**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[1998] SGHC 290**

Suit 917/1997

Between

Metro Parking (S) Pte Ltd

… *Plaintiff*

And

Young Women's Christian Association of Singapore

… *Defendant*

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# GROUNDS OF DECISION

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# Metro Parking (S) Pte Ltd v Young Women's Christian Association of Singapore

**[1998] SGHC 290**

Suit 917/1997
Amarjeet Singh JC
31 August 1998

**Judgment :**

**Cur Adv Vult**

1. The Plaintiffs are car park operators for profit.

2. The Defendants are an association registered under the Society's Act and are run by a Board of Management with a President at its head.

3. In or about March 1996, the Defendants were undertaking a building programme for a hostel with car parking facilities ('YMCA car park') at Fort Canning Road. The project was nearing completion then.

4. The issue arose at the trial whether there had been an acceptance by the Defendants of an offer made to them by the Plaintiffs to lease and operate the YMCA car park thereby resulting in a binding agreement between the parties breach of which entitled the Plaintiffs to claim damages for loss of profits.

4.1 The above issue of liability only was tried, the issue of damages, if any, on the Defendants' liability if established, being reserved for assessment of damages by the Registrar.

5. The Plaintiffs' case was that by letter dated *15 March 1996* they offered to lease and operate the YWCA car park as per terms enclosed in an ***Offer to Lease*** which contained certain skeletal clauses. Importantly, according to ***cl 1.0*** the lease was to be for 3 years with an option of three years on the same terms and conditions, the option to be exercised by the Lessee not later than 3 months prior to expiration of the initial term and in the Lessee's sole discretion. By ***Cl 2.0*** the rental was to be $18,000/- p.a. ($1,500/- p.m.).

5.1 Following the said letter, the Plaintiffs again wrote to the Defendants on *22 May 1996* following an inspection visit to the site of the car park to let them have a letter of acceptance as regards the *Offer to Lease* contained in their said earlier letter.

5.2 There then followed a meeting and discussion on *4 June 1996* between the parties, namely, one Tyrone Lopez, PW1 ('Lopez') and Linda Neo, PW2, respectively the Plaintiffs' Managing Director and Dy Managing Director of the Plaintiffs and James Chee, the Defendants' Hostel Manager.

5.3 Following the meeting, the Plaintiffs wrote to the Defendants on *6 June 1996* referring to the meeting and discussion on 4 June 1996 and confirming 'our agreement' of the monthly rental of $1,500/- per month but subject to Plaintiffs' right to re-negotiate the rent after the first year if there was reduced usage of the car park and of increase of rental if there was correspondingly an increase of usage of the car park through higher occupancy of the Plaintiffs' building and

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certain number of complimentary season passes to be issued to the Defendants and finally asking the Defendants to note that all other terms and conditions in the earlier *'Offer to Lease'* remained the same. The letter enclosed a document with *sample clauses* on the above and ended on the note:

> 'We trust that this is now acceptable to you and await your letter of acceptance so as to enable us to prepare the Draft Agreement and proceed with our preparatory work.....'

5.4 Thereafter, on *13 June 1996* the Defendants replied as follows:

Dear Sir

THE FORT CANNING YWCA

CAR PARK LEASE AGREEMENT

> We refer to our discussion and your proposed offer stated in letters dated 15 March and 6 June 1996.
>
> Could you now proceed to prepare a draft agreement incorporating all terms and conditions of both letters to finalise the contract.
>
> Meanwhile, the number of confirmed parking lots is 97. This is confirmed by our architect which we have informed Linda today.
>
> We look forward to working with Metro Parking and both of you in the near future.

With warmest regards,

Yours faithfully,

The Fort Canning YWCA

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Sgd.

James Chee

5.5 The Plaintiffs thereafter undercover of their letter dated *20 June 1996* responded by forwarding a ***Draft Lease Agreement*** for the Defendants' perusal and asked the Defendants to contact the Plaintiffs' representative Linda Neo in case they required any clarification.

5.6 The Defendants responded on *9 July 1996* to the ***Draft Lease Agreement*** and proposed a number of additional clauses by way of amendment, the relevant ones were:-

(i) *Added as Cl 2.02*

> The Option for renewal is subject to Lessor's agreement and the new lease is subject to revision of new rental of between $2,500 to $3,000 per month.

(ii) *Added as Clause 3.02*

> Upon the expiration of this lease and if the lessor is desirous of taking over the Lessee's car parking facilities, fittings and fixtures, then Clause 3.01 shall not apply. In this event Clause 3.02 will supersede Clause 3.01. The lessor will have the prior option to take over the Lessee's car parking equipment, fittings and fixtures at a price not more than 20% of its original installation cost.

5.7 It was the evidence of Lopez and Linda Neo that Lopez had scribbled a note on *'30/7/96'* to her on top of the Defendants' letter dated *9 July 1996* asking her:

'Pls enquire on update'

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She responded by scribbling a reply and initialing her name to the note as follows:

> 'Spk to Mr Png. They've got their Mgt & Solicitors feedback and incorporating into the Agreement. Next week will call for meeting. 30/7'

Png Geok Puah was then one of the Defendants' employees.

5.8 On 24 September 1996, the Defendants followed up their letter by retyping the Plaintiffs' ***Draft Lease Agreement*** and sending a copy of the retyped draft lease (**AB79 - 97**) *incorporating* the amendments set out in their letter dated *9 July 1996* to the Plaintiffs.

5.9 The Plaintiffs, having considered the Defendants' draft lease sent to them on *24 September 1996*, in turn made the following amendments to the proposed Defendants' clauses 2.02 and 3.02 as follows:

1)

*Clause 2.02 - Option for Renewal*

Amendment

> If the Lessee shall be desirous of continuing the tenancy hereby created the Lessee shall at least three (3) calendar months prior to the end of the Term give to the Lessor written notice of such desire and the Lessor will then let the Premises to the Lessee for the further term set out in **Item 4** of the Schedule from the expiration of the Term upon the same terms and conditions as are herein contained and at a rent of S$3,000 per month.

2) *Clause 3.02*

> We advise that the proposed take over fee of 20% of the original equipment cost is not acceptable.

> As explained, it is an excepted accounting practise to provide for depreciation of 20% per annum for plant and equipment.
>
> Hence the take over fee at the expiry of the Term (3 years) should be 40% of the original cost.

The letter stated that all other terms and conditions were to remain the same and concluded by stating:-

> "We trust the above amendments are acceptable and look forward to the conclusion of this agreement."

5.10 The Plaintiffs subsequently learned on or about 8 January 1997 that the contract for managing the YMCA car park was being awarded to a third party. They wrote to the Defendants on 9 January 1997 that they were surprised to learn that in spite of having a binding contract with them the Defendants had commenced negotiations with another party and asked the Defendants to confirm whether they were honoring the agreement with them or rescinding the same.

5.11 The Defendants through James Chee, replied on 9 January 1997 informing the Plaintiffs that there was no binding contract entered into by them with the Plaintiffs and that they had only been negotiating the terms of the operating contract and concluded:

> 'Your proposed terms of contract dated 25 September 1996 had not been accepted by us and the **negotiations** have been left open since then.' (emphasis added)

6. According to the evidence of Margaret Chew See Eng, DW3 ('Margaret Chew') the President of the Defendants' Board of Management the Board had met on 31 October 1996 and accepted the recommendation in the *'Report of the YWCA Building Committee to the Board of Management for October 1996'* that the YWCA car park be contracted out to EZY Parking (ManagEment) Pte Ltd

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('EZY'). Margaret Chew produced the Report of the Building Committee and the Board's Minutes together with the Agreement with EZY, Exhs. 'MC-2 and 'MC-1' respectively to her Affidavit of Evidence-in-Chief.

7. Lopez and Linda Neo of the Plaintiffs and James Chee of the Defendants together with Quek Bee See and a member of the Plaintiffs' Board and legal consultant had also testified. I shall refer to their evidence later in my findings to avoid repetition.

8. Plaintiffs' Counsel's submission was that the Plaintiffs' letter dated 15 March 1996 contained all the material terms and conditions for the lease of the YWCA car park for a term of 3 years. That together with the further concession offered in the Plaintiffs' letter dated 6 June 1996 constituted an acceptance by the Defendants in their letter dated 13 June 1996 thereby forming a binding agreement breach of which entitled them to damages for the loss of profit they had suffered.

8.1 Counsel drew support for his submission based on the Defendants' reference to the Plaintiffs' letters of 13 March and 6 June 1996 in the Defendants' letter of 13 June 1996 including the sentence:

> 'Could you now proceed to prepare a draft agreement incorporating all terms and conditions of both letters to finalise the contract.'

Counsel stressed that PW1 and PW2 had also testified that they had believed that there had been a concluded agreement with the Defendants by their letter of 13 June 1996 as they had understood the phrase 'to finalise' the contract as meaning to formalise the agreement. Counsel quoted from the New Shorter Oxford English Dictionary pg 166 the definition of 'finalise' - as stating "1. Put

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into final form. 2. Complete; bring to an end. 3. Approve the final form of bringing something to completion, conclude." Counsel also relied on ***Klerk-Elias Liza v K T Chan Clinic Pte Ltd*** [1993] 2 SLR 102 the facts which he said were similar to the present case and where the Court had used the word 'finalise' to mean to 'formalise'. According to Counsel therefore the Defendants had accepted the terms of the offer of the Plaintiffs as already set out resulting in the agreement or contract. Any differences remaining to be agreed were only those of details which were not fundamental to the terms offered and accepted and forming the agreement.

9. Defence Counsel countered the submissions submitting amongst other things:

> (i) the contents of the letter of 13 June 1996 did not amount to an acceptance of the Plaintiffs' offer;
>
> (ii) at all material times, the Plaintiffs and Defendants were still bargaining and hence engaged in the process of negotiating;
>
> (iii) there was no substance in the position taken by the Plaintiffs that the fundamental terms proposed by the Plaintiffs had been accepted by the Defendants and that the discussion and correspondence after 13 June 1996 was restricted to subordinate details and consequently,
>
> (iv) the Plaintiffs and Defendants had never reached final agreement of mutually acceptable terms leave alone the question of their being only one of formal adoption in a written agreement as submitted on behalf of the Plaintiffs.

10. It is necessary now to look at the construction of the documents that passed between the parties to answer Plaintiffs' Counsel's pivotal question of whether the Defendants by their letter dated 13 June 1996 had accepted the Plaintiffs' offer as communicated in their earlier two letters dated 15 March and 6 June 1996 resulting in a binding agreement.

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11. Plaintiffs' Counsel had founded his case primarily on the said letters which I shall consider first. I shall thereafter consider the correspondence between the Plaintiffs and Defendants *after* 13 June 1998 and the words that passed between the respective witness at meetings and their evidence.

12. The relevant portion of the Defendants' letter of 13 June 1996 replying to Plaintiffs' letters of 15 March and 6 June 1996 containing the Plaintiffs' offer states:

> 'Could you now proceed to prepare a **draft** agreement **incorporating** all terms and conditions of both letters to **finalise** the contract.' (emphasis added)

I am satisfied that these words by themselves do not form an acceptance by the Defendants of the Plaintiffs' offer as contained in their two letters referred to. In my opinion, contrary to Plaintiffs' Counsel's submission, nothing more should be read in the Plaintiffs' reply than what it states. An acceptance must be unconditional and unequivocal. There is no such acceptance in the above communication here. The Plaintiffs are instead requesting for a **draft** agreement. The irresistible inference to be drawn from this is that the Plaintiffs simply wanted a full **draft** of the terms and conditions in the Defendants' said letters to be *incorporated* into a legal document for their consideration or for their legal adviser's consideration and advice before responding to the **draft**. In my opinion, if the **draft** was acceptable by the Defendants, a contract would result; if it was not, amendments would be made and returned to the Plaintiffs for their consideration and acceptance or rejection - nothing more. Such a construction does no violence to the dictionary meanings ascribed to the aforesaid phrase. Just as there is many a slip between the proverbial 'cup and the lip' the process of *finalisation* may itself produce disagreement on a single unresolved matter and so thwart the formation of a contract. I am unable to

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accede to Plaintiffs' Counsel's attempt to draw a parallel between the facts in ***Klerk-Elias Liza v K T Chan Clinic Pte Ltd*** [1993] 2SLR 417 where the lessee had affirmatively acknowledged accepting material terms of a document creating a rental agreement by signing on a copy of the same and returning it to the lessor as required pending settlement of some incidental details and thereafter execution of a legal document and the present case where all the Defendants did was to request a **draft** lease. I could not read the phrase 'to finalise' in the Defendants' letter of 13 June 1996 as meaning that they had accepted the Plaintiffs' terms and that only a formal agreement remained to be signed consequent on the **draft** being sent. As Lord Blackburn said in ***Edinburgh Street Tramways Co v Torbain*** [1877] 3App.Cas.58,68:

> "Words used with reference to one set of circumstances may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced".

12.1 However, the intention of the parties becomes considerably clear as a result of the subsequent correspondence between the parties which not only supports the interpretation I have placed on the Plaintiffs' letter of 13 June 1996 but which independently shows on-going negotiations and the fact that a few of the material terms were still not settled.

12.2 On 20 June 1996, the Plaintiffs had replied to the Defendants. The relevant portion of the letter states:

> "We are pleased to forward herewith a **Draft** Lease Agreement for your **perusal**." (emphasis added)

12.3 On **9 July 1996**, the Defendants wrote back. The relevant portions state:

Re: The Fort Canning YWCA Car Parking **Draft** Agreement

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> (i) "We refer to the above **draft** agreement."
>
> (ii) "Kindly let us know at your earliest convenience so that we can meet to **finalise** the above." (emphasis added)

12.4 On 12 July 1996, the Plaintiffs' further response was:

> "We look forward to the meeting at your office on Tuesday 16 July 1996 at 9.30 am to **discuss** the contents of the **Draft** Agreement." (emphasis added)

12.5 On 16 July 1996 accordingly there was a meeting and discussion of the Plaintiffs' draft and the counter proposals made by the Defendants in their letter of 9 July 1996.

12.6 On 25 September 1996 there was a final letter in the series from the Plaintiffs to the Defendants:

> Re: The Fort Canning YWCA - **Draft** Lease Agreement (i) "We write further to the **draft** lease agreement received on 24th September 1996." (ii) "We trust the above amendments are acceptable and look forward to the **conclusion of this agreement**." (emphasis added)

12.7 There was no response from the Plaintiffs to this letter.

13. The upshot of all this further exchange of correspondence and exchange of draft leases was that on 25 September 1996 there were the following material differences which remained unresolved between the Plaintiffs and Defendants:

(i) The Defendants took the position that the Option for Renewal was to be *subject to Lessors' agreement*; the Plaintiffs, on the other hand, wanted the lease renewed at the end of a 3 year lease provided they gave the requisite 3 months' notice of option to renew such lease;

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(ii) Assuming the Defendants renewed the lease, the Defendants wanted an increase of the current rent agreed at $1,500/- p.m. to between $2,500/- to $3,000/- p.m. on renewal. The Defendants were agreeable to the renewal rent of $3,000/- but failed to concede to the Defendants' requirement that the renewal should be *subject to Lessors' agreement* and finally

(iii) The Defendants required that on the expiration of the original term of the lease or its determination and if the Defendants desired to take over the operation of the YWCA car park from the Plaintiffs, the Defendants should have the prior option to take over the Defendants car parking equipment, fittings and fixtures at a price of not more than **20%** of its original installation cost; the Plaintiffs had countered that the Defendants would be allowed to do so but at **40%** of the original cost.

14. Plaintiffs' Counsel's stand was that all these were only matters of detail and not material or fundamental matters. Counsel's submission was without merit. The differences were obviously material. They were particulars essential to an agreement. The Plaintiffs failed and neglected to respond to and match the exact proposals counter-offered by the Defendants. The only reasonable inference I could draw and drew was that the Plaintiffs had by their conduct of remaining silent, decided to abandon and withdrew from the negotiations since they did not want to accede to the demands of the Defendants. The subsequent letter of 9 January 1997 by the Plaintiffs, in my opinion, was written in reaction to the contract being awarded to the third party. I reject the Plaintiffs' explanation of their three and the half months silence since 25 September 1996 that they were awaiting in the meantime for the Temporary Occupation Licence ('TOP') to be issued in February 1997 in respect of the said car park to the Defendants (which would be followed by their applying for and obtaining a licence from the

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relevant authority and contract would run from the date of issue of the said licence).

15. I am also of the opinion that if the Plaintiffs were convinced that they had a contract with the Defendants as a result of the Plaintiffs' letter dated *13 June 1996*, it is strange that they still carried on negotiations with the Plaintiffs after that date as the correspondence and the drafts of the respective parties show. They should have either asserted the right and taken a stand with the Defendants that the Defendants were adding new terms to an already concluded deal on *13 June 1996* and taken action then or informed the Defendants that what was being further discussed were non-essential details in respect of a contract that had already come in existence between them. Linda Neo's glib evidence on this aspect to a specific question by Defence Counsel was:

> Q: Put: If there was a binding contract you would not be considering the counter proposal of the Defendants?
>
> A: No. We are accommodating them.

16. Then there was the other evidence. It was James Chee's evidence (both affidavit and oral) that he had asked Lopez and Linda Neo for a **draft** agreement to present it to the Defendants' Board for approval and that the contract had to be approved by the Defendants' Board. Margaret Chew, as President of the Defendants' Board, amongst other things, confirmed in her evidence that she had earlier informed James Chee who did all the negotiations for the Defendants that the contract with the Plaintiffs had to be approved by the Board. Quek Bee See an Advocate and Solicitor and a legal consultant to the Board said the same thing. She had also perused all the documents between the Defendants and the Plaintiffs when consulted in late September and found no binding agreement between the Plaintiffs and the Defendants. She testified to the effect that she

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told the Defendants to negotiate with third parties as on reading the correspondence she was uncomfortable with the Plaintiffs and that they had also been unaccommodating in their negotiations. It was also Margaret Chew's evidence that no Board meeting was held to consider the award of contract in respect of the YWCA car park until 31 October 1996 when it was awarded to a third party EZY Parking (Management) Pte Ltd on the recommendation of the Defendants' Building Committee as set out in its Report to the Board of Management.

16.1 Lopez and Linda Neo who negotiated for the Plaintiffs, on the other hand, had denied that James Chee had orally represented to them at the meeting on 4 June 1996 or at all that the contract with the Plaintiffs had to be approved by the Defendants' Board of Management.

16.2 Yet I observed that Linda Neo had unsurprisingly scribbled a note on top of the Defendants' letter of 9 July 1996 to Lopez which clearly made a reference to the process of the Defendants obtaining their Management's ('Mgt') and solicitor's feedback.

16.3 I also accept the evidence of James Chee as a simple, honest and credible witness that he did tell Lopez and Linda Neo that he wanted a **draft** agreement to present it to the Defendants' Board for approval. I also observed from the qualification, demeanor and evidence of Lopez that he was a shrewd businessman. I found it difficult to believe that he was not aware at all relevant times that it would be the Defendants' Board that would decide on the award of the contract and not James Chee its Hostel Manager. James Chee served the Defendants obviously in a relatively lower rank compared to the President and the Board members of the Defendants. He would therefore have informed Lopez

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and Linda Neo of the same that he needed the Board's permission for there to be an agreement. Further, the reasonable inference to be drawn from the contents of the scribbled note is that at the date of the note, no contract between the parties existed because the process of consultations at the solicitor's level and management level was still an on-going affair.

17. Plaintiffs' Counsel's final submission was that the Building Committee's Report in respect of the recommendation was fabricated for the purpose of this trial. Defence Counsel's reply was that the Plaintiffs had been allowed inspection of the documents before the trial and it had never been part of the Plaintiffs' case that the Report was fabricated. The same had also not been put to the Defendants' witnesses. In the circumstances, I also find this submission on behalf of the Plaintiffs without substance.

18. For all the reasons given, I dismiss the Plaintiffs' claim with costs to be agreed or taxed.

Dated this 31st day of August 1998

AMARJEET SINGH

Amarjeet Singh JC

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Ee Hock Hoe Adrian (Ramdas & Wong) for the plaintiffs
Ng Chon Hsing (Michael Khoo & Partners) for the defendants

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