IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 179

Suit No 935 of 2019

Between

Seah Han

… Plaintiff

And

Onwards Media Group Pte Ltd

… Defendant

JUDGMENT

[Contract] — [Contractual terms]

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Version No 1: 16 Jul 2021 (10:36 hrs)

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Seah Han
v
Onwards Media Group Pte Ltd

[2021] SGHC 179

General Division of the High Court — Suit No 935 of 2019
Philip Jeyaretnam JC
20–22 April 2021, 15 June 2021

16 July 2021 Judgment reserved.

Philip Jeyaretnam JC:

Introduction

1 In business, who you know may sometimes count for more than what you know. For this reason, making connections and building friendships are both important for success. This offers a perennial role to the socially adept. Among their ranks are those who make introductions in return for a commission on resulting contracts. They are especially needed by newly established businesses that do not have much of a record.

2 The plaintiff is one such person: good at making friends. He hoped to parlay this quality into income by securing business for one friend from another. Friendship however fosters informality, and in this case, there was no written contract for his commission. While all involved agree that commission was to be paid, the parties differ on how much. That question is what I must answer.

3 In addition, the defendant argues that if the plaintiff is right about how much was to be paid, part of his claim is premature, because some of the commission had not fallen due as of the date of the writ.

Facts

The parties

4 The plaintiff, Seah Han, is a sole proprietor who provides public relations consultancy services in the media and information technology industries ("Mr Seah").[1] The defendant is an information technology company specialising in video processing and real-time communications ("Onwards Media").[2] Onwards Media called two witnesses. One was Chau Ching Nam, its former CEO and a former director ("Mr Chau"). The other was Hoong He Hin, the former chairman of its board of directors ("Mr Hoong").

5 It is with Mr Hoong that Mr Seah's commission terms were orally agreed. They disagree about the amount that was agreed.

Background to the dispute

6 Mr Hoong had previously been Mr Seah's boss.[3] Mr Seah looked up to him both because of his educational pedigree and the values he appeared to espouse, and counted him as a friend that he could trust.[4] In about March 2018, Mr Seah was given an independent role to introduce business to Onwards

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1 Seah Han's Affidavit of Evidence-in-Chief dated 25 January 2021 ("Seah's AEIC") at paras 1 and 5.

2 Hoong He Hin's Affidavit of Evidence-in-Chief dated 4 February 2021 ("Hoong's AEIC") at para 4.

3 Seah's AEIC at para 34.

4 Seah's AEIC at paras 25 and 34.

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Media.[5] Mr Seah was not doing so for free but under an arrangement for reward.[6] How much he would be paid would be agreed upon securing any particular business.[7] The arrangement was not reduced into writing.

7 Mr Seah had a friend at HBO Asia, one Ching Ping Lee ("Mr Lee").[8] They had been primary school classmates.[9] Mr Seah emailed Mr Lee on 21 June 2018 to see if Onwards Media could have an exploratory discussion on opportunities with HBO Asia.[10]

8 A purchase order[11] from HBO Asia eventuated, totalling US$3,798,500 and comprising two items. The first was for Platform Enhancement and Development, amounting to US$1,391,000 ("the development amount"). The second was for Platform Support and Maintenance, amounting to US$2,407,500, payable in 36 monthly instalments of US$66,875 ("the maintenance amount"). The maintenance payments would only commence when development was completed.[12] Although the purchase order was dated 16 November 2018, Onwards Media only learned of its success in securing the order on 7 December 2018, when Mr Lee told Mr Seah and Mr Seah in turn told

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5 Seah's AEIC at para 30.

6 Seah's AEIC at paras 31–33.

7 Seah's AEIC at para 33.

8 Seah's AEIC at para 44.

9 Seah's AEIC at para 44.

10 2 AB 408.

11 1 AB 129.

12 Transcript, 22 April 2021 at p 52 lines 1–23.

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Mr Hoong.[13] On 14 December 2018, representatives from HBO Asia and Onwards Media met to kick off the project.[14]

9 Later that day, Mr Seah met Mr Hoong in his office. It was then that the commission amount was agreed.[15] Mr Hoong has claimed that it was agreed at only US$39,000, calculated by applying a rate of 3% to the development amount in the purchase order.[16] Mr Seah has testified that it was agreed at 10% of the whole contract value.[17] Thus, the amount claimed is US$355,000.[18]

10 Subsequently, Onwards Media paid Mr Seah a total of S$40,000, first S$20,000 on 30 January 2019[19] and then another S$20,000 on 16 March 2019[20]. By his solicitors' letter dated 23 July 2019, Mr Seah made a demand for payment in the sum of S$419,229.50.[21] By their solicitors' reply dated 13 August 2019, Onwards Media asserted that the commission payable was only US$39,000, and tendered payment by cheque of S$13,623.48.[22] This was what Onwards Media calculated to be the balance, converted into Singapore dollars, due after their earlier payment of S$40,000. Mr Seah's solicitors responded by letter dated 26 August 2019, noting that Mr Seah would bank in the cheque as

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13 1 AB 327.

14 Hoong's AEIC at paras 24–25.

15 Seah's AEIC at para 8; Hoong's AEIC at paras 27–29.

16 Hoong's AEIC at para 29.

17 Seah's AEIC at para 9.

18 Statement of Claim (Amendment No 2) dated 17 July 2020 ("SOC") at para 14.

19 Seah's AEIC at pp 296–297.

20 Seah's AEIC at pp 302–304.

21 2 AB 584–585.

22 2 AB 586–588.

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part-payment of what he claimed.[23] There was further correspondence but as the matter could not be resolved, these proceedings were commenced on 18 September 2019.

Procedural history

11 When these proceedings were commenced, Mr Hoong was pursued in addition to Onwards Media. However, the claim against him was discontinued on 15 July 2020, and the matter proceeded to trial only against Onwards Media.

The parties' cases

12 Mr Seah's claim is simple. He had an arrangement with Onwards Media for him to make introductions and help secure business. He was not doing so for free, but for reward. What he would be paid would be agreed each time he helped secure business.[24] This is a straightforward legal arrangement. It was not disputed by Onwards Media. When the project for the HBO Go platform was won, he went to see Mr Hoong at his office on 14 December 2018 and they agreed on commission at 10% for the whole of the contract value.[25] He confirmed this agreement by WhatsApp message two days later.[26] Thus, he has not been paid in full and is entitled to the balance.

13 Onwards Media contends that what was agreed on 14 December 2018 was only commission at 3% and only for the development amount.[27] In relation to Mr Seah's Whatsapp message of 16 December 2018, they contend that Mr

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23 2 AB 589–591.

24 Seah's AEIC at paras 31–33.

25 SOC at paras 7–8.

26 1 AB 342.

27 Hoong's AEIC at para 29.

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Hoong did not positively confirm it, and that mere silence on his part is not sufficient to amount to an acceptance of an offer. Their counsel cited the English case of *Felthouse v Bindley* (1862) 142 ER 1037 ("*Felthouse v Bindley*"), applied in *Day, Ashley Francis v Yeo Chin Huat Anthony and others* [2020] 5 SLR 514 at [116], for this proposition.[28]

14 Onwards Media has also relied on Mr Seah's presentation of its cheque as raising an estoppel against him such that he is no longer entitled to deny Onwards media's position that the commission payable was only 3% of the first item under the purchase order.[29]

15 Lastly, Onwards Media contends that if there was any agreement to pay commission in the amount claimed by Mr Seah, that commission would have been payable only as and when HBO Asia paid Onwards Media. The amount paid prior to commencement of these proceedings was only US$1,415,000, and so only US$141,500 would have been due as at the date of the writ. The claim for the balance would therefore be premature. Their counsel cites the English case of *Eshelby v Federated European Bank, Ltd* [1932] 1 KB 254 ("*Eshelby v Federated European Bank, Ltd*") in support of this argument.[30]

Issues to be determined

16 I will consider the issues in the following order:

(a) whether commission was agreed at 10% of the whole HBO contract or only 3% of the development amount;

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28 Defendant's closing submissions ("DCS") at para 62.

29 DCS at paras 133–135.

30 DCS at paras 136–144.

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(b) whether Mr Seah is estopped from denying Onwards Media's position that only 3% of the development amount was payable as commission; and

(c) whether any part of the claim is premature.

Issue 1: The amount of commission agreed

17 In this case, there was no dispute that an oral agreement was reached.[31] The dispute concerned the amount of commission agreed. It is a stark dispute, and both counsel have in their submissions effectively contended that the other side was lying rather than being mistaken either in what they heard on the day or what they recalled later. I agree that there is really no room for the difference between them to be explained by faulty perceptions or faulty memory. My assessment of the evidence proceeds on the basis that only one of the two told the truth in court.

18 The burden is on Mr Seah to prove his claim of what was agreed at the 14 December 2018 meeting. I must determine which of Mr Seah's and Mr Hoong's versions to accept. Mr Seah gave evidence in person, while Mr Hoong gave evidence remotely. I have kept the mode of testifying in mind when assessing demeanour. In this case the quality of the remote video link for Mr Hoong's testimony was generally good, and I was able to observe him well.

19 Mr Seah gave evidence somewhat impetuously, occasionally rushing and tangling his words. He came across as truthful, and genuinely hurt and indignant by how he felt he had been treated by Mr Hoong. Mr Hoong appeared to think calmly and carefully before each answer, and did not always seem to

[31] DCS at paras 6 and 21.

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be speaking from memory of what had happened but at times appeared to proffer a practised story. I tested what they said carefully against the evidence. I considered their respective versions in terms of how well they fit and explain all the circumstances and events in this case, including contemporaneous documents and conduct of the parties.

20 I have concluded that Mr Seah's version of the meeting on 14 December 2018 is what happened. Commission was agreed at the higher rate of 10% and applied to the entirety of the contract value.

21 I now explain my conclusion. One of the most significant reasons why I believe Mr Seah is that his version is supported by WhatsApp messages sent by him to Mr Hoong. The day after the meeting, he messaged someone known to both himself and Mr Hoong and told him that Mr Hoong was "giving [him] 10% commission from HBO contract".[32] This person, called Dennis Teo, messaged him back both to say that he was very happy for Mr Seah and also to encourage him to "work hard for good man".[33] He meant that Mr Hoong was a good man.[34] The next day, on 16 December 2018, Mr Seah sent Mr Hoong a screenshot of this exchange with the comment that "Dennis says u are a good man".[35] Mr Hoong's response to Mr Seah was simply "[w]e help each other".[36]

22 In my view, the phrase "10% commission from HBO contract" is not only clear about the rate but also about what that rate is to be applied to. On an

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32 1 AB 342.

33 1 AB 342.

34 Transcript, 20 April 2021 at p 91 lines 6–8.

35 1 AB 342.

36 1 AB 342.

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objective reading, it refers to the HBO contract, not just to the development item under the HBO contract. A reference to a contract includes all its components. If Mr Seah's message was referring only to the development component, then that limitation would have been specified. This reading is only reinforced upon consideration of the purchase order.[37] There is a single purchase order. It does not refer to two contracts but only two components of a single project. With that purchase order as the context, the reference to the HBO contract would be to the contract as a whole, and include both components. Subsequently, a single contract was entered into between HBO Asia and Onwards Media, namely a Master Service Agreement dated 15 May 2019.[38] The fact that there was only one contract does not support Onwards Media's case that commission was only payable on the development amount.

23 This WhatsApp exchange is significant, because if the agreement two days previously had been for 3% only and only in respect of the development amount, Mr Seah's WhatsApp message would not have been sent, or if sent would have provoked a protest from Mr Hoong. Mr Seah would not have written to Dennis Teo stating that Mr Hoong had agreed to 10% of the contract (without any limitation), or forwarded a screenshot of this to Mr Hoong. If it wrongly reflected their agreement, Mr Hoong would, upon receipt of Mr Seah's screenshot, have immediately denied it, and put on record that the agreement was for 3% only, and only for the value of the first item of the contract. Mr Hoong could give no satisfactory explanation for not clarifying or contradicting what Mr Seah wrote. I was not at all convinced by his suggestion that he believed that Mr Seah was just "posturing".[39] I do not believe that that was what

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37 1 AB 129.

38 1 AB 130–234.

39 Transcript, 22 April 2021 at p 30 lines 9–29.

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he thought at the time. Indeed, if Mr Hoong had thought that Mr Seah was posturing, he would have considered it all the more necessary to respond at once to put him straight.

24 Moreover, Mr Hoong did not stay silent. He responded as a friend might, saying that they "help each other". I interpret Mr Hoong's statement that they "help each other" as meaning that just as Mr Seah had helped him by introducing and helping to secure the contract with HBO Asia, Mr Hoong was helping him in relation to the commission. This is what friends do. Unfortunately for Mr Seah, Mr Hoong's actions did not match his words.

25 My interpretation of this WhatsApp exchange fits with the flow of events. On 13 December 2018, the day before the two met in person, Mr Hoong assured Mr Seah in a WhatsApp message, "I need to pay you for the HBO contract".[40] After they met, Mr Seah recorded what they had agreed in person in his WhatsApp messages to Dennis Teo and Mr Hoong.[41] It is wholly implausible that Mr Hoong would not have corrected him if it did not accord with their agreement.

26 This conclusion is supported by my observations and inferences concerning their respective characters. Mr Hoong is a calm, careful and methodical person, and not someone who would leave uncorrected a point that would implicate the company of which he was chairman in an unwarranted liability. Mr Seah is more emotional and impulsive. Apart from my observations of their respective characters as they testified, this difference is also reflected in Mr Seah's rushing to Mr Hoong's office to get the amount agreed, and in his

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40 1 AB 340.

41 1 AB 342.

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messaging about what they had agreed in an informal manner, extolling Mr Hoong's goodness rather than dispassionately recording the amount payable.

27 This was not the only WhatsApp exchange. For many months afterwards Mr Hoong did not clarify or contradict Mr Seah, even when Mr Seah repeated the point that what he was getting was 10% of the contract value in a WhatsApp message on 28 February 2019[42] and again in a WhatsApp message on 21 April 2019.[43] It would have been simple for Mr Hoong to type out a quick response to correct Mr Seah, and the fact that he did not do so confirms that he did not contest Mr Seah's account of what transpired when they met in person on 14 December 2018.

28 I have considered Onwards Media's submission that the commission amount claimed by Mr Seah was too high to have been agreed given his limited role as an introducer. This submission rested on the fact that after the initial introduction there were some meetings between Onwards Media and HBO Asia, especially technical ones, that Mr Seah did not attend. In relation to a three-day workshop held by Onwards Media for HBO Asia that Mr Seah did attend, Onwards Media sought to convince me that his attendance was entirely voluntary and that he was a mere observer.[44] This focus on how much time Mr Seah spent attending meetings or whether he could contribute to technical or pricing discussions entirely misses the fact that doing work for HBO Asia was a big step up for Onwards Media, and that without Mr Seah's involvement it would never have happened. HBO Asia was of "international standing" and "high quality" whereas their existing clients were "not really established" and

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42 1 AB 346.

43 1 AB 372.

44 DCS at paras 43–44.

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gave them "bad debts".[45] That it was a big breakthrough is apparent from the effusiveness of the WhatsApp messages sent to Mr Seah, such as Mr Chau's "[a] million thanks to you" on 7 December 2018.[46] I accept that it was Mr Seah's vouching for Onwards Media to his friend Mr Lee that gave Onwards Media the opportunity. It was not a mere introduction. Rather, Mr Seah's involvement gave Mr Lee comfort and assurance. Mr Seah had lunch with Mr Lee on 16 August 2018[47] and was given information by Mr Lee that assisted Onwards Media as the negotiations progressed, such as in private chats on 23 August 2018[48] and 14 November 2018.[49]

29 A further point raised by Onwards Media was that their entire profit margin for the project was calculated only at about 12%[50]. I was not able to accept this evidence in the absence of contemporaneous documents. The calculations struck me as vague and self-serving. In any case, even if the anticipated profit margin was as low as 12%, the opportunity to build a relationship with a "high quality" customer of "international standing" and use that record in future marketing efforts with other customers was itself likely to be valuable.

30 In all the circumstances, it was not surprising that the rate of commission was agreed at 10% and not 3%, and that it applied to the whole contract value.

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45 Transcript, 21 April 2021 at p 58 line 24 to p 59 line 16.

46 1 AB 327.

47 1 AB 245.

48 1 AB 247.

49 1 AB 302.

50 Transcript, 21 April 2021 at p 48 lines 1 to 12

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31 Onwards Media raised a number of arguments concerning Mr Seah's credibility, which I now deal with. First, they pointed out that Mr Seah was inconsistent during his testimony on two aspects, namely whether the meeting on 14 December 2018 was planned or unplanned, and whether he or Mr Hoong first uttered the figure of 10%.[51] Secondly, they noted that some of the detail he gave in oral testimony was not included in his affidavit in evidence-in-chief.[52] Thirdly, they noted that Mr Seah failed to make good the plea that Mr Chau (and one other person) were present when the agreement was made.[53]

32 It is true that Mr Seah's oral testimony included the identified inconsistencies. In oral testimony, and in keeping with his somewhat excitable nature, he spoke quickly, sometimes following one thought with another in a somewhat disorganised way. However, I do not accept that these inconsistencies indicate that he was making things up. It is not unusual even in a truthful account that some of the details change upon retelling.

33 As for Mr Seah's elaborating in oral testimony, I again do not consider this an indication that he invented anything. There was nothing he said in cross-examination that could be said to have been a glaring omission from his affidavit of evidence-in-chief.

34 As for who was present when the figure was agreed, it is correct that Mr Seah had pleaded that Mr Chau and another person attended the meeting.[54] Mr Chau's evidence was that he did come into Mr Hoong's office briefly but was

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51 DCS at paras 85(a) and 85(b).

52 DCS at para 85(b).

53 DCS at para 86.

54 SOC at para 7.

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not present at the crucial moment.[55] Mr Chau's evidence therefore did not support either case on this point. I do not have to determine definitively whether Mr Seah misremembered that Mr Chau was present at the crucial moment or whether Mr Chau, by averring his absence at that point, took the path of least resistance to not contradicting Mr Hoong, but if I had to make a determination I would be inclined to the latter conclusion. I did note that Mr Chau was not always forthright during his testimony, and in particular I noted that he unfairly downplayed Mr Seah's role in securing the HBO Asia contract.

35 It is clear to me on the totality of the evidence that 10% commission was agreed, applicable to the whole of the HBO Asia contract value.

36 I end this section by observing that *Felthouse v Bindley* is not relevant. That case concerned the question whether a horse included in an auction lot had instead already been sold separately by the owner. The person who believed he had bought the horse sued the auctioneer. But the court found there had been no concluded contract of sale, for the simple reason that the putative buyer's offer was not accepted. He had framed his offer presumptively, to the effect that unless he heard to the contrary from the putative seller, he would consider the horse bought at the price he had offered. It was held, *per* Willes J, that an offeror "had no right to impose … a sale … unless [the offeree] chose to comply with the condition of writing to repudiate the offer". In short, the well-known sales tactic of the presumptive close does not work in law.

37 That has nothing whatsoever to do with the question in this case, which is what terms were orally agreed. In relation to that question, a written summary of the oral agreement sent from one of the makers of the agreement to the other

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[55] Transcript, 21 April 2021 at p 37 line 1 to p 39 line 19.

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shortly after it was made is persuasive evidence of what was orally agreed, even if the other does not respond.

Issue 2: Estoppel

38 Onwards Media also contends that their tender by cheque of what would have been the balance of the commission if it had been agreed at 3% of the development amount, and Mr Seah's banking in of their cheque, raises an estoppel against him.

39 This defence is wholly without merit. Mr Seah's solicitors made clear that he would pay in the cheque on the basis that it was part-payment of his claim and not in admission of Onwards Media's position.[56] This could not possibly be taken to mean the opposite, namely that he accepted Onwards Media's position. I reject this defence.

Issue 3: Prematurity

40 Onwards Media then contends that part of the claim is premature. In this, they rely on the proposition in *Eshelby v Federated European Bank, Ltd* that a cause of action must be established as at the date when proceedings are instituted. Mr Seah pleaded that it was a term of the agreement that Mr Hoong was to draft a payment schedule and that he was to be paid according to HBO Asia's payment schedule.[57] The writ was issued when Onwards Media had only received US$1,415,000 from HBO Asia.[58] Thus, Onwards Media argues, only US$141,500 was due at the time of the writ, of which US$39,000 had been paid.

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56 2 AB 589–591, para 6.

57 SOC at para 8(d).

58 Defence (Amendment No 2) dated 13 August 2020 at para 9.

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Mr Seah's claim, to the extent that it covers payments due after the issue of the writ, is said to be premature.

41 Onwards Media's argument overlooks two points. One is that, prior to the issue of the writ on 18 September 2019, Onwards Media had clearly and unequivocally renounced the agreement that I have found to exist, by their solicitors' letter of 13 August 2019.[59] They renounced it by asserting that the agreement was only for 3% commission on part of the HBO contract and denying the agreement for 10% commission on the HBO contract as a whole. The second point is that Mr Seah had already fully earned the commission. There was nothing left for him to do.

42 Thus, even assuming that payment was to be made only in accordance with a schedule that extended beyond the date of the writ, there was an anticipatory repudiatory breach of the whole agreement that Mr Seah accepted by issuing his writ. He did not have to await the dates stipulated by the schedule before suing, because Mr Seah's entitlement to the full payment accrued once he secured the HBO Asia contract for Onwards Media, agreed the commission and Onwards Media had made clear that they had no intention to pay. The cause of action in respect of the unpaid balance of the commission arose prior to the date of the writ and this action is not premature.

43 The facts of this case are quite different from those in the case cited by Onwards Media's counsel, *Eshelby v Federated European Bank, Ltd*. In that case, a builder claimed against the guarantor certain instalments not paid by the owner who had contracted for the building work. It was held that a condition precedent to the guarantor's liability, namely due execution of the works by the

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[59] 2 AB 586–587.

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builder, had not been proved. An additional point was taken, and accepted though not necessary to the decision, namely that the claim having been commenced for the first instalment, a claim for the second instalment could not be added by amendment after issue of the writ because under the terms of the contract it did not fall due until after the issue of the writ and upon execution of further work.

44 Thus, that case concerned an instalment payment that was neither earned nor due as of the date of the writ. Here, the commission was fully earned by Mr Seah upon the HBO Asia contract being secured for Onwards Media. There was nothing further for him to do.

45 Moreover, the defence on this point assumes that the effect of the term concerning a payment schedule was to postpone when payments fell due, rather than giving Onwards Media time to pay what was already agreed to be due. I do not consider that that analysis fits what was discussed between Mr Seah and Mr Hoong. I find that it was just a matter of Mr Seah being happy to give Onwards Media time to pay his already earned commission. I interpret this as a simple forbearance to sue so long as the agreement was honoured. Mr Hoong never even provided a payment schedule. Once Onwards Media renounced the agreement, Mr Seah was free to sue for the entire sum.

Interest

46 Mr Seah has claimed discretionary interest on the amount awarded to him under the judgment.[60] Where a plaintiff has been kept out of money, the court should ordinarily exercise its discretion to award prejudgment interest.

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60 PCS at para 184.

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There is no reason for me not to do so, except that in my view interest should run from the date of the writ and not the date of the demand, as he has sought. I award him prejudgment interest at the rate of 5.33% on a simple basis from the date of the writ to the date of judgment.

Costs

47 Mr Seah has succeeded in his claim. Costs should follow the event. The trial took two and a half days, and the dispute was mostly a factual one. He has asked for costs of S$42,500 and disbursements particularised at S$12,192.04.[61] I accept these figures as reasonable and warranted and fix costs at S$42,500 and disbursements at S$12,192.04.

Conclusion

48 Mr Seah won a contract for his friend Mr Hoong thanks to his friendship with Mr Lee. Disappointingly, Mr Hoong did not honour his word as a friend. As I have believed Mr Seah's account of their agreement, Onwards Media must pay Mr Seah the remainder of his commission, with interest and costs as set out above.

Philip Jeyaretnam
Judicial Commissioner

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61 Plaintiff's Schedule of Estimated Costs.

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Rajwin Singh Sandhu (Rajwin & Yong LLP) for the plaintiff;
Nicholas Jeyaraj s/o Narayanan and Chik Hui Rong, Crystal
(Nicholas & Tan Partnership LLP) for the defendant.

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