] 1 HKLD 286.

⁴ [2013] HKCU 2755 (LDCS 2800/2012, 29 November 2013, unreported).

⁵ [2014] 4 HKC 364.

⁶ [2016] HKLT 52 (LDCS12000/2014, 6th May 2016, unreported).

⁷ [2002] 1 HKC 359 at 381.

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PLEASE NOTE

The law and procedure on this subject are very specialized. This article is a general explanation for your reference only and should not be relied on as legal advice for any specific case. If legal advice is needed, please contact our solicitors.

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