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ADMINISTRATIVE AND
CONSTITUTIONAL LAW
PRACTICE GROUP

A HUA HIN CONDOMINIUM CASE: UNIT OWNERSHIP CERTIFICATE REVOKED BY COURT

Buyers would generally assume that they have made a safe and secure investment in a condominium unit if they obtain clean legal title to the unit. However, according to a recent Supreme Administrative Court decision, clean legal title may be insufficient to secure ownership as such title may be revoked if issued in an unlawful manner.

Unlawful Unit Ownership Certificate Issued Leading to Suit by Condominium Juristic Person Against Authority to Seek Revocation.

Pursuant to a recent Supreme Administrative Court decision, a Hua Hin condominium juristic person, as representative of the unit owners, took legal action against the Land Department and the relevant officials of the Land Department. Claiming that it suffered damage as a result of the Land Department's unlawful issuance of a condominium unit ownership certificate ("**Unit Ownership Certificate**"), the plaintiff requested that the Unit Ownership Certificate for the unit in question be revoked. The Land Department defended its action and argued that if the Unit Ownership Certificate is revoked, official documents will be deemed unreliable by the public and bona fide third parties will suffer damage.

Facts: Condominium Unit vs. Elevator Maintenance Room.

In this case, under the construction plans approved under the applicable building control laws, the area in question was to be used as an elevator maintenance room, which is common property belonging to all condominium unit owners. However, according to the layout plans submitted for condominium registration, such area was not listed as common property, but as a condominium unit. The unit was sold by the developer to a buyer, and was resold to another buyer before it was finally resold to the current owner. The latest price purchased by the current owner was Baht 4.2 million.

Different Details in Construction Plan under Building Control Law and Layout Submitted for Issuance of Unit Ownership Certificate Deemed Unlawful.

The Supreme Administrative Court ruled that since the layout plans submitted for condominium registration is different from the construction plans approved under the building control law, such difference is deemed to be unlawful modification of the building. Therefore, the Land Department's registration of the condominium and issuance of the Unit Ownership Certificate by relying on the layout plans different from the construction plans approved under the building control law is unlawful, as the area to be used as common property was unlawfully changed to private property.

Revocation by the Court and Remedy Availability.

As Thai law provides that the issuance of Unit Ownership Certificates will take place once approval for the construction of the condominium has been obtained under the building control law, and after registration of the condominium has been completed, it is therefore important that the layout plans used in the approval process of the condominium be consistent with those approved under the building control law. The court therefore ordered that the Unit Ownership Certificate be revoked. The court also noted that as the revocation affects the current owner of the condominium unit, she is entitled to seek remedy by taking legal action against the Land Department for the wrongful act committed by its officials.

Conclusion

Buyers should therefore conduct proper legal due diligence investigation to ensure that when acquiring a condominium unit, the Unit Ownership Certificate will not be subject to subsequent revocation. On the other hand, buyers can find some comfort in the Supreme Administrative Court's ruling which provides a remedy against the land department if the Unit Ownership Certificate is revoked. Nevertheless, this will be a separate case, and will generally take a few years.

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Important Note and Disclaimer

The content of this Newsletter is prepared as of 7 November 2008.

This Newsletter is informational in nature and is not to be considered as legal advice. It does not exhaustively cover the subjects which it treats, and is only intended to address some of the key issues. When specific questions arise in practice, it is necessary to obtain appropriate legal advice.