

CASE LAW DISCOURSE ON THE NON-COMPLIANCE OR BREACH OF EXPRESS CONDITIONS OF ALIENATED LAND

Introduction

Section 120 (1) and (2) of the National Land Code (Revised 2020) ("**NLC 2020**") states that the state authority ("**State Authority**") is accorded with the power to alienate land including to impose any conditions and restrictions in interest to be complied by the land proprietor of the alienated land. There are two types of conditions imposed on an alienated land which must be observed by the land proprietor, namely express and implied conditions. However, this article focuses on decided case laws on non-compliance or breach of express conditions imposed by the State Authority on alienated land.

Express Conditions under the NLC 2020

Express conditions shall be endorsed on the issue document of title ("**Land Title**") under the heading of "*syarat-syarat nyata*". Express conditions imposed on any alienated land vary according to the category of land: agricultural, industrial, or building. For agricultural land, Section 121 of NLC 2020 states that express conditions which may be imposed by the State Authority may include the cultivation of a specific type of crop, prohibition from the cultivation of a specific type of crop, limiting the maximum area of land to be occupied by dwelling houses or other types of buildings, etc.

For building or industrial land, examples of express conditions that may be imposed by the State Authority, as stipulated under Section 122 of NLC 2020 may include the area or proportion of land to be built upon, a specific type, design, height, and structure of any building to be erected on the land, and the type and quality of the materials to be used in the construction of the building, the usage of the building, etc.

Can express conditions be amended?

Section 124(1)(c) of NLC 2020 allows the land proprietor to apply for rescission or

amendments of any express conditions imposed on the alienated land to the State Authority. In deciding whether to vary the express conditions, State Authority shall be satisfied that the land proprietor has interest on the land[1] and has settled all rents due to the alienated land. Any revision or amendments to the express conditions of the land shall be reflected on the Land Title as required under Section 124 (4)(c) of NLC 2020.

Discussion on the non-compliance or breach of express conditions

This article shall discuss on the decision of two Federal Court cases, the case of *Singma Sawmill Co Sdn Bhd v Asian Holdings (Industrialized Buildings) Sdn Bhd [1980] 1 MLJ 21* ("**Singma's case**") and the case of *Tan Sri Dato' Lim Cheng Pow v. Bellajade Sdn Bhd & Another Appeal [2021] 10 CLJ 183* ("**Bellajade's case**"), on the non-compliance or breach of the express conditions endorsed on the Land Title which subsequently resulted on the issue of legality of the agreements entered between the landowner and the tenant in both cases.

(i) Singma's case

In Singma's case, the issue brought before the Federal Court was whether the tenancy agreement entered between the appellant and the respondent in this case was illegal and void under the Contracts Act 1950, due to the breach of express conditions of the land.

The appellant in this case had rented out a portion of its land to the respondent to allow the respondent to operate a factory on the land although the category of land use endorsed on the land title was for agricultural purposes, with an express condition that the land shall only be used for the cultivation of pineapple and rubber tree. Prior to the execution of the tenancy agreement, the appellant applied to change the category of land use from agriculture to industrial but was rejected by the State Authority.

The State Authority issued a letter to warn the appellant that the factory was operated illegally, and the appellant had breached the express conditions imposed on the land. The State Authority further issued a notice to the appellant to remedy the breach of conditions and to demolish the factory but was ignored by the appellant. The Federal Court held that the breach of express condition of the land was "willful, if not contumacious" as there was a clear intention to use the land on which the factory was built on, for an unlawful purpose which is to build and operate the factory.

(ii) Bellajade's case

One of the issues raised before the court in this case is on the legality of the tenancy agreement dated 21 February 2013 entered between Bellajade Sdn Bhd and CME Group Berhad ("**CME**") for an office building known as Plaza Palace, for a period of three years. Bellajade filed an action in the High Court for the recovery of rental under the tenancy agreement from the appellant, Tan Sri Dato' Lim Cheng Pow, who is the guarantor for CME.

A sale and purchase agreement ("**SPA**") dated 26 March 2012 was entered between the previous owner of Plaza Palace, Orion Choice Sdn Bhd ("**Orion Choice**") and Bellajade Orion Choice was named in the SPA as the beneficial owner of the land and premise as the owner of the land and premise, Kris Angsana Sdn Bhd ("**Kris Angsana**") went into liquidation. Prior to the execution of the SPA between Orion Choice and Bellajade, Kris Angsana had applied to the Land Administrator of Kuala Lumpur on 22 November 2011, for the surrender and re-alienation of the lands under Section 204D of the NLC 2020 and Section 124(1)(c) of NLC 2020 to amend the express condition of the lands from residential to mixed development.

The application under Section 204D of NLC 2020 and Section 124(1)(c) of NLC 2020 were approved on 8 May 2012. Kris Angsana was instructed to make a full settlement of the premium sum and administrative costs in relation to the applications and made settlement of the same on 14 February 2013. Subsequently, on 18 February 2013, the Department of Land and Mines Kuala Lumpur issued a certificate acknowledging the payment made by Kris Angsana and approving the application made under Section 204D of NLC 2020 and Section 124(1)(c) of NLC 2020. However, during the execution of the tenancy agreement, approval granted by the State Authority in respect of the change was not endorsed on the land title.

The High Court held that the tenancy agreement was illegal and void ab initio as the commercial use of the premises contemplated under the agreement contravened the express condition of title which restricted the use of the lands to residential only. On appeal, the Court of Appeal reversed the finding of the trial judge and held that the tenancy agreement was not void for illegality since the process of conversion had been completed upon payment of the premium sum imposed by the State Authority for the change of condition.

The appellant appealed before the Federal Court on the illegality of the tenancy agreement entered between Bellajade and CME since the application under Section 124(1)(c) of NLC 2020 to amend the express conditions of the land were not endorsed on the land title as required by Section 124 (4)(c) of NLC 2020. The Federal Court held that the tenancy agreement for the commercial use of the lands, which in the instant matter was expressly conditioned only for residential use, was illegal and void as the amendment made on the express conditions were not endorsed on the land title.

The effective date for the approval of change of express conditions

The Federal Court in Bellajade's case held that since NLC 2020 does not provide expressly the effective date for the approval of the change in condition, the effective date of the amendment of the express conditions shall be upon the endorsement in the Land Title.

Effect of non-compliance with the express conditions

It is important to note that Section 125 of NLC 2020 stipulates that a breach of a condition shall arise so soon and continue so long as the condition is not complied with.

Section 127 of NLC 2020 further states that any breach of condition endorsed on the Land Title shall cause the land to be liable to forfeiture to the State Authority.

Conclusion

To conclude, land proprietor of an alienated land shall observe all conditions, especially all express conditions imposed on the alienated land. In the event the land proprietor decides to use the land for other purposes other than what was allowed in the Land Title, application to amend the express conditions of the land shall be made to the State Authority. The land can only be used for the intended purposes upon the endorsement of the amended express conditions on the Land Title. Any non-compliance or breach of any express conditions may result in the forfeiture of the land by the State Authority.

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1. In a Federal Court case of *See Leong Chye & Anor v. United Overseas Bank (Malaysia) Bhd & another appeal* [2021] 6 CLJ 650, the Court defined "Interest on the land" to be the statutory interest in registered land which includes a registered lease, charge or easement, statutory lien, and a tenancy exempt from registration.

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