

# Dajia Vs Mirae -- The Anbang Adventure

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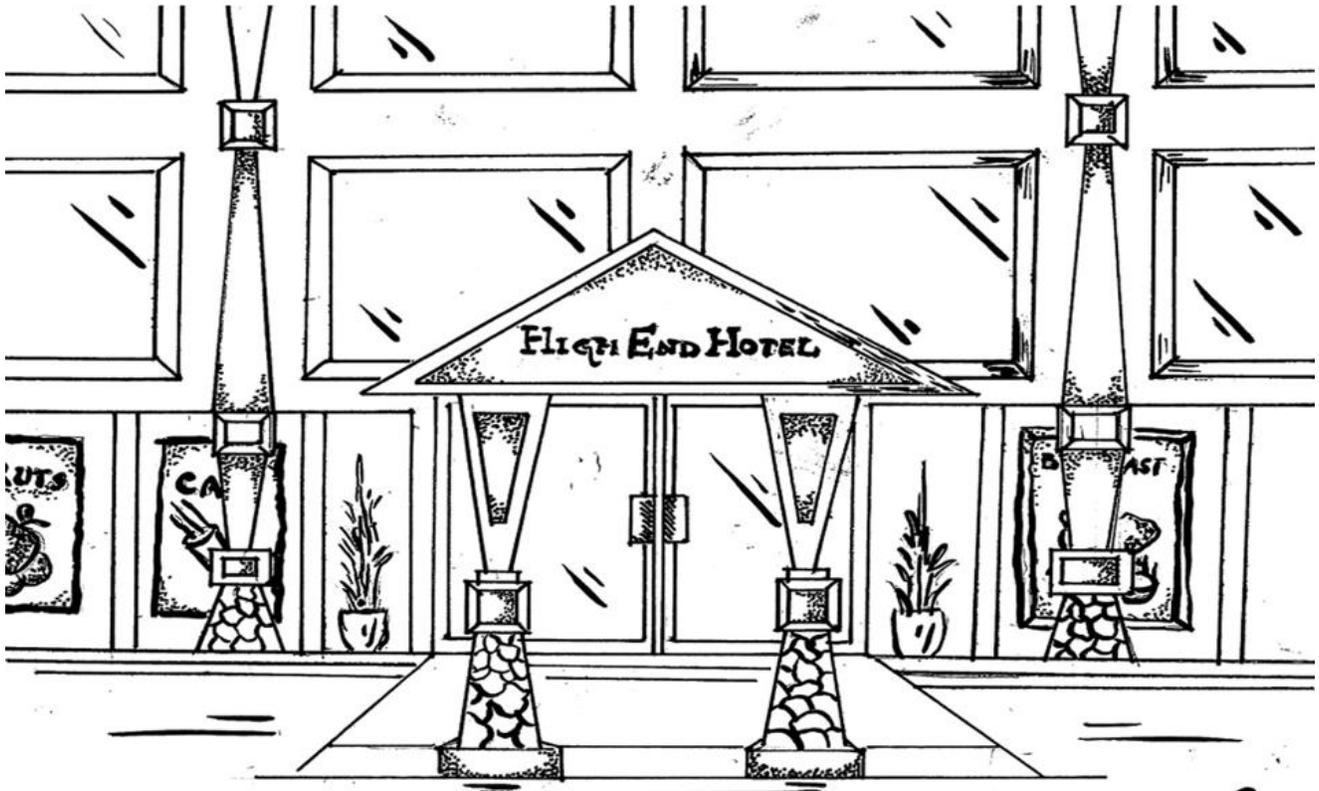
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I write about commercial real estate negotiations, deals and legal issues.





The strange adventure of Dajia and Mirae involved a portfolio of 15 high-end hotels.  
RANJAN SAMARAKONE

A Chinese company called Dajia agreed to sell 15 high-end American hotels to a Korean investment fund called Mirae for almost \$6 billion. The contract deposit alone was half a billion dollars, under a contract signed a few months before the Covid pandemic began. But the transaction never closed. Instead, it found its way into Delaware Chancery court, which late last month ruled in favor of Mirae, the buyer, in a remarkable [243-page decision](#).

The story of Mirae and Dajia offers lessons for anyone negotiating similar deals or seeking inspiration for a novel on international fraud and intrigue.

The contract required the seller to operate its hotels in the ordinary course, consistent with prior practice. When Covid shutdowns drove many of those hotels to close or nearly close, the buyer said the seller hadn't lived up to its obligation to operate in the ordinary course, so the buyer was off the hook. The seller of course disagreed, arguing that it had operated the hotels the same way everyone else in the hotel industry did at the time, and that was good enough.

The court decided that the buyer – not the seller – had the better of the argument. In other words, operation in the “ordinary course” required consistency with historical operations without regard to what others were doing at the same time, and Dajia hadn't met that standard.

That would have been enough to decide the case. But there was much more to it.

During the original contract negotiations in mid-2019, it had become apparent that someone had recorded deeds to transfer six of the hotels to purported new owners other than Dajia entities. Those purported new owners had names that were often similar to those of the previous owners. The deeds contained weird language. Mirae wasn't happy with any of this.

Dajia assured Mirae that the six deeds were the work of a young Uber driver who had committed random acts of fraud. So the contract required Dajia to clear the deeds from title and convince a consortium of title insurance companies to issue, at closing, title insurance coverage for the buyer with no exception for anything related to those deeds.

Dajia got rid of the deeds through "quiet title" litigation that ended in February 2020. Then, just as Mirae was about to sign up its lender group, counsel to a lender discovered a strange surprise through its due diligence: a series of Delaware arbitration awards that various Chinese entities had obtained against Dajia's predecessor entity, Anbang Insurance. Those awards purportedly declared that Anbang (now Dajia) owed the claimants extraordinary sums, as high as \$180 billion, because of purported and sometimes actual trademark disputes. The awards commanded Anbang (now Dajia) to transfer ownership of 20 properties, including the 15 under contract with Mirae, to the claimants. Six of the transfers had already occurred, according to the awards, presumably matching up with the six California deeds.

The landscape suddenly became much more complicated and murky. To Mirae, the six deeds now looked like the tip of a quite unusual iceberg, not just random acts of fraud perpetrated by an Uber driver.

Mirae tried to get more information on the alleged agreement – written in Chinese – that led to the Delaware arbitrations, but had trouble obtaining it from Dajia, which said the whole arbitration exercise just continued the previous fraud by the Uber driver. Mirae knew that if it were aware of an unrecorded claim to the hotels (e.g., the Delaware arbitration awards and underlying agreement, requiring conveyances of the hotels) but didn't tell the title companies about it, then Mirae's title insurance policy wouldn't protect against the claim.

The title insurance consortium refused to affirmatively insure Mirae against any claims arising from the Delaware arbitration awards or the underlying agreement. Instead, the title companies raised a broad exception to coverage for anything related to these matters.

That exception, the court concluded, meant that Dajia hadn't satisfied the contractual requirement that Mirae's title insurance policy omit any exception related to the California deeds. A policy exception for the Delaware arbitrations and related matters was broad enough, the court said, to subsume the California deeds. And because Dajia had not persuaded the title insurance companies to omit that broad exception for the Delaware arbitration, Mirae didn't have to close. It was entitled to the return of its half-billion-dollar deposit.

That part of the decision demonstrates how buyers and sellers can use the title insurance process to define exactly the condition of title that a buyer must accept, with a bright line if title insurance coverage cannot be obtained. The decision also provides a worst-case example of what can happen if a seller either doesn't fully understand the issues associated with what it's selling, or does not fully disclose them early in the process.

Intertwined in all that, the Delaware court decision lays out the history of a massive and protracted campaign against Dajia's predecessor, Anbang, involving claims, legal proceedings, and murky players around the world. The Delaware arbitration agreement, an important piece of that history, created enough concern that no title insurance company would ignore it. And that was how the deal ended.

Rollo Baker and Jonathan Feder, two of Mirae's attorneys at Quinn Emanuel, said the facts of the case were extraordinarily complex and convoluted, but the court "got it right" on the two central issues in the case – the obligation to operate in the ordinary course and the use of title insurance to define what the seller had to deliver. Counsel to Dajia has been invited to comment on the litigation.

The author was engaged by Mirae and Quinn Emanuel as an expert witness in this litigation for some title-related issues.



Joshua Stein

