# Tang Dynasty City Pte Ltd v Tan Seng Heng
# [2000] SGHC 56

**Case Number** : Suit 1073/1999, RA 521/1999

**Decision Date** : 08 April 2000

**Tribunal/Court** : High Court

**Coram** : Judith Prakash J

**Counsel Name(s)** : Kelvin Chia (Balkenende Chew & Chia) for the plaintiffs; Aqbal Singh (Chan Ng Aqbal) for the defendant

**Parties** : Tang Dynasty City Pte Ltd — Tan Seng Heng

## JUDGMENT:

### GROUNDS OF DECISION

1. The plaintiffs made two claims against the defendant. The first was for the sum of $3,250,000 arising under an undertaking dated 24 March 1997 and the second was for the sum of $108,654 (with interest continuing to accrue on the principal sum of $105,000) arising under a deed of guarantee dated 11 February 1999.

2. The plaintiffs obtained summary judgment against the defendant for both claims on 13 December 1999. The defendant then appealed against the registrar's decision. I heard the appeal on 25 January 2000. At the hearing, the defendant dropped his appeal in respect of the amount claimed under the deed of guarantee but continued with the appeal against the judgment for the sum of $3,250,000 claimed under the undertaking. I dismissed this appeal for the reasons that follow.

**Background**

3. In December 1996, the plaintiffs were the lessees under a 30-year lease of the whole of private lot A7312 comprising part of Government Resurvey Lot 1785 of Mukim 6 Peng Kang ('the property'). They had erected a theme park known as Tang Dynasty Village on the property and their main business was that of operating the theme park.

4. The defendant was then the managing director of a Singapore company called Admiralty Leisure Pte Ltd ('ALPL') that wished to purchase the lease of the property and take over the theme park together with its fittings and equipment. On 7 December 1996, a purchase and sale agreement to this effect was entered into between the plaintiffs as vendors and ALPL as purchasers. The sale was made conditional on certain 'Necessary Approvals' being obtained by 7 April 1997. Amongst these approvals was the consent of the lessor of the property, Singapore Leisure Industries Pte Ltd, to the sale of the lease to ALPL. If any of the Necessary Approvals was not obtained within the requisite period, the sale and purchase would not be proceeded with.

5. Clause 3.1.1 of the sale agreement obliged the plaintiffs to apply to the lessor for consent to sell the property to ALPL within seven days of the date of the agreement. The plaintiffs duly made the application but the lessor took some time to respond. By mid March 1997, it was clear that the lessor's approval was unlikely to be obtained by the specified date of 7 April 1997. It was the only one of the Necessary Approvals that was still outstanding. The defendant then requested the plaintiffs to grant an extension of time of four months (ie up 7 August 1997) for the lessor to consent to the sale of the property to ALPL.

6. The plaintiffs agreed to the defendant's proposal subject to his entering into an undertaking and indemnity with them. This document was signed by the defendant on 24 March 1997. By it the defendant agreed and undertook that in the event all Necessary Approvals were obtained on or before 7 August 1997 and ALPL thereafter refused or neglected to pay the sum of $7,050,000 being the 15% of the sale price due under cl 5 of the sale agreement and/or the sum of $2,700,000 being a payment due to the plaintiffs under cl 4.1.2 of a supplemental agreement dated 7 December 1996, he would pay the plaintiffs the said sums and indemnify them against all loss and damage suffered by them as a result of ALPL's failure to pay the same.

7. By a letter dated 11 July 1997, the lessor informed the plaintiffs' solicitors that it had 'no objection in principle' to the plaintiffs' assigning the property to ALPL as the assignee/lessee subject to various terms and conditions. One of these was that the assignment had to be completed on or before the expiry of three months from the date of the lessor's letter. The letter also required the plaintiffs and ALPL to accept the offer from the lessor by submitting various specified documents to it by 7 August 1997.

8. The parties had some difficulty with the condition requiring completion within three months of the lessor's letter as the sale agreement provided 75% of the purchase price to be paid by 12 instalments the last of which was scheduled for 7 September 1998. Only upon full payment would the lease be assigned to ALPL. Both parties wrote to the lessor asking it to modify this condition. The lessor refused to modify its condition about the assignment, however, although it did agree to enter into a fresh building agreement with ALPL. In the event the assignment was completed within the time period specified by the lessor.

9. Pursuant to cl 5 of the sale agreement and cl 1.2 of the supplemental agreement, ALPL was to pay the sums of $7,050,000 and $2,700,000 to the plaintiffs after the Necessary Approvals had been obtained. ALPL did not, however, make payment of the full amount to the plaintiffs after 7 August 1997. Instead, ALPL paid the plaintiffs only $6,500,000 on 21 September 1997. As a result, there was a balance due to the plaintiffs of $3,250,000. This was the amount that the plaintiffs proceeded to claim from the defendant under his undertaking.

Submissions and decision

10. The defendant's main argument before me was that the Necessary Approvals were not obtained before 7 August 1997 because the lessor's letter of 11 July was a conditional approval and that approval did not become a 'Necessary Approval' until all the terms and conditions in the letter had been fulfilled. There was one condition in the letter that was not fulfilled by either the plaintiffs or ALPL before 7 August 1997 and therefore the terms of the sale agreement had not been complied with within the extended period. Basically, the submission was that the 'Necessary Approval' specified in the sale agreement had, in relation to the lessor, to be an unconditional approval.

11. I was not able to accept the defendant's submission. The lessor, when requested by the plaintiffs for consent to the intended sale and purchase of the property, had three possible courses of action. It could reject the request, it could consent to the transaction without conditions or, thirdly, it could agree to the transaction with conditions. The defendant was aware of this and he conceded in his first affidavit that the lessor had the right to impose conditions on its consent. That this was a likely outcome of an application for consent was recognised in the sale agreement itself since it contained provisions specifying how certain conditions if imposed by the lessor would be treated.

12. As the plaintiffs submitted what the defendant was trying to do was to say that it was agreed that any conditions that might be attached to the lessor's approval had to be accepted by the parties by the deadline of 7 August 1997, otherwise the lessor's consent was a conditional one which could not constitute a 'Necessary Approval'. I agreed with the plaintiffs' submission that the defendant was confusing the lessor's consent which alone was a Necessary Approval with the parties' acceptance of the conditions attached to the consent. The date of acceptance of the lessor's conditions had nothing to do with the date when the lessor issued consent. That date was 11 July 1997 and was well within the period specified for receipt of the approvals.

13. Further, even if the defendant was correct to say that the lessor's conditions had to be accepted on or before 7 August 1997, the evidence was that such acceptance did take place by that deadline. When the lessor made it clear to both parties that the conditions in the 11 July letter remained unaltered, the parties accepted this position. Both sent letters to the lessor on 7 August 1997 agreeing to accept the lessor's conditions. The plaintiffs' letter was written by themselves whilst ALPL's solicitors wrote on their clients' behalf.

14. At the time the parties were clear that the lessor's letter of 11 July 1997 qualified as the lessor's approval of the sale. This is

shown in the way that ALPL treated the stakeholding money. Under cl 4.1 of the sale agreement, ALPL had to pay by way of deposit a sum of $4.7 million of which $500,000 was to be paid directly to the plaintiffs while the balance of $4.2 million was to be held by the plaintiffs' solicitors as stakeholders until all the Necessary Approvals had been obtained whereupon the plaintiffs' solicitors were entitled to release the said balance to the plaintiffs without reference to ALPL.

15. On the same day that the lessor sent its letter of consent to the sale and purchase of the property, ALPL's solicitors wrote to the plaintiffs' solicitors to inform the latter that ALPL's instructions were that the balance of the ten percent deposit could be released to the plaintiffs. In one sense this was an unnecessary letter in that once the Necessary Approvals were in hand no authority was needed from ALPL for the release of the funds. In another sense, however, it was useful as it showed that ALPL took the view that with the receipt of the lessor's letter of 11 July all the Necessary Approvals had been obtained.

16. Further, the plaintiffs' solicitors wrote to ALPL solicitors on 12 July 1997 enclosing a copy of the letter of approval from the lessor and stating that since all the Necessary Approvals had then been obtained, the sale and purchase was final and no longer subject to conditions precedent to be fulfilled. Neither ALPL nor their managing director objected to the statement at that time or within a reasonable time thereafter. The first time any allegation was made that the letter of 11 July 1997 did not constitute the lessor's consent to the sale was in the defendant's affidavit resisting the order 14 application.

17. As a matter of construction, I could not accept that the lessor's letter of 11 July 1997 did not constitute the lessor's consent to the sale and purchase as required by the sale and purchase agreement. The document did not require that consent to take any particular form. What was necessary was simply an indication that the transaction had the lessor's approval and that the lessor would co-operate to allow it to be completed. Further, it was always envisaged that conditions might attach to such consent and the parties, had they wanted to rule out an unconditional consent, could easily have inserted wording to that effect. They did not do so. The letter of 11 July indicated that the lessor was approving the transaction subject to certain terms that were not unusual or impossible of compliance. In the circumstances, I was satisfied that it was a genuine approval and thus qualified as a consent on the part of the lessor to the sale of the property to ALPL and therefore meant that the first Necessary Approval under the sale and purchase agreement had been obtained.

18. I therefore dismissed the appeal.

JUDITH PRAKASH

JUDGE

SINGAPORE