IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 214

OS 1195/1993

Between

Transvic Investment Pte Ltd

… Plaintiff

And

Amva Investment Pte Ltd

… Defendant

GROUNDS OF DECISION

Land — Sale of land — Conditions of sale

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Transvic Investment Pte Ltd v Amva Investment Pte Ltd and Others

[1994] SGHC 214

OS 1195/1993
Lim Teong Qwee JC
22 August 1994

1 By a contract in writing evidenced by an offer dated 4 March 1992 made by the second and third defendants and acceptance dated 19 March 1992 by the first defendant the second and third defendants agreed to sell to the first defendant the property at 469 and 469A Geylang Road for $1m. By another contract in writing evidenced by an offer in substantially the same terms dated 23 September 1992 made by the first defendant and acceptance dated 7 October 1992 by the plaintiff the first defendant agreed to sell the same property to the plaintiff for the same price. Both contracts have not been completed and by this originating summons the plaintiff claims against the defendants an order:

> *4 That the first, second and third defendants do complete the purchase of the property pursuant to the terms and conditions of the option to purchase dated 4 March 1992 so as to enable the first defendants to perform its obligations in the sale of the property to the plaintiffs pursuant to the terms of the option to purchase dated 7 October 1992.*
>
> 5 That the first defendants specifically perform their obligations under the option to purchase dated 7 October 1992 for the sale of the property to the plaintiffs.

2 And alternatively damages and other reliefs. I made an order for specific performance of both contracts and these are my grounds of judgment.

3 Clause 13 of the offer in each case provides:

> *The sale and purchase is subject to approval of the vendors` application to the competent authority for subdivision and issue of a separate certificate of title to the above property. In the event that such approval to the vendors` application is not granted, this option shall become null and void and of no further effect and all monies paid forthwith shall be refunded to the purchaser without interest and neither party shall have any claim against the other for costs, damages or compensation whatsoever, each party to pay their own legal costs thereof.*

4 In each case completion was to take place `twelve (12) weeks from the date of the issue of separate certificate of title to the property by the Registry of Titles.`

5 Rayney Wong & Co were the solicitors for the second and third defendants in their sale and for the first defendant in its purchase under the earlier contract and for the first defendant in its sale to the plaintiff under the later contract. They received this letter dated 21 April 1993 from the Registrar of Titles:

> *Approved plan in DC 478/1/72 dated 16 November 1992 lot 161-40 mukim 24 at Geylang Road*
>
> *I refer to your letter of 16 April 1993 forwarding title deeds and other enclosures mentioned therein for our inspection pursuant to s 16 of the Land Titles Act (Cap 157).*

6 I hereby direct pursuant to s 16(2)(c) of the Land Titles Act that the abovementioned land be continued to be dealt with under the provisions of the Registration of Deeds Act.

7 Section 16 of the Land Titles Act then in force provided:

> *(1) Where permission has been granted under the Planning Act ... to ... subdivide unregistered land, the proprietor thereof, for the purpose of dealing with the unregistered land, or any part thereof, shall be required to produce to the Registrar all the title deeds necessary for deducing a good title to the land.*
>
> (2) The Registrar on receipt of the title deeds may -
>
> ...
>
> (b) bring the land under the provisions of this Act by issuing a qualified certificate of title ...; or
>
> (c) issue to the proprietor a certificate to the effect that this section does not apply to the title held by the proprietor ...

8 Lot 161-40 of mukim 24 comprises the property sold as well as 471 Geylang Road and it is not disputed that although permission to subdivide the land had been obtained the Registrar of Titles would not issue a separate certificate of title for the property sold and a conveyance or other assurance of the property sold could be registered under the Registration of Deeds Act. By letter dated 5 June 1993 Rayney Wong & Co gave notice to the plaintiff`s then solicitors `that the sale and purchase be aborted.` It is not altogether clear whether in giving the notice Rayney Wong & Co were acting for the second and third defendants as well as for the first defendant. The plaintiff disagreed with the notice and reserved its rights. By letter dated 25 August 1993 Rayney Wong & Co advised that they had appealed to the Registrar of Titles for reconsideration. They expressed the view that if the appeal was unsuccessful the contract would be null and void. They also advised that `Approval for subdivision has [been] granted by the competent authority.` By letter dated 31 August 1993 the plaintiff`s former solicitors disagreed and pointed out that cl 13 was for the benefit of the plaintiff only and by its present solicitors` letter of 25 October 1993 the plaintiff reserved its right to waive cl 13. In the event, the appeal was unsuccessful. In these proceedings, the first defendant now separately represented takes the position that if specific performance is ordered

Version No 1: 29 Oct 2026 (23:45 hrs)

against it then it would ask for a similar order against the second and third defendants.

9 The plaintiff`s principal case and on which the orders were made is that the condition as to issue of a certificate of title in cl 13 is for the exclusive benefit of the plaintiff and can be waived. In an agreement for the sale of a business carried on in Ellistones under the name `Benjamin Outram & Co` contained these two terms:

> *(3) The purchaser shall be at liberty in carrying on the business to use the style of Benjamin Outram & Co.*
>
> (5) ... The vendors ... shall not be at liberty to carry on directly or indirectly, within the radius of 50 miles of Ellistones aforesaid ... any similar business ... .

10 The agreement was signed by one of the vendors for himself and as attorney for another under a power of attorney. The purchaser sued for specific performance. In the Court of Appeal Lindley LJ said at pp 375-376:

> *The purchaser, however, says: `A doubt being raised whether the power of attorney authorizes the giving a purchaser power to carry on the business in the name of the old firm, which might expose the old partners to liability, or authorizes the binding the vendors not to carry on the same business, I will waive those stipulations.` That appears to me to remove all difficulty, because it is quite obvious that those two clauses are inserted simply and purely for the benefit of the purchaser; and if there is any doubt whether they are binding upon the vendors, and the purchaser waives them, what have the vendors to complain of? What conceivable difficulty remains if that is done? I can see none. Of course, if those clauses were so inextricably mixed up with other parts of the transaction that they could not be severed, there might be a difficulty; but they are not. They are perfectly severable.*

11 In a contract for sale of land was subject to the purchaser obtaining a mortgage on certain terms for part of the price. In the Privy Council Lord Templeman said at p 405:

> *Their Lordships consider that the condition solely benefited the purchaser and could be waived by her; it did not matter to the vendor where the money came from so long as she received $38,000: ... .*

12 See also where the contract for sale of land was subject to a condition as to obtaining extension of the written permission for a particular development. Goh Joon Seng J said at p 172:

> *It is obvious on the face of the said agreement that the condition as to obtaining extension of the written permission was for the exclusive benefit of the plaintiffs. As such they might waive this condition.*

13 Mr Ng submitted that upon failure of the condition as to issue of a certificate of title the contract was annulled automatically. I am unable to agree. That is not what cl 13 says. Under cl 13 the sale is subject to two conditions. First it is subject to approval of the vendors` application to the competent authority for subdivision. Secondly it is subject to issue of a separate certificate of title to the property. The two are distinct conditions. The contract becoming null and void is expressed to be a consequence of failure of the first condition. It is a consequence of `such approval to the vendors` application [being] not granted.` If the condition as to subdivision is not satisfied the defendants may not be able to convey the property on completion as the conveyance may not be registrable under the Registration of Deeds Act. The eventuality of failure of this condition is provided for. If this condition is satisfied then the sale can be completed either by a conveyance if the Registrar of Titles issues a certificate under s 16(2)(c) as he has done in this case or by a transfer if a certificate of title is issued. Clause 13 is silent as to the consequence of failure of the condition as to issue of a certificate of title. It may also be noted that cl 5 provides that on payment of the price at the time and place for completion the vendors are to `make and execute to the purchaser ... a proper assurance of the property.` These

Version No 1: 29 Oct 2026 (23:45 hrs)

are words which are apt to describe the mode of completion where the condition fails and a certificate of title is not issued.

14 Mr Ng`s main submission is that cl 13 of the offer or more accurately the condition as to issue of a certificate of title is so inextricably mixed up with the other parts of the contract that it cannot be severed and so cannot be unilaterally waived by the plaintiff. He referred to where a contract for the sale to the plaintiffs of the southern part of a site owned by the defendants contained these clauses:

> *7 This agreement is expressly conditional upon the purchaser obtaining detailed town planning consent for the redevelopment of the property as a petrol filling and service station together with a car wash in accordance with plans and drawings to be submitted to the local town planning authority by the purchaser such consent to be either unconditional or subject only to conditions acceptable to the purchaser. ... In the event of town planning consent in such terms as above not being granted within six months from the date of the first local town planning authority meeting after the date hereof (or within such extended time as the parties hereto may agree in writing) then after the expiration of such period (or such extended period) either party may by notice in writing to the other party determine this agreement ... .*
>
> 8 Completion will take place on the expiration of one calendar month from whichever is the relevant of the following: (i) the receipt by the purchaser of a written copy of the unconditional consent to the said planning application; or (ii) the date on which the purchaser shall approve in writing or be deemed to approve a conditional planning consent granted as aforesaid but not in any event before 1 January 1973.

15 Brightman J said at p 154:

> *There is an added difficulty in the way of [the purchaser`s] case. The decision in [1892] 3 Ch 359 suggests that a stipulation cannot be waived if it is inextricably mixed up with other parts of the transaction from which it cannot be severed. Clause 8 of the sale agreement specifies the date for completion. That date under cl 8 is dependent upon the date when [the purchaser] receive planning consent without conditions or when [the purchaser] is deemed to have approved conditions attached to the planning*

> *consent. Nothing is said about the date for completion if [the purchaser] waives the condition for planning consent. So it would seem that [the purchaser`s] unilateral elimination of cl 7 of the sale agreement will also eliminate cl 8 and leave the date for completion in the air.*

16 In the plan for redevelopment that was to be submitted was agreed with the vendors. It bears the reference CN/123/3A and was prepared by the purchaser`s architects Candlish & Kind. It showed the northern part (to be retained by the vendors) as `future site of showroom, existing workshops converted.` It was the intention of the vendors to use the retained land for the sale of motor vehicles as was well known to the purchaser. The contract which was subsequently signed also contained these clauses:

> *10 The purchaser will at its own expense cause to be built on the property between the points marked `A` and `B` on the plan annexed hereto and abutting on the southerly boundary of the retained land a raised footwalk four feet in width ... (hereinafter called `the footwalk`).*
>
> 11 The conveyance to the purchaser shall contain the following exceptions and reservations in favour of the land retained by the vendors ... : `Subject to the vendors ... exercising ...` (v) a right to pass and repass on foot over and along the footwalk, (vi) the right for the vendors and their successors in title to the retained premises to maintain windows along the southerly walls of the vendors` buildings now erected or henceforth to be erected along the southerly boundary thereof adjacent to the footwalk and a free and uninterrupted right of such light thereto as will exist after the purchaser has redeveloped the property in accordance with the drawing CN/123/3A prepared by Candlish & Kind or such other plan or plans as may be approved by the vendors and right also to maintain access and egress points to the footwalk from the retained land.
>
> 14 The purchaser will in the conveyance covenant with the vendors for the benefit of the retained land and each and every part thereof not to use the property for the sale of new or second-hand motor vehicles of any description.
>
> 15 The vendors will in the conveyance covenant with the purchaser for the benefit of the property and each and every part thereof not to carry on upon the retained land the business of a petrol filling and service station and/or car wash ... .

Version No 1: 29 Oct 2026 (23:45 hrs)

17 It cannot be doubted that cl 7 or the condition as to planning consent is not exclusively for the benefit of the purchaser. It is clear from cl 7 itself. The vendors are expressly given the right to determine the agreement in the event of planning consent not being received for a development approved by them. Clauses 10, 11, 14 and 15 make that even clearer. It was not open to the purchaser to waive the condition unilaterally. That was the ratio decidendi and I agree entirely with it. Brightman J went on to say that there was an additional difficulty in the purchaser`s case. The conveyance is to contain exceptions, reservations and covenants and these are related to such development. If the condition as to planning consent is waived unilaterally by the purchaser the conveyance cannot be settled and I think it is in this sense that elimination of cl 7 will `leave the date for completion in the air.`

18 In the purchaser entitled to specific performance `if a good title could be made` waived all objections to the title and agreed to accept such title as was in fact made and it was held that he was entitled to do so. If there had been a term that completion was to take place one month after a good title had been made I should be unable to see that the purchaser should by reason of that alone be unable to waive the objections to the title or why completion should not take place one month after he waived the objections and agreed to take such title as was in fact made.

19 I come now to cl 13 of the offer. The sale is subject to approval of the application for subdivision. That has been obtained. It is also subject to the issue of a separate certificate of title to the property. The Registrar of Titles has elected not to bring the land under the provisions of the Land Titles Act by issuing a certificate of title but has issued a certificate under s 16(2)(c) directing that the property continue to be dealt with under the provisions of the Registration of Deeds Act so that a conveyance may be registered. In a letter to

Version No 1: 29 Oct 2026 (23:45 hrs)

Rayney Wong & Co dated 8 September 1993 he drew attention to a conveyance dated 25 May 1981 registered in the Registry of Deeds. A good title has not been deduced by the second and third defendants as vendors under the earlier contract and consequently by the first defendant as vendor under the later contract. A certificate of title would have conferred on the proprietors a paramount estate free from encumbrances, liens, estates and interests except those registered or notified on the land-register subject to the exceptions under s 38 of the Act then in force (now s 46 of the Land Titles Act) and on completion the whole of the estate of the defendants would have been transferred to the plaintiff. That is what the plaintiff would have been entitled to. On the face of the contract in each case the condition as to issue of a certificate of title in cl 13 is for the benefit of the purchaser and not the vendors or vendor. It is exclusively for the purchaser`s benefit. The plaintiff as purchaser under the later contract has waived this condition and agreed to complete the purchase (and in doing so accepting such title as has been deduced) by conveyance of the property. The defendants have not asserted that by executing a conveyance for registration under the Registration of Deeds Act they would be undertaking any covenants or obligations or any covenants or obligations more onerous than by executing a transfer under the Land Titles Act. It made no difference to them whether they signed a transfer or executed a conveyance or other assurance of the property on completion - and indeed the only way in which Mr Ng attempted to show that the condition in cl 13 was also for the benefit of the vendors was to suggest that `a separate certificate of title to the above property` in cl 13 meant a separate certificate of title to 469 and 469A Geylang Road which is the property described in the heading of the offer and which is the property sold as well as a separate certificate of title to 471 Geylang Road which is not mentioned anywhere in the offer and which is to be retained by the second and third defendants. This construction is clearly untenable. Apart from this he has not

attempted to submit that on the face of the contract the condition is also for the benefit of the vendors.

20 Mr Ng`s main argument is that completion is to take place 12 weeks from the issue of the certificate of title and waiver would in the words of Brightman J in leave the date for completion in the air. I see no difficulty in that nor has any difficulty been demonstrated. There is nothing in the conveyance to be settled that is of substance rather than form by reason of the issue of a certificate of title being waived. Mr Davinder Singh submitted that is distinguished and I agree. The condition is not so inextricably mixed up with the provision for completion or with any other parts of the contract that it cannot be severed. It is severable. Completion was to take place 12 weeks from the issue of a certificate of title. The plaintiff waived the condition at the hearing. So completion ought to take place 12 weeks from the order to be made on this originating summons and I made an order for specific performance of both contracts for completion 12 weeks from the date of the order with costs to be paid by the first defendant and by the second and third defendants and I ordered the second and third defendants to pay the first defendant the costs to be paid to the plaintiff.

21 ***Plaintiff`s claim allowed.***

Lim Teong Qwee JC

Version No 1: 29 Oct 2026 (23:45 hrs)

Transvic Investment Pte Ltd v Amva Investment Pte Ltd and Others[1994] SGHC 214

Davinder Singh and Bonnie Lo (Drew & Napier) for the plaintiff
Kelvin Lim (Kelvin Lim & Pnrs) for the first defendant
Ng Yuen (Shook Lin & Bok) for the second and third defendants

---

Version No 1: 29 Oct 2026 (23:45 hrs)