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Private Lease Scheme (PLS): A Generational Curse

IN a previous article, we wrote about a fictional character by the name of Albert. The facts are briefly:

“Albert buys a Private Lease Scheme (PLS) property and he has a 2-year old son. At the time of purchase, the balance lease period is say 95-years. Assuming say 35-years later, Albert’s son is now 37-years old and want to sell this PLS property to upgrade to a better property and the lease remaining for the PLS property has been reduced to 60-years”.

Beware the oppressive Private Lease Scheme (PLS) – Part 3 Inheritance of PLS

Continuing with the facts above, let us assume Albert does not sell the PLS property and continues to stay in the PLS property till he passes away. Albert leaves behind a son name Ben and daughter name Cathy. They are his beneficiaries under Albert’s Last Will & Testament (‘Will’). Ben is named as the executor of Albert’s last Will.

In the usual way, Ben and Cathy, as the beneficiaries to Albert’s estate desire to transfer Albert’s assets into their own names according to the terms of the Will. They engage lawyers to help them to apply for a Grant of Probate at a particular High Court. After a short two (2) month process where the application goes smoothly, the High Court issues the Grant of Probate.

Ben is named as the executor to Albert’s estate in the Grant of Probate. Under the Probate and Administration Act, 1959, he is empowered to attend to the distribution of Albert’s assets, whatever they are, be it cash or savings or shares or properties. Ben instructs his lawyers to transfer the PLS property to his sister and him in accordance to Albert’s last Will.

His lawyers informs him that there is no registration of transfer of the PLS property into their names because the PLS property is just a sub-lease. The developer is not the owner of the land. The developer derived their lease from the land owner/ proprietor and then sells to Albert. Therefore, Albert is the sub-lessee only. There is no transfer of ownership of a sub-lease at the land registry to Ben and Cathy.

Ben is puzzled by his lawyer’s information and decides to contact the developer that sold and constructed the PLS property to get to the bottom of things. He finds the developer’s contact details in scrap of paper from Albert’s belongings and Googles the name and address of the developer.

Ben finds nothing appear when he types in the developer’s name. Since the PLS property was purchased 60 years ago, Ben later finds out from *Wikipedia* that the developer had undergone several changes of management and change of names. The developer was wound up 10 years ago due to poor management and the sub-prime crisis in the year 2008. Ben’s lawyer advised Ben to speak to the insolvency officer who was in charge of the developer’s file at the Insolvency Department.



Be aware that you can not transfer PLS property into your own name because the PLS property is just a sub-lease. The developer is not the owner of the land.

He goes to the branch of a particular Insolvency Office and tries to find out about the developer and how he can get a transfer of the sub-lease to the PLS property to him and Cathy. The officer tells Ben to write in and Ben in turn tells his lawyer to write in.

Meanwhile, Ben’s lawyer does a land search on the property title on which the PLS property sits. The land owner/ proprietor is no longer the same corporation 60 years ago. A different name appears. Ben’s lawyer tries to contact the new corporation and was told that as a result of a merger and acquisition, the corporation that previously owned the land is now defunct and the power of attorney given by the previous land owner to the developer has been revoked by a Court Order as the previous land owner and the developer had parted ways after a spate of litigation.

Ben’s lawyer writes to the Insolvency Office since the developer is wound up and after 6 months and 10 reminder letters (*pun intended*) later, Ben’s lawyer finally receives a letter from the Insolvency Office confirming that Ben and Cathy’s name are listed as the new owners of the PLS property but Insolvency Office does not guarantee any transfer or vesting of interest in the land to Ben and Cathy.

By now, Ben and Cathy are frustrated and tired. They are also using a lot of their energy and resources to obtain information and documents. Ben and Cathy decide that the easiest way out is to sell the PLS property so that they do not need to deal with all these paperwork and processes.

Faced with Reality

In the year 2018, the market value of the PLS property which Albert had bequeathed to Ben and Cathy was estimated to be about RM250,000. Ben was told by his neighbours living around the same area as the PLS property that the value has not appreciated because the lease will expire in 30 years. He was told by estate agents that one of the ways to increase the market value is to

extend the lease.

Ben thought it was a sound idea and instructs his lawyers to apply for extension of the PLS lease from the new corporate land owner. The corporate land owner replies the land owner will not be renewing the lease given to the developer.

Ben and Cathy are shocked. Ben’s lawyer issues a letter to the land owner to demand that they renew the lease or compensate Ben and Cathy through damages. The lawyer for the land owner issues a reply informing Ben and Cathy that the land owner has no obligations to renew a sub-lease: *“It’s the prerogative of the land owners/ proprietor”*, he said.

This right of renewal is not automatic and the land owner does not owe a duty to Ben and Cathy. The original Sale and Purchase Agreement did say that renewal of any lease is subject to a set of terms and conditions and solely at the discretion of the land owners/ proprietor. Also, for strata schemes, all the owners of the PLS development must by unanimous resolution agree to the extension of lease and pay a 10% premium.

Since this PLS property is a strata scheme with 600 units, Ben and Cathy is at a loss how they will be able to get a unanimous resolution. Ben remembers how Albert used to share about the different factions within the PLS’s joint management body/ committee members, each with their own agenda and interest. This is another obstacle encountered by Ben.

Ben’s lawyer writes to the Insolvency Office and tries to get them to intervene. Insolvency Office informs Ben’s lawyer they are not empowered to extend the lease to the PLS because they are not the land owners/ proprietor. Ben’s lawyers write to the land authorities on the plight of the PLS property and the issues Ben and Cathy are facing. The land authorities decline to take action because there is no fraud or dishonesty in the creation or sale of the PLS property to Albert. To them, it was a legitimate sale and purchase transaction.

They were of the opinion that since this was a private lease as opposed to a lease from the state authority, they are unable to offer much assistance. Ben’s lawyer makes a final attempt to write to the Ministry of Housing to seek assistance and were then informed the PLS is a good scheme because the land owner can reuse their lands repeatedly and Albert (their father) should have read the terms of the Sale and Purchase Agreement carefully before committing himself 60 years ago.

Inheriting problems

So at the end of long journey, Ben and Cathy explore various options available to them. They thought about suing the new corporate land owner but the legal fees and time spent pursuing an action was daunting to them as they are not rich. They then explored the option of selling the PLS property at a very low price but they know most potential purchasers will shy away if they know the PLS lease will expire in 30 years and the chances of renewal or extension of the lease is uncertain. Obviously, the Banks will not finance the purchase of an expiring lease.

Ben and Cathy feels that the PLS property which was supposed to a good inheritance from Albert has turned into a burden with no solution. Ben and Cathy knows that either at the end of their lifetime or after them, Ben and Cathy’s children can expect not to count this PLS property as part of the family assets. Ben and Cathy then informs their own children that this PLS property will be written off after 30 years because the PLS property will be returned to the new corporate land owner/ proprietor.

The moral of the story is to face reality: Private Lease Scheme instead of a blessing turned into a Curse.

This article was contributed by The National House Buyers Association to the Real Spaces team and was edited by Gunaprasath Bupalan.



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