IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1994] SGCA 124

CA 14/1994

Between

Deans Property Pte Ltd

… *Plaintiff*

And

Land Estates Apartments Pte Ltd
Another

… *Defendant*

GROUNDS OF DECISION

Agency — Estate agents; Civil Procedure — Pleadings

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

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Deans Property Pte Ltd v Land Estates Apartments Pte Ltd and Another

[1994] SGCA 124

CA 14/1994
Goh Joon Seng J; Karthigesu JA; L P Thean JA
08 November 1994

1 Cur Adv Vult

2 ***Background***

3 The appellants are licensed real estate agents. The first respondents are a company which owned a factory cum warehouse at 170-178 Paya Lebar Road, Singapore 1440 (the property). The second respondent was a director of the first respondents and also a director and shareholder of Heshe Holdings Pte Ltd (Heshe) whose managing director was Chia Shi Teck (Chia). Heshe are garment manufacturers with their manufacturing processes located within the property.

4 Around March/April 1989, the second respondent requested Dean Ong (Ong), the appellants` managing director, to find a purchaser for the property as well as for his shares in Heshe (the shares). On the basis of prior dealings, it was understood that if the appellants managed to effect a sale, they would be entitled to a commission amounting to 1% of the sale price. Ong and his colleague Tay Tien Guan (Tay) then set about marketing the property and the shares. Investment proposals were prepared and sent to various companies, including

First Capital Corp (FCC) which expressed some interest. Two viewings of the property were arranged by Ong and Tay for FCC in June 1989. Ultimately, FCC purchased the shares for $10m in August 1989 and the property for $19m in September 1989 with completion in December 1989. The appellants were paid $120,000 by the second respondent as commission for the sale of the shares. The appellants received nothing from the first respondents for the sale of the property, but FCC did pay the appellants $75,000, apparently in respect of the same.

5 About two years later, on 31 May 1991, Ong wrote to the first respondents requesting payment of a 1% commission ($190,000) in respect of the sale of the property. Two reminders were subsequently sent by Ong. On 29 July 1991, the second respondent replied on behalf of the first respondents stating that the sale of the property was effected directly between FCC and the first respondents and therefore the appellants were not entitled to any commission for the sale. Subsequently on 14 August 1991 the appellants commenced this action in the High Court claiming $190,000 as commission payable for arranging the sale and purchase of the property.

6 **The evidence in the High Court**

7 In the High Court, Ong and Tay testified for the appellants. It was their evidence that they arranged two viewings of the property for FCC. One of the viewings was attended by Tay, Chia and Wong Kwai Choy (Wong), FCC`s general manager, when Chia showed and explained Heshe`s operations to them. At this viewing, FCC only expressed interest in the shares. Ong said that another viewing was attended by Lay Kok Weng (Lay) who was in charge of FCC`s property division. Tay admitted that Lay subsequently told him of FCC`s

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disinterest in the property but said that Wong later informed him that FCC would in fact be interested in the property if the price was right. This led to negotiations in which both Ong and Tay claimed they were actively involved. In the event, the property was sold for $19m but the appellants did not receive any commission from the respondents. They did, however, receive $75,000 from FCC which Ong said was a commission and partly in payment for their efforts in bringing about a reduction in the purchase price from $19.5m to $19m.

8 The respondents called Wong and Lay to give evidence on their behalf. Both Wong and Lay admitted receiving the investment proposal prepared by the appellants and reading it. Lay said that he went with Ong to view the property in June 1989. However, he informed Tay a few days later that FCC was not interested in purchasing the property. Wong said that subsequently, when he met Chia at the factory premises on the property, he had already been told by Lay that the property was not a good investment and he made it clear that FCC was only interested in the shares and not in the property. Both Ong and Tay were present at this meeting. He said that the discussions took place in a meeting room within the property but he was not shown the rest of the property. FCC agreed to purchase the shares and became the majority shareholder in Heshe. According to Wong, it was only after this that Chia approached him concerning the purchase of the property, pointing out the long term advantages of FCC owning the property on which Heshe`s operations were being carried out. Wong said that the sale of the shares was structured such that he was only allowed to do a detailed inspection of Heshe`s balance sheets and business plans after the purchase and it was only on doing so that he concluded that for long term purposes it would be good to purchase the property as Chia had suggested. He said that, having obtained his backing, Chia subsequently raised the issue at a meeting at which members of the FCC board of directors were present. The

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board was persuaded by Wong and Chia, and Lay was instructed to negotiate a price between $18m and $20m. Lay confirmed that he negotiated the price on behalf of FCC with the second respondent. However, he made it a point to say that neither Ong nor Tay were present or involved in the negotiations. Some time after the sale was agreed at a price of $19m, the second respondent expressed the hope that there would be no misunderstanding with Ong. Wong said that on being told this by Chia, he contacted Ong to inform him that the sale had been a result of direct dealings between the first respondents and FCC and that the appellants were not entitled to any commission. In the face of Ong`s expressed dissatisfaction, and after some bargaining, Wong said that he eventually agreed that FCC would pay him $75,000.

9 Chia and the second respondent also gave evidence and their version of events was substantially the same as Wong`s and Lay`s. Chia said that he had instructed the appellants to market the property confidentially so as not to damage market confidence in Heshe. He admitted that he did not know Wong or Tay prior to the meeting arranged by the appellants. He confirmed FCC`s initial disinterest in the property and said that its subsequent purchase was largely due to his efforts in convincing FCC`s board of directors as to the long term advantages of owning the property.

10 The second respondent confirmed that he had originally contacted the appellants to instruct them to market the property. He said that he subsequently negotiated the price at which the property was sold and noted that neither Ong nor Tay was present at these negotiations. He also confirmed approaching Chia to help prevent any misunderstanding by requesting Wong to inform Ong that the sale was a direct deal and that no commission was payable. He also said that he had subsequent dealings with the appellants after the completion of the sale

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of the property but the question of commission for that sale was not brought up at all until May 1991. Finally, the second respondent also said that when he contacted Ong following his letter of 31 May 1991, Ong told him that Tay thought Ong had taken the commission for the sale of the property and that the letter was merely meant to show Tay that Ong had not. The second respondent said that some negotiations to settle this dispute followed but the parties could not agree on a compromise and the matter was then left in the hands of their respective solicitors.

11 **The decision of the High Court**

12 In her judgment, the learned judicial commissioner (as she then was) found the evidence of Ong and Tay lacking in some respects. In particular, she found that for someone who allegedly participated in negotiations, their evidence was sadly lacking in detail in respect of these negotiations. She also felt that there was `more than a grain of truth` in the second respondent`s allegation that there was some misunderstanding between Ong and Tay over the non-payment of the commission. The learned judicial commissioner found the evidence of FCC`s representatives more reliable as she said, `there is no reason for either Wong and Lay to testify other than to the truth and contrary to counsel`s suggestion I do not think they will sacrifice the truth to help the defendants avoid payment.` Relying on Wong`s and Lay`s evidence, she found that the plaintiffs had introduced FCC to the first respondents. Next, she found that Ong was told that Lay did not think the property a good investment. Thirdly, she found that the negotiations after the second viewing when Wong met Chia were with regard to the shares and not the property. Finally, FCC`s later interest in purchasing the property arose from different considerations, that is, as the parent company of Heshe.

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13 Based on these findings of fact, the learned judicial commissioner held that FCC`s expressed disinterest in the property in June 1989 and Chia`s efforts in August 1989 to get FCC`s management to change its mind formed a break in the chain of causation sufficient to disentitle the appellants to the 1% commission. The appellants` introduction of FCC was spent and was not the effective cause of the sale. As an alternative, the learned judicial commissioner also held that the $75,000 paid by FCC to the appellants was in full and final settlement of whatever claims the plaintiffs had for commission. She said that, at law, the appellants had compromised their claim and, regardless of the merits thereof, a court would not permit them to raise the claim afresh in the context of a new action. Thus, the learned judicial commissioner relied on these two grounds and held in favour of the respondents, dismissing the appellants` action, and awarded separate sets of costs to each of the two defendants. [See [1994] 2 SLR 198 .]

14 **The appeal**

15 The appellants challenged both the grounds given by the learned judicial commissioner for her decision. Firstly, counsel for the appellants argued that the evidence showed that the $75,000 was not paid as a compromise and, even if it was, the learned judicial commissioner was not entitled to find that there had been a compromise because this defence had not been pleaded by the respondents. Secondly, the appellants argued that the learned judicial commissioner had erred in finding that there had been a break in the chain of causation leading to the sale of the property as there were numerous authorities that established, as a matter of law, that an act of introduction is the effective cause of a sale where there are no special contractual conditions to the contrary.

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16 **Compromise**

17 Having examined the evidence, it is our view that the $75,000 was paid as a settlement of any claim that the appellants might have had against the respondents. This is clear from the testimony of Wong whose evidence the learned judicial commissioner found to be credible. This is what Wong said:

> *I told PW1 (Ong) that FCC had decided to purchase the property and as we all understand it was a direct deal between ourselves, no commission is payable to him from either party. He was certainly not happy, he was agitated, he said he wanted a token sum because he said he was the one who introduced us to Chia and second defendant. We went on talking about the quantum of the token sum, I cannot recall exactly what figure I started off with it, may have been $5,000-$10,000 and he was talking six digits and looking at a figure of $100,000. After much haggling we settled on a figure of $75,000 on the basis that it is an ex gratia token sum given and he would have no claims against either party whatsoever over this property deal.*

18 ...

19 I thought I had agreed with PW1 that the $75,000 payment represented the one and final payment and there would be no further claims whatsoever.

20 Reading this evidence in the light of the learned judicial commissioner`s assessment of Wong as a truthful witness, we find that it clearly establishes that the $75,000 was intended to be a full and final settlement of any claim that the appellants might have vis-Ã¡-vis the 1% commission.

21 At the hearing of this appeal, counsel for the appellants argued that the evidence of Chia and the second respondent confirmed that there was in fact no compromise between the parties. However, those parts of the evidence that he referred to were merely statements that the payment of the $75,000 had nothing

to do with the first respondents. This does not make the payment any less a settlement. There is authority to say that if a third party pays a sum in settlement of a claim between a creditor and a debtor, the creditor cannot revive the claim against the debtor, and the debtor is entitled to rely on the settlement in defence even though he was not privy to the settlement agreement. In , the plaintiffs were moneylenders from whom the defendant had borrowed money. When the defendant failed to repay, they approached his father, Sir Richard Temple, who sent them a bank draft for a sum less than that claimed by the plaintiffs, in settlement of the debt. The plaintiffs subsequently brought an action against the defendant but the English Court of Appeal held that the plaintiff moneylenders could not pursue the defendant for the balance as there had been a settlement. Fletcher Moulton LJ said at p 339:

> *I am of the opinion that by that transaction between the plaintiffs and Sir Richard Temple the debt on the promissory note became extinct. I agree with the view expressed by Willes J in 13 CB (NS) 543. The effect of such an agreement between a creditor and a third party with regard to the debt is to render it impossible for the creditor afterwards to sue the debtor for it. The way in which this is worked out in law may be that it would be an abuse of the process of the court to allow the creditor under such circumstances to sue, or it may be, and I prefer that view, that there is an extinction of the debt ... .*

22 Therefore, even though the payment of the $75,000 had nothing to do with the respondents, they can still rely on it as a defence to the action of the appellants.

23 However, the counsel for the appellants also argued that the defence of a settlement or compromise was never pleaded by the respondents and that, therefore, the learned judicial commissioner was not entitled to make the finding that there had in fact been such a compromise. Having examined the pleadings, it is clear to us that the defence of settlement or compromise was indeed never

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pleaded. Neither was the fact that FCC had made a payment of $75,000 to the appellants. Though there arose in the course of the trial evidence that the $75,000 was paid and that it was paid in full and final settlement of any cause of action that the appellants might have, no application was made on behalf of the respondents to amend the defence to include averments on this matter. In , Buttrose J, with whom Wee Chong Jin CJ and Tan Ah Tah J agreed, said at p 101:

> *While one can appreciate the dilemma in which the learned trial judge found himself as the result of his findings, he has, with the greatest respect, in my opinion, decided the case on issues not raised by the pleadings and against the admissions contained in them and the evidence.*

24 The case, in my view, must be decided on issues raised by the pleadings which bind the parties. If other issues are desired to be raised or come to light during the trial, they must be pleaded by way of amendment.

25 For these reasons alone, in my judgment, this decision cannot be allowed to stand.

26 This part of Buttrose J`s judgment was cited with approval by this court in at p 715. Since the question of a compromise or settlement had never been pleaded by the respondents in our present case, the learned judicial commissioner was not entitled to make the finding that she did.

27 **Effective cause of the sale**

28 It is clear that the relationship between an agent and a principal is a contractual one with any entitlement to commission being governed by the terms of that contract. However, an agency relationship is sometimes

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established in a situation where there has been little or no express discussion of contractual terms. The relationship between a vendor and a real estate agent is often of such a character. In such a case, the agent`s entitlement to any commission for the sale of property is dependant on his being the `effective cause` of the sale; this being an implied term of the agency contract. The law in this respect was stated concisely by Chan Sek Keong J [as he then was] in at p 295:

> *The law is not in dispute. In the absence of any special contractual terms, the general principle is that the agent must be the effective cause of the sale. It is a question of fact in each case.*

29 In the present case, there were no express contractual terms governing the entitlement to commission. Therefore, for the appellants to succeed, they have to show that they were the effective cause of the sale. This means that their efforts to market the property must have operated to produce a ready and willing buyer for the property. In this respect, the cases are clear that it is insufficient for the appellants to show that the sale and purchase would not have taken place but for their efforts. It is not enough for the agent`s labours to be a causa sine qua non. His services must actually be the causa causans of the sale before commission is payable; see and . With this in mind, we now turn to the evidence to see whether or not the facts establish that the appellants were the effective cause of the sale. In doing so, we are particularly mindful of the finding of the learned judicial commissioner that the evidence of Wong and Lay was dependable and truthful.

30 The appellants had prepared an investment proposal on the property and had sent it to both Wong and Lay. However, Wong`s evidence was that he merely `glanced through it`. Further, he emphasized that he was not the `right person` to handle a property transaction for FCC as that was Lay`s job. It was

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Wong`s evidence that the meeting with Chia arranged for him by the appellants concerned the shares and only the shares and that he never viewed the property as such, spending all of his time in a meeting room within the property. On the other hand, it was Lay`s job within FCC to investigate possible investments in property. The appellants also sent to Lay the investment proposal and no doubt he read it. The appellants also arranged a viewing for him. However, having read the investment proposal and having been shown round the property by the appellants, Lay`s decision was that FCC should not purchase the property. Even Tay admitted that Lay had informed him of FCC`s disinterest. In our view, the conclusion to be drawn from this is that all the efforts on the part of the appellants to produce a willing and able buyer for the property had failed. In spite of their marketing efforts which included the investment proposals and the conduct of viewings, FCC remained unconvinced.

31 Returning to Wong`s evidence, we note that he stated clearly the reasons why he subsequently changed his mind and supported the purchase of the property. He said:

> *After FCC acquired shares in Heshe Holdings, Chia brought up the matter of purchasing the property at a meeting where FCC board members were present. Before he did so, he consulted me and we discussed the advantage of FCC purchasing the building. During that discussion I told him I would support his proposal. No, PW1 and PW2 were not present at the discussion ... Also the way the shares deal was structured we were not allowed to do a detailed due diligence inspection of the company`s balance sheets items before the purchase. After we bought the company I examined the business in detail especially the business plan aspect for future expansion. Also I had a chance for the first time to meet up with the other senior management of the company. Based on these two factors, I felt comfortable about the business and that we had bought a good investment and that for long term planning purposes it would be good for us to purchase the property. No, when I made the decision I did not refer to either PW1 or PW2 [Tay]. I saw no particular reason why I should refer to them. No, they never called me on the property [after August*

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> *1989]. The CEO Kwek, of FCC, was at the board meeting together with another board member also Mr. Quek. Yes the board gave me the green light to purchase the property.*

32 It is thus clear that Wong`s reasons for supporting the purchase of the property were totally extraneous to the appellants. Wong decided that the purchase would be wise in the light of his inspection of Heshe`s business from the perspective of a majority shareholder. He was also convinced by Chia. None of the efforts of the appellants operated to obtain Wong`s support. It is also important to note that Wong said that Chia brought the matter up before members of the board of directors and that it was they who subsequently gave the green light for the purchase. There is no suggestion that the members of the board had read the investment proposal or been affected in any way by the efforts of the appellants in their decision to approve the purchase.

33 The only contribution of the appellants to the eventual sale and purchase was really the introduction that they effected between the respondents and FCC. It was never disputed that FCC was the appellants` contact. However, this degree of causation is clearly insufficient to establish that the appellants were the `effective cause` of the sale. At the most, they could be said to be the causa sine qua non of the sale, but not the causa causans.

34 For an agent to be the effective cause of a sale, he has to introduce a willing and able buyer to his principal. In this case, though FCC was introduced by the appellants, they were initially not interested in purchasing the property. However, the appellants could also have earned the right to their commission if, by their efforts, an initially uninterested buyer became a purchaser. In that case, they would correctly be described as the effective cause of the sale. However, on the evidence, there is nothing to indicate that FCC`s change of mind was the

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result of any of the appellants` efforts. Wong`s evidence, which was accepted by the learned judicial commissioner, shows clearly that FCC`s subsequent interest in the property did not arise from the appellants` marketing efforts. The only contention raised by the appellants before us amounted to a simple assertion that the sale would not have come about but for their initial introduction. This is clearly not enough. We therefore dismiss this appeal.

35 **On costs**

36 In the court below, the learned judicial commissioner awarded separate sets of costs to each of the two respondents, although the action against the second respondent had been struck off since 4 November 1991. Accordingly we set aside the award of costs in favour of the second respondent in the court below and we make no order as to the costs of this appeal in respect of second respondent. We award the first respondents costs of the appeal and affirm the order granting them costs in the court below. The deposit by way of security for costs is to be paid out to the first respondents to account of costs.

37 ***Appeal dismissed.***

Goh Joon Seng J
Karthigesu JA
L P Thean JA

Manjit Singh, Chow Kin Wah and Samuel Chacko (Manjit & Pnrs)
for the plaintiffs

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Lee Mun Hooi and Tan Lee Cheng (Lee Bon Leong & Co) for the defendants

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