

Singapore Insulating Glass Pte Ltd v Newspaper Seng Pte Ltd
[2000] SGHC 88

Case Number : Suit 1558/1999
Decision Date : 20 May 2000
Tribunal/Court : High Court
Coram : Lim Teong Qwee JC
Counsel Name(s) : Ramalingam Kasi and Uthaya Chandran (Raj Kumar & Rama) for the plaintiff; Rabi Ahmad (PK Wong & Advani) for the defendant
Parties : Singapore Insulating Glass Pte Ltd — Newspaper Seng Pte Ltd

Contract – Breach – Contract for sale of land – Buyer and seller to obtain consent from Jurong Town Corporation – Consent not obtained – Whether consent not obtained because of buyer's default – Whether buyer in breach of contract

: This is a claim for damages and other reliefs for breach of contract contained in an agreement in writing dated 10 December 1997 (‘sale agreement’) for the sale by the plaintiff (‘SIG’) to the defendant (‘NS’) of its land in Jurong for \$4. 28m. NS disputed the claim and counterclaimed for a declaration that the sale agreement had become null and void and for the return of the deposit which had been paid to a stakeholder. There was concurrently an originating summons in which the stakeholder had obtained an order and paid the amount of the deposit in court. At the conclusion of the trial in this action I dismissed SIG’s claim and allowed NS’s claim for a declaration and I stood over the claim for payment out of the amount of the deposit to the hearing of the originating summons. SIG has given notice of appeal and these are my written grounds.

The land is described in the sale agreement as ‘the whole of Pte Lot A14567 ... together with the building(s) erected or to be erected thereon’. It is not disputed that all that SIG had was the benefit of an agreement dated 25 October 1996 (‘JTC agreement’) with Jurong Town Corporation (‘JTC’) to enter upon the land at Pte Lot A14567 and to construct certain buildings on it at its own expense and upon satisfactory completion of the construction works to have the right to a lease for a term of 30 years from 1 June 1995.

At the date of the sale agreement the construction works had not been completed. The JTC agreement provided for completion of the construction works within two years from 1 June 1995 but by letter dated 9 April 1997 a copy of which was attached to the sale agreement between the parties as App III time was extended by JTC to expire on 31 December 1997. The sale agreement provides for an undertaking by SIG to apply to JTC for a further extension of time.

Under the JTC agreement SIG agreed to perform and observe a large number of stipulations one of which was:

Not to assign charge create a trust or agency let sublet or underlet or grant a licence or part with or share his interest under this Agreement, or the possession or occupation of the said land, or any part thereof except that, subject to the[JTC’s] prior written consent, which consent shall not be unreasonably withheld, [SIG] may mortgage or charge his interest under this Agreement by way of assignment or debenture (as the case may be) to secure the repayment of such sum or sums as [SIG] may require for the purpose only of erecting or completing the building or other structure to be built on the said land ...

The 30-year lease to be granted would also be subject to the covenants and conditions set out in the schedule to the JTC agreement and anyone having any familiarity with JTC leases would expect to see a covenant against assignment but for some unknown reason the schedule was not included among the documents before me and no reference has been made to any such covenant.

The stipulation against assignment or parting with any interest under the JTC agreement was unconditional and unqualified. Under the JTC agreement SIG was granted a licence to enter upon the land and to construct the buildings and `for the installation of equipment fixtures and fittings thereat for the purpose of manufacturing of double glazed insulating panels, laminated glass and tempered glass only in accordance with the stipulations hereinafter contained and for no other purpose whatsoever`. This was not what NS intended to use the land for.

Again the restriction as to use would also be set out in the schedule which has not been produced. For the sale agreement to be carried into effect JTC`s consent was clearly necessary and the conditions referred to as special conditions provide:

1(a) The sale and purchase herein is subject to the written consent of [JTC] (hereinafter referred to as `the JTC`) being obtained by [SIG] for the sale and it is also subject to [NS] obtaining the written consent of the JTC and all other relevant authority to use the property for packing and storage of waste paper. [NS] warrants that they will comply with the URA`s/JTC`s requirement in utilising 60% of the gross floor area (GFA) for production and 40% of the GFA for storage and office space only.

1(d) [SIG] and [NS] agree and undertake to comply with all the terms and conditions that will be imposed by the JTC in respect of the sale and purchase and the proposed change of use provided always that [NS] shall have the right to rescind this agreement in the following circumstances:

(1) if JTC requires [NS] to invest more than \$200 psm of the land area (\$1,000,000. 00) on plant and machinery for the 30 year lease with effect from 1 June 1995;

(2) [SIG] is unable to assign the benefit of the investment on the building and civil works to [NS];

(3) [NS] is required by JTC to undertake to apply and obtain the TOP and CSC which are [SIG`s] responsibilities and obligations under the terms of this Agreement and [SIG] is unable to comply with JTC`s requirement so as to enable [NS] to undertake to do so with JTC;

in which event(s) [SIG] shall return to [NS] all deposit paid free of interest herein in exchange for the withdrawal of caveats and all entries made against the property by [NS] or arising from [NS] and thereafter neither party shall have any claim against the other. Each party shall then bear their own solicitor`s costs and expenses.

2(a) In the event the consents mentioned in Clause 1(a) is not obtained or shall be refused for any reason whatsoever by 27th May 1998, the sale shall become null and void ...

2(b) In the further event that the JTC's consent in Clause 1(a) is not obtained or is refused due to the neglect and/or default of either party other than in respect of the representations and warranties herein, neither party shall be compensated for all losses, damages, costs, expenses and/or inconveniences incurred and suffered as a result of the defaulting party's act of default and/or neglect.

Special condition 2(b) appears here in the form as amended by the agreement of both counsel. I think '60% for production and 40% for storage and office only' in special condition 1(a) means not less than 60% to be used for production and not more than 40% to be used for storage and office.

Special condition 1(a) contemplates the consent of JTC for the sale being obtained by SIG and the consent of JTC and 'all other relevant authority' for change of use being obtained by NS. This is what it says and it is made clear by special condition 1(b) which refers to applications to be made for the two consents and special condition 1(c) which provides for the separate responsibility of each party for fees payable for the two consents.

By letter dated 18 December 1997 SIG's solicitors applied to JTC for its 'approval' in respect of the sale. The letter refers to SIG's 'application form' but no document has been identified as such. There was an error in the letter and this was corrected by the solicitors' letter of 8 January 1998.

NS also made an application and for this purpose it completed and submitted to JTC its standard form consisting of Pts I to IV and sections A and B. Parts I and IV contain information relating to NS and its business activities including financial statements and Pts II and III contain applications for clearance from the relevant authorities. Section A identifies the seller but is otherwise not applicable and section B identifies the buyer and gives the reasons for the purchase and the causes.

On 18 March 1998 JTC wrote to SIG's solicitors:

Proposed Assignment of Lease on Pte Lot A14567 at Penjuru Rd

We refer to the above captioned.

2 We regret to inform that the application for assignment of the above mentioned lot has been unsuccessful. The reason being that the assignee is not able to meet our value-add and space utilisation requirements. '

A copy of this letter was given to NS's solicitors. It seems quite clear that JTC has refused to give its consent to SIG for the sale and this is not in dispute. It is for SIG to obtain such consent and such consent has not been obtained or has been refused by 27 May 1998.

On 20 May 1998 SIG's solicitors wrote to NS's solicitors to say that the parties had 'agreed to mutually extend the consent period required under cl 2(a) to 27 July 1998' and requested their confirmation. This confirmation NS's solicitors duly gave by letter dated 21 May 1998.

On 20 May 1998 NS's solicitors submitted a revised application to JTC. In the first submission the

financial statements related to the years to 31 December 1996 and 31 December 1997. In the second submission they related to the years to 31 December 1997 and 31 December 1998. In the case of the financial years which were current at the time of the submission the financial statements were estimates and projections. There were differences because of the change in the accounting years but in all other respects the forms as completed were substantially the same.

By letter dated 13 July 1998 JTC called for NS's financial statements for the six months to 30 June 1998 and two letters of undertaking. These were duly supplied on 20 July 1998. On 24 July 1998 JTC wrote to NS's solicitors:

Based on the balance sheet submitted, the half-yearly figures for Newspaper Seng Pte Ltd are S\$5. 28m, but their projected figures for the year ended 1998 are S\$17. 02m. In view of this, please advise us how your client can achieve the said figure of S\$17. 02m. '

In the second submission NS had projected sales of \$17. 02m for the year to 31 December 1998 but in the first six months it had only achieved sales of \$5. 28m. On 27 July 1998 NS's solicitors replied to JTC. Its letter arrived by fax at about 1710 hrs.

There is no evidence that SIG took any further steps to obtain JTC's consent after JTC's refusal or to appeal against such refusal. Nothing was heard about SIG having obtained the consent of JTC for the sale of the land or about JTC or any other authority having given its consent for the change of use and neither NS nor its solicitors heard anything further from JTC about its second submission. On 6 August 1998 NS's solicitors gave notice to SIG's solicitors to treat the sale agreement as having become null and void and demanded the return of the deposit.

This action was commenced in October 1999. The statement of claim alleges the sale agreement and states some of its terms. These terms appear to be different from what is stated in the sale agreement and counsel said that they were intended to be stated verbatim and not intended to represent SIG's version of the terms or their intended meanings. The sale agreement is to be referred to for all its terms.

The statement of claim then proceeds to allege implied terms and paras 6 and 7 state:

6 In the application to [JTC] for consent to the sale, [NS] stated in December 1997 that the annual value of its gross output for its last financial year (1996) from the sales of its manufactured or processed products (newspapers) was \$12,732,320, and that the projected annual value for its gross output for the current financial year (1997) would be \$13,483,489.

7 In March 1998, [JTC] declined to give consent to the sale for the reason, as set out in its letter dated 18 March 1998, that [NS] was 'not able to meet [JTC's] value-added and space utilisation requirements.

Special condition 1(a) provides that the sale is subject to the consent of JTC being obtained by SIG. It is for SIG to apply for and to obtain such consent. NS did make an application as alleged in para 6 but the refusal alleged in para 7 was not a refusal of NS's application but of SIG's application. However in its defence NS admits the allegations in these paragraphs.

Paragraph 8 of the statement of claim states:

By an exchange of letters dated 20 May 1998 and 21 May 1998, [SIG] and [NS] agreed that the date of 27 July 1998 should be substituted for the date of 27 May 1998 referred to in Special Condition 2(a). The purpose of the extension was to enable [NS] to appeal to [JTC] for its consent to the sale.

Counsel stated that the allegation was that the sale agreement had been varied as to the date only. No other agreement is alleged and no agreement is alleged as to an appeal to be made and that such appeal was to be made by NS. However the allegations in para 8 are also admitted by NS in its defence.

Paragraph 22 of the statement of claim states:

[NS] acted in breach of, and/or did not act in accordance with, its undertaking in Special Condition 1(d) and/or the implied obligation which has been pleaded.

This is followed by five paragraphs of particulars which will be considered in the order in which they have been pleaded.

Mr Kasi referred to **Tan Soo Leng David v Wee, Satku & Kumar Pte Ltd & Anor** [\[1994\] 3 SLR 481](#) where Karthigesu JA (delivering the judgment of the Court of Appeal) said at p 489:

... in our view, there was a duty on the [vendors] to show that they had taken all reasonable steps to obtain the [developers`] consent or that it was useless for them to pursue the matter with the [developers] after the initial withholding of consent because it would have been quite impossible for them to obtain the [developers`] consent.

He submitted that NS was in default in this respect.

In **Tan Soo Leng David** the agreement for sale made on 15 July 1992 (by the exercise of an option granted on 2 July 1992) provided that it was subject to the consent of the developers and that if such consent was refused or not received by the completion date (20 September 1992) the agreement for sale was deemed to have been rescinded. The vendors were the original purchasers from the developers under an agreement (‘principal agreement’) which provided for a restriction in the following terms:

The purchaser shall use the building unit(s) solely for his medical practice and shall not let or sublet, sell or assign or transfer (otherwise than by way of security) the same without the prior written consent of the vendor which consent shall not be unreasonably withheld if the intended letting or sub-letting, sale or assignment or transfer is to a medical practitioner (which expression shall include a body corporate) engaged in the practice of specialist medicine.

The purchaser was engaged in the practice of specialist medicine. He was an ophthalmic surgeon in

practice as such since 1976.

The vendors applied to the developers for their consent and received this reply:

We regret to inform you that our client is withholding its consent under cl (f) of the third schedule.

Clause (f) of the third schedule is the clause providing for the restriction set out above. The vendors refused to proceed with the sale and the purchaser sued. His statement of claim was ordered to be struck out as disclosing no reasonable or probable cause of action and it was an appeal against that order that came before the Court of Appeal.

Karthigesu JA referred to **Brauer & Co (Great Britain) Ltd v James Clark (Brush Materials) Ltd [1952] 2 All ER 497** where Denning LJ said at p 501:

... this clause is a special exemption inserted in favour of the sellers. In order to enable them to take advantage of it they must show that, notwithstanding that all reasonable steps were taken by them, they could not obtain a licence to export during any part of the shipment period, or, alternatively, that it was useless for them to take any such steps, or any further steps, because it was quite impossible for them to obtain a licence.

The contract was for sale of goods to be exported from Brazil and contained a clause to the effect that the contract was subject to any Brazilian export licence. This was the clause referred to in the passage of the judgment of Denning LJ cited. Continuing Denning LJ said:

*There is nothing to show that the licence could not have been obtained at some time during the shipment period. On the contrary, there is a specific finding that an export licence could have been obtained if the sellers had been prepared to pay a higher price for the goods to their Brazilian associates - a price higher, that is, than the price at which they had contracted to re-sell them. Was that a step which they could reasonably be expected to take? This depends on how much was the price they had to pay to get the licence. If it was, to take the judge's illustration, one hundred times as much as the contract price, that would be 'a fundamentally different situation' which had unexpectedly emerged, and they would not be bound to pay it: see **British Movietonews, Ltd v London & District Cinemas, Ltd [1952] AC 166**. But if the price they had to pay was only the current market price, as we were told it was, then they ought to have paid it so as to get the licence.*

The sellers had merely stated that it was impossible for them to ship the goods at the prices contracted owing to the intervention of the Brazilian authorities.

In due course **Tan Soo Leng David** came before Judith Prakash J who found that subsequent to the receipt of the developers' reply withholding consent the parties met with representatives of the developers and in the event the developers refused to give their consent. Her Honour also found that the consent had not been unreasonably withheld and dismissed the purchaser's claim against the vendors.

I do not think there can be any doubt that where as in this case the contract is subject to JTC's consent being obtained and such consent is refused or not obtained by the time limited then the party seeking to rely on the failure of consent must show that it has taken all reasonable steps to obtain the consent or that it was useless for it to take any such steps or any further steps because it is quite impossible to obtain the consent. Whether and what steps are reasonable will depend on the circumstances. Whether the consent may be refused unconditionally or otherwise and what an applicant for consent has to do to obtain it are relevant circumstances but it is not possible to list all the circumstances. I will now return to para 22 of the statement of claim and consider each of the allegations of breach of or failure to act in accordance with the contract.

`Prior to 24 July 1998, [NS] did not act as quickly as it could and should have done with a view to obtaining [JTC's] consent to the sale in that`

`after being notified by [JTC] on 20 March 1998 that the application had not been successful because of [NS] was not able to meet [JTC's] `value added and space utilisation requirements` [NS] did not submit a new application for consent until 20 May 1998`

The sale was subject to the written consent of JTC being obtained by SIG. See special condition 1(a). SIG applied to JTC for its consent on 18 December 1997. In the event that such consent was not obtained or should be refused for any reason whatsoever by 27 May 1998 the sale was to become null and void. See special condition 2(a). As alleged by SIG in its statement of claim the consent had been refused by 27 May 1998. It was refused on 20 March 1998. The consent that was refused was the consent applied for by SIG. Down to about 20 May 1998 there was nothing or nothing further to be done by NS to obtain the consent for the sale which SIG was to obtain.

On or about 20 May 1998 the parties agreed to an extension of time. That would not by itself make any difference. If by 27 May 1998 consent had been refused it would still have been refused by 27 July 1998. It was not a case of the consent not having been obtained yet. The statement of claim alleges that `the purpose of the extension was to enable [NS] to appeal to [JTC] for its consent to the sale` and this is admitted by NS in its defence. I think what this means is that when the extension of time was agreed upon the parties also agreed that the sale agreement was still in full force and effect and that NS would appeal to JTC for its consent to buy from SIG and this consent would be the consent for the sale to be obtained by SIG under the sale agreement. I think the parties also agreed that the appeal would be made by NS making the second submission which it did on 20 May 1998.

It is not necessary to say anything more but there are some letters among the documents which may be referred to. The reason given by JTC for not giving its consent was that NS was not able to meet its `value-add and space utilisation requirements`. By letter dated 23 March 1998 SIG's solicitors alleged that NS was in breach of warranty as regards the 60%:40% space utilization requirement in special condition 1(a).

On 26 March 1998 NS's solicitors wrote to JTC to point out that the application was made on the basis of 60% of the gross floor area for production and 40% for storage and office space and that the details of floor space usage showed even a higher percentage for production. This is in accordance with the warranty. As to meeting JTC's `value-add` or added value requirements there is nothing that NS could reasonably do or be reasonably expected to do. In any case there is no evidence as to what those requirements were or in what way they were not met.

On 11 April 1998 JTC wrote to advise that it was looking into the matter and would revert in due course. On 19 May 1998 NS's solicitors wrote to JTC to enquire as to the outcome of the application.

On 20 May 1998 they wrote again and in addition made the second submission. In my judgment NS was not in breach of contract as alleged.

`[NS] did not then request [JTC] to deal with its new application with expedition`

On 4 June 1998 JTC wrote to NS`s solicitors to advise that it was in the process of `evaluating the proposal` and would get back to them as soon as possible. On 13 July 1998 JTC wrote to NS`s solicitors:

2 Please be informed that we require your client, Newspaper Seng Pte Ltd, to submit the following to us:

(i) a letter of undertaking that Newspaper Seng Pte Ltd will utilize 90% of the area for manufacturing/assembly/servicing purposes and 10% of the area for office space.

(ii) an unaudited or audited Statement of Accounts from 1/1/98 to 30/6/98.

(iii) a letter of undertaking that Newspaper Seng Pte Ltd will complete the building and fulfill all investment criteria as stipulated in the building agreement dated 25 October 1996, in particular with reference to cl 2(viii) and 4.

3 Looking forward to your reply soonest possible. Thank you.

The letters of undertaking went beyond what was reasonable for NS to do (as between SIG and NS) and the accounts were for a period just 13 days ended. Nevertheless these were provided on 20 July 1998. On 24 July 1998 JTC wrote to ask how sales of \$17. 02m could be achieved for the year to 31 December 1998 and a complete reply was given on 27 July 1998.

I do not see that in these circumstances there was any duty on the part of NS to request JTC to deal with the second submission with expedition. In my judgment NS was not in breach of contract as alleged.

`[NS] did not respond to [JTC`s] requirement for further information and written undertakings, albeit that the requirement was communicated to [NS] on 13 July 1998, until 20 July 1998 (when it could and should have responded to it by 15 July 1998 at the latest)`

I have set out the terms of JTC`s letter of 13 July 1998. Under special condition 1(a) of the sale agreement NS warranted that it would comply with a 60%:40% space utilization requirement. It was now required to give an undertaking to use not less than 90% of the space for production and not more than 10% for office. Details of space utilization given in its solicitors` letter of 26 March 1998 showed 77% for production.

I would have thought that it would be reasonable to allow some time for space utilization to be reconsidered before giving an undertaking in terms required by JTC. The accounting period ended 30 June 1998. Again some time would have to be allowed for the accounts to be done. In the event NS took seven days to deliver the documents asked for. No evidence has been given that it could have complied with the requirements earlier or that it could have done so in two days as alleged by SIG. In my judgment NS was not in breach of contract as alleged.

`[NS] did not comply with [JTC`s] requirement, made on 24 July 1998, for an explanation as to the apparent discrepancy between its gross sales for the first half of 1998 and its projection for the whole of 1998`

There was no discrepancy apparent or otherwise. JTC`s letter of 24 July 1998 has already been given above. JTC asked NS to advise how it could achieve sales of \$17. 02m for the year to 31 December 1998 (as projected in its second submission made on 20 May 1998) when its actual sales for the six months to 30 June 1998 were only \$5. 28m.

NS was in the business of manufacturing corrugated paper cartons, CPO (computer print-outs) and SOP (sorted office paper) from waste paper for export to Indonesia, Thailand, Philippines and Korea. It explained in its solicitors` letter that the projections had not been achieved in view of the economic downturn which particularly affected these four countries. NS only managed \$5. 28m in the first half of 1998 `through great effort` and was confident of achieving \$2. 5m in the second half. That would make \$7. 78m for the year which still had more than five months to run. The letter concluded by saying that the position would be reviewed from time to time. It was an admission that the projected sales were not going to be or were unlikely to be achieved.

Ms Lai Sin Yee is the customer service manager of JTC and during the relevant time she was the senior lease management officer. She said that towards the end of this case she was kept informed and she has had the benefit of going through JTC`s file records.

Ms Lai was referred to NS`s solicitors` letter of 27 July 1998 during examination in chief. Her evidence was:

Q: PB-113. Complied with JTC`s requirement?

(Note: PB-113 is a copy of the letter of 27 July 1998.)

A: No. Data not sufficient.

(To court):	To us information not sufficient. Can`t see from records if Miss Poh has actually asked from applicant to re-submit whole of Part IV. Also no record of any communication to applicant after PB-113
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The information was not sufficient for JTC but she did not say in what way it was not. I think it was in that sense that she said NS had not complied with JTC`s requirement. In fact NS had complied. It admitted that the projected sales were not going to be or were unlikely to be achieved. It gave a revised projection of \$7. 78m for the year to 31 December 1998.

Later Ms Lai was referred to JTC`s letter dated 19 August 1998 to SIG`s solicitors. This was in reply to their letter of 14 August 1998 which stated:

... please let us know the reason(s) for the Corporation`s delay in giving the

necessary consent to the parties` application on an immediate basis.

We are however given to understand that you had requested from the purchasers the following two items:

(1) to submit the company`s past audited account to show the company`s turnover exceeding \$17m as represented; and

(2) to resubmit the projection for 1998 taking into consideration the first half year unaudited account turnover of about \$5. 2m

which are still outstanding from the purchasers. Please confirm.

There is no evidence that JTC had requested the two items. Ms Lai could see no record of this. NS had not represented sales exceeding \$17m. In its second submission made in May 1998 it projected sales of \$17. 02m for the year to 31 December 1998 which was then still current. The statement was untrue. It was an impolite letter. It accused JTC of delay in giving its consent. It presumed without any basis that its consent would be given.

JTC`s reply written by Ms Poh sated:

Please take note it is not that JTC has failed to give the necessary consent to the sale and purchase of the abovementioned property but we would require the re-submission of the projected 1998 figures before we can proceed further.

It did not say that re-submission of the 1998 projected sales had been called for. Its letter of 24 July 1998 only asked to be advised how the projected sales could be achieved. This is wholly inconsistent with a request for a re-submission. Such a request if any could only have been made after receipt of NS`s solicitors` letter of 27 July 1998. As Ms Lai said in evidence there was no reply to that letter and in any event time for obtaining JTC`s consent would have expired. In my judgment NS was not in breach of contract as alleged.

`[NS] could and should have provided [JTC] with that explanation before 1. 30pm on 27 July 1998`

No evidence has been given in support of this allegation. Even if the explanation had been provided before 1. 30pm on 27 July 1998 there is no evidence that it would have served any purpose.

On 21 October 1998 SIG`s solicitors (instructed in place of the previous solicitors) wrote to JTC and put a number of questions to it including:

In the event that PK Wong & Advani or Newspaper Seng Pte Ltd had responded with (1) only the aforesaid clarification, (2) both the clarification and re-submission (whether simultaneous or otherwise), please confirm if you would have been in a position in each case to grant your consent to the assignment of the above property.

PK Wong & Advani were NS`s solicitors. JTC`s answer in its letter of 29 October 1998 was:

In the event that PK Wong & Advani or Newspaper Seng Pte Ltd had responded with (1) only the aforesaid clarification, (2) both the clarification and re-submission (whether simultaneous or otherwise), we would not have been in a position to grant consent immediately as the application needed to be evaluated based on our list of criteria.

Ms Lai was referred to JTC`s answer under cross-examination and her evidence was:

Q: PB-157. Item 2(f). If defendant had re-submitted whole of Part IV revised between 24 and 27/7/98 JTC in a position to grant approval?

(Note: PB-157 is a copy of JTC`s letter of 29 October 1998 and item 2(f) is the para stated above.)

A: Assuming data correct and sufficient we would normally need 18 working days from full submission of data.

On re-examination she said:

Q: Normally 18 working days. Difference to answer if applicant merely submitting additional data and not whole application?

A: If only some additional information required upon submission of data would take about three to five working days to give consent letter.

(To court): Depends on earlier submission. If shortly before would still require more time. Also depends on additional information required and information given. May require further investigation. May take more time.

In my judgment SIG has not made good this allegation.

`[NS] did not re-submit the said revised projection for 1998 as [JTC], to the knowledge of [NS], required [NS] to do in order to be in a position to grant written consent to the sale by 27 July 1998`

JTC`s letter of 29 October 1998 which was also written by Ms Poh contains a statement that `re-submission of complete data` was requested by JTC verbally on 24 July 1998. This allegation was made earlier and was denied by NS in its solicitors` letter to JTC on 12 October 1998. JTC`s reply again written by Ms Poh stated:

According to our records, we did inform your client, Mr Louis from Newspaper Seng Pte Ltd, verbally on 24 July 1998 about the `re-submission of complete data`. We had required Newspaper Seng Pte Ltd to furnish a realistic figure to the original figure of S\$17.02m, which they pleaded was unattainable in your

letter of 27 July 1998, and to re-fill Part IV of the application form for the assignment to facilitate our evaluation.

Ms Lai's evidence is that there were no such records. It seems quite clear on a plain reading of the letter that if someone on behalf of JTC did in fact make known to NS its requirement for NS to refill Part IV of the application form that person would have done so after rather than before NS had 'pleaded' that 'the original figure ... was unattainable' in its solicitors' letter of 27 July 1998.

Mr Kasi said that Ms Poh would be in court on 27 January 2000 to testify. On 27 January 2000 Mr Kasi said he had spoken to her and he was unable to obtain an affidavit from her. He did not call her and SIG closed its case without her evidence.

In my judgment it has not been proved that NS was informed or knew at any time before its solicitors' letter of 27 July 1998 was sent to JTC or at any time at all that JTC required it to re-submit a revised projection for 1998 or as alleged.

'The projection of gross sales for 1998 as set out in [NS's] letter to [JTC] dated 27 July 1998 was not a genuine projection, but was, as it was intended to be, an intentional understatement of the projected sales for 1998, made with a view to deterring [JTC] from granting consent to the sale'

There is no evidence that any of the statements made in the letter of 27 July 1998 was untrue or inaccurate. There is no evidence as to the actual sales achieved for 1998. The evidence as to sales of \$5.28m for the six months ended 30 June 1998 was unchallenged. The economic downturn referred to in the letter is a matter of such notoriety that I may take judicial notice of it. I have not been called upon by NS to do so but I see no reason to believe that it did not exist. The estimate of \$2.5m sales for the six months to the end of the financial year does not appear to be anything other than a genuine estimate.

In my judgment it has not been proved that the projection of sales for 1998 in the letter of 27 July 1998 was not a genuine projection. It has not been proved that it was an understatement of the projected sales or that NS had intended to understate such sales or had done so for the reason alleged.

If JTC's consent is not obtained by 27 July 1998 or is refused 'for any reason whatsoever' the sale becomes null and void. That is what special condition 2(a) plainly says.

JTC's consent may fail without any default on the part of either party. It may also fail by reason of some default. It seems to me to be unlikely that 'any reason whatsoever' in special condition 2(a) will include default on the part of the party seeking to treat the contract as null and void unless the contract construed as a whole points to some other construction.

Special condition 2(b) provides that 'in the further event' that the JTC's consent fails 'due to the neglect and/or default of either party other than in respect of the representations and warranties herein' then neither party is to be compensated for loss and expenses suffered and incurred as a result of the defaulting party's act of default and/or neglect. Quite clearly the parties intended to make special provision for the particular case or 'further event' of a failure of the consent which is due to neglect or default.

Under special condition 2(b) where there is neglect or default which causes the consent to fail then except as provided neither party is entitled to compensation for loss or expense. Such loss or expense can only arise if the sale agreement cannot be carried into effect and it cannot be carried into effect without JTC's consent. But it is not every kind of neglect or default that has the effect of conferring exemption upon the party in default. Excluded and expressly so excluded is neglect or default 'in respect of the representations and warranties [in the sale agreement]'.

The sale agreement provides for the sale and purchase of the land subject to the **terms and conditions** mentioned. Clause 8 of the sale agreement provides that the sale is subject to the **special conditions** which are set out. Clause 9 incorporates the **general conditions** of sale known as 'The Singapore Law Society Conditions of Sale' in so far as they are not varied by or inconsistent with the **special conditions** and **other terms** contained in the sale agreement. Special condition 13 provides (as does special condition 19 also) that the **terms and conditions** of the sale agreement remain in full force and effect and do not merge with the transfer of the land on completion.

In these provisions the draftsman has employed the expressions 'terms and conditions', 'special conditions', 'general conditions' and 'terms'. In contrast special condition 1(a) provides that NS **warrants** that it will comply with the 60%:40% space utilization requirement. Special condition 16 provides that SIG **warrants** that all additions and alterations to the buildings constructed on the land which are not in accordance with plans approved by JTC have been carried out with the approval of the relevant authorities. Special condition 21(3) provides that SIG warrants that it has complied with and will continue to comply with the terms of the JTC agreement of 25 October 1996. Finally special condition 24 provides that SIG warrants and represents that the land area is 4,964 sq m and the built up area of the buildings is 3,067. 63 sq m. Provision is also made for variation of the price in the event of variations in the areas.

The sale agreement was negotiated between the parties and the form of the agreement was amended and finally settled between separate solicitors representing the parties. I think the expressions 'representations' and 'warranties' have been used to refer to those matters provided for in special conditions 1(a), 16, 21(3) and 24. The parties clearly attach great importance to these matters and it appears that these are the sort of matters which would attract such attention.

Mr Kasi submitted that there was no significance in the choice of expressions so that 'warranties' in special condition 2(b) meant no more than 'terms'. I am unable to agree. 'Neglect and/or default of either party' must be neglect or default in respect of some provision of the sale agreement. If 'warranties' means no more than terms then there would be no point in providing for neglect or default and then excluding neglect or default in respect of warranties. In place of the whole of special condition 2(b) all that would be necessary if that be the intention is to qualify 'any reason whatsoever' in special condition 2(a) by excluding **neglect or default** of either party.

The only warranty given by NS is to comply with the 60%:40% space utilization requirement. This it has undertaken to do with JTC. Since the utilization will not commence before JTC's consent is obtained and the sale completed an undertaking is all that can be given at that stage. In any case it is not SIG's case that there has been any default in respect of this warranty.

Mr Kasi submitted that NS was slow or delayed in submitting its application and in responding to JTC's request at various stages. He referred to **Selvadurai Pala Krishnan & Partners v Francis Adrian & Co Pte Ltd & Anor** [SLR 403](#). I have found that NS was not in default or in breach of contract as alleged and there is no evidence of tardiness or delay and even if NS was in default in this respect it would not be liable to compensate SIG but in any case I do not see how **Selvadurai Pala Krishnan & Partners** assists.

In that case the sale was subject to the approval of JTC to the purchasers' application for use of the property for **manufacturing wooden container sleeves** and the purchasers were to apply within seven days for the approval. FA Chua J said at p 407:

The [purchasers] were under an obligation to take all reasonable steps to obtain such approval from JTC.

The evidence clearly shows that the delay in getting JTC's approval was due entirely to the [purchasers] trying to obtain approval for the storage of stuffed containers when it had been clear to them as early as 12 October 1983, that the JTC would not approve the application.

The contract was made on 22 September 1983 and if the approval was not granted by 8 December 1983 then the contract was off. The purchasers applied for approval to use the property **for storage of stuffed containers** and persisted in their application down to 2 December 1983. Approval was not granted by the time limited or at all. That case has no application to the case before me.

The sale agreement has become null and void as JTC's consent for the sale was refused or was not obtained by 27 July 1998. The failure of the consent was not caused by any neglect or default on the part of NS but even if it was the neglect or default was not in respect of any representations or warranties within the meaning of special condition 2(b) and SIG is not entitled to any compensation for any loss or expense suffered or incurred as a result of the neglect or default.

The counterclaim of NS is for a declaration. There will be judgment accordingly.

Outcome:

Plaintiffs' claim dismissed; defendants' counterclaim allowed.

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