

Breaking new ground – filling a gap in Cayman’s strata laws

Lawyer Daniel Priestley of Priestleys highlights a flaw in the Cayman Islands’ strata laws

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The concept of redeveloping land is hardly revolutionary and, indeed, in the vast majority of cases, it is inevitable that, in the fullness of time, any building will become obsolete and in need of renewal.

Just as in any other jurisdiction, the laws of the Cayman Islands are the creation of humans, and, as such, can never be and will never be perfect or comprehensive. However, there is a particularly glaring gap in our real estate laws: our Strata Titles Registration Law does not envisage the redevelopment of a strata plan by its proprietors.

This article seeks to explain this gap and to show how it has been filled, thereby establishing the precedents necessary for any strata corporation to proceed with its own redevelopment, safe in the knowledge that the desired result can be achieved.

Obviously, physical redevelopment is not the problem: anyone can hire a contractor to knock down his building and construct a new one in its place, subject to obtaining the necessary planning permission. Furthermore, there is no problem when it comes to a reinstatement or, if a strata corporation chooses to do it, exactly replicating the structures that existed prior to demolition.

But what if, as is highly likely to be the case, the proprietors wish to create something completely different than had existed before?

An examination of the Strata Law provides no guidance as to how this is to be done. Section 23 tells us that when a building or strata plan is destroyed (presumably whether intentionally or by act of God) and is not to be reinstated, the strata corporation must file notice with the Registrar of Lands, at which point, the proprietors cease each to own their respective strata lots and instead become common owners of the whole of the land comprising the strata plan in proportions equal to their previous unit entitlements as a proportion of the aggregate unit

entitlements. The land could then be sold, at which point, presumably, each proprietor gets his share and that is the end of the matter.

However, this does not solve the problem of proprietors wishing to redevelop. As we know, it is the byelaws of a strata corporation which form the constitutional basis of a strata plan – maybe there is some help to be found there? Unfortunately, there is not. Section 21(4) of the Strata Law makes this clear by saying: “No byelaw shall operate to prohibit or restrict the devolution of strata lots or any dealing therewith.”

Redevelopment of a strata plan therefore falls outside the constitution of a strata corporation and outside our laws.

On this basis, any attempt to effect such a redevelopment can, on the face of it, immediately be



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stopped by any proprietor on the basis that such an action would be ultra vires or, in plain English, outside the scope of authority which the strata corporation has conferred on it by the byelaws and our laws.

Having said this, the laws of the Cayman Islands are “permissive”, which means that anything which is not specifically prohibited by law is permitted. In this case, the implication of that principle is that because redevelopment of a strata



plan is not prohibited, it is permissible to do it but, up to now, there has been no guidance as to how, and this is where some creativity is required.

It is suggested that it is only with the consent of the proprietors by unanimous resolution in general meeting that the strata corporation can derive the necessary authority to procure the redevelopment.

The existence of the unanimous resolution will operate as a so-called “estoppel” which would provide the strata corporation with the means to prevent a proprietor from denying that the necessary authority had been conferred.

Having said this, the passing of such a resolution merely deals with the ultra vires issue. In voting the

resolution, proprietors act in their capacity as members of the strata corporation and it is questionable, to say the least, whether those proprietors are capable, in the forum of a meeting of a strata corporation, to make an agreement with the strata corporation which deals with all of the usual issues that arise in any contract by which one party agrees to perform construction services for another. It is further suggested therefore that the strata corporation must enter into a separate redevelopment agreement with each proprietor in which these issues are dealt with.

There then remains the issue of how to get title to a strata lot which is materially different to the strata lot it replaced vested in the

proprietor. As the Strata Law is silent on this issue, it was agreed by the Lands and Survey Department that as a matter of interpretation of the Strata Law, where Notice of Destruction had been filed, the relative strata plan would cease to exist but the relative strata corporation would remain in existence and be permitted to file a new strata plan by following the requirements of Section 10, in the usual way. This, however, results in all of the strata lots being registered in the name of the strata corporation.

It was further agreed by Lands & Survey that in order to transfer title to a strata lot into the name of the proprietor entitled to it, a transfer of land would have to be executed by the strata corporation pursuant to Section 14. Whilst this solves one problem, it also creates another because, on the face of it, any such transfer would be subject to payment of stamp duty in the usual way.

Fortunately, this problem was overcome due to the practical extrapolation of our laws. The Financial Secretary has a general discretion to waive or reduce stamp duty and he will usually exercise this discretion where and to the extent that it can be shown that the proposed transfer does not result in any increase in beneficial ownership of the land being transferred.

In the case giving rise to the formulation of this process, there were 18 units in the old development to be replaced by 37 units in the new development, with each proprietor getting only one unit for each unit held. This meant that each existing proprietor’s interest in the development was actually cut by roughly one-half.

By demonstrating that existing proprietors’ interests in the new development would not exceed their respective interests in the old development, the Financial Secretary exercised his discretion and granted an abatement of stamp duty on the transfers from the strata corporation to the existing proprietors, which provided the final piece to this particular puzzle.

Quod Erat Demonstrandum (QED).

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