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DISTRICT JUDGE

SIM MEI LING

13 January 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGMC 5

Magistrate's Court Originating Claim No 8613 of 2023

Between

Hampton Property Group

... Claimant

And

Marx Aurnhammer Werner
Johannes

... Defendant

JUDGMENT

[Contract] — [Contractual terms] — [Implied terms] — [Whether an agent is
the effective cause of a sale]

[Statutory Interpretation] — [S 44 of the Estate Agents Act 2010]

TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND FACTS	3
THE ALLEGED ENGAGEMENT	3
MS GAN BROUGHT MR ALEX TO VIEW THE LEVEL 4 UNIT.....	3
THE NEGOTIATIONS WITH MR ALEX THROUGH MS GAN	5
MR ALEX PURCHASED THE LEVEL 4 UNIT DIRECTLY FROM THE DEFENDANT	7
PRELIMINARY ISSUE: WHAT IS THE EFFECT OF NON- COMPLIANCE WITH S 44 OF THE EA ACT?	10
WAS AN AGREEMENT REACHED BETWEEN THE CLAIMANT AND THE DEFENDANT AND WHAT WERE ITS TERMS?.....	15
WAS THE AGREEMENT TERMINATED ON 31 JULY 2023?	18
WAS THERE AN IMPLIED TERM THAT THE CLAIMANT WOULD BE ENTITLED TO COMMISSION IF MS GAN WAS THE EFFECTIVE CAUSE OF THE SALE?	20
WAS MS GAN THE EFFECTIVE CAUSE OF SALE?	21
CONCLUSION.....	28

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Hampton Property Group
v
Marx Aurnhammer Werner Johannes

[2026] SGM C 5

Magistrate's Court Originating Claim No 8613 of 2023
District Judge Sim Mei Ling
16 June 2025, 17 December 2025

13 January 2026

Judgment reserved.

District Judge Sim Mei Ling:

Introduction

1 The claimant is a company in the business of marketing immovable properties in Singapore.

2 The claimant said that in or about June 2022, the defendant engaged the services of its director, Ms Linda Natalie Gan Mee Fong ("Ms Gan"), to market his two units at Ocean Front @ Sentosa Cove: one at Level 3 (the "Level 3 Unit") and one at Level 4 (the "Level 4 Unit"). Ms Gan brought potential clients to the defendant, including one Mr Alexey Navolokin ("Mr Alex"), who viewed the Level 4 Unit on 23 July 2023.

3 The claimant subsequently discovered that on or about 25 July 2023, the defendant had put up an advertisement for the Level 4 Unit on Carousell, and further, that Mr Alex had signed an Option to Purchase (“OTP”) for the Level 4 Unit on 29 August 2023 at the sale price of \$3.138 million.

4 The claimant commenced these proceedings for commission at 1% of the sale price, being \$31,138. The claimant pleaded that Ms Gan was the effective cause of the sale of the Level 4 Unit to Mr Alex, and that the defendant was in breach of contract by refusing to pay the claimant its commission.¹

5 The defendant agreed that he sold the Level 4 Unit to Mr Alex at \$3.138 million.² However, he denied that there was any agreement to pay the claimant commission; further and/or alternatively, that any agreement had in any event been terminated. He also denied that Ms Gan was the effective cause of the sale as he asserted that he had negotiated directly with Mr Alex to reach an agreement on materially different terms. He also argued that the absence of a written agreement in the prescribed form meant that the claimant was barred under s 44 of the Estate Agents Act 2010 (the “EA Act”) from making the present claim against him.

6 After reviewing all the evidence and parties’ submissions, I dismiss the claim. I set out my reasons below.

¹ Statement of Claim, [17].

² Defence, [15].

Background facts

The alleged engagement

7 The claimant relied on a message the defendant sent Ms Gan on 18 June 2022, in support of its claim that the defendant had engaged Ms Gan’s services.³

8 I reproduce below the message of 18 June 2022 as well as the messages leading up to it for context⁴:

[17/6/22, 2:54:45 PM] [Ms Gan]: Hi just to check is ur unit for sale n can I market it for sale? Thanks [emoji omitted]

[17/6/22, 2:54:26 PM] [The defendant]: Yes but please ask for 3.38 M...

...

[17/6/22, 2:58:56 PM] [Ms Gan]: Also can I check so commission payable is 2%? Thanks [emoji omitted]

...

[18/6/22, 8:54:30 PM] [The defendant]: If you sell at asking will give 1.5% commission, above up to 2% and below asking price down to 1%....

9 On 11 July 2022, Ms Gan informed the defendant that she wanted to visit the Level 4 Unit to take photographs for a potential buyer. The defendant provided her with several photographs on 14 July 2022.⁵

Ms Gan brought Mr Alex to view the Level 4 Unit

10 Ms Gan and the defendant did not exchange further messages until May 2023 when Ms Gan asked him what the minimum price he was looking at for his units at Ocean Front @ Sentosa Cove was. The defendant replied that his

³ Statement of Claim, [4].

⁴ Claimant’s Bundle of Documents (“CBD”) 10.

⁵ Statement of Claim, [5]; CBD 11.

asking price was \$3.488 million.⁶ On 22 July 2023, Ms Gan asked the defendant if she could bring someone for viewing.⁷

11 The defendant was present when Ms Gan brought Mr Alex, his wife, and his daughter to the Level 4 Unit on 23 July 2023.

12 Ms Gan said that, at this meeting, she had introduced Mr Alex as “Mr Alex” to the defendant.⁸ While Ms Gan brought Mr Alex’s wife and daughter for a 20 minutes’ long tour of the Level 4 Unit, the defendant and Mr Alex had a private discussion and the defendant showed Mr Alex many plans and drawings. The defendant also mentioned that Mr Alex could check out the defendant’s website to see what works he had done, as the defendant was in the home automation / renovation business.⁹

13 The defendant disputed that Ms Gan introduced Mr Alex by name.¹⁰ Mr Alex’s contact details were also not disclosed to him.¹¹ In the defendant’s submissions, he said that it was only in her WhatsApp message of 5 October 2023 that Ms Gan mentioned the name “Mr Alex” for the first time, when she said Mr Alex had informed her that he had purchased the Level 4 Unit.¹²

14 The defendant also denied having a private conversation with Mr Alex for 20 minutes. He said he had merely mentioned his company’s website for

⁶ Defence, [6]; CBD 12.

⁷ CBD 12.

⁸ Certified Transcripts (“CT”), 16 June 2025, 44:29 – 45:6.

⁹ Statement of Claim, [6].

¹⁰ The defendant’s affidavit of evidence-in-chief (“AEIC”), [A4].

¹¹ Defence, [6].

¹² CBD 19.

references to his other renovation and automation projects.¹³ They had discussed renovations because the proposed sale of the Level 4 Unit at that time included extensive renovation works to be performed by the defendant.¹⁴

The negotiations with Mr Alex through Ms Gan

15 After the viewing on 23 July 2023, the defendant informed Ms Gan that he would send her the full renovation scope that same night to pass to the potential buyer. He also offered a rental yield guarantee of 4% over 2 years, and said he would try to get an early termination period and include the possibility of customising renovation works.¹⁵

16 In the defendant's closing submissions, he included an image of an email purportedly sent from Mr Alex to the defendant on 23 July 2023 at 9.42pm. Mr Alex had stated "hi Werner, thank you for the meeting today at your apartment [unit number redacted]", signed off as "Alexei" and provided his mobile number.¹⁶ This email had not been produced in discovery or at trial.

17 At around this time, the defendant put up an advertisement for the Level 4 Unit on Carousell. The caption of the advertisement said "no agent but only Direct Buyers".¹⁷ The advertised price was \$3,388.888.¹⁸ The claimant put the

¹³ The defendant's AEIC, [A4].

¹⁴ Defence, [6].

¹⁵ CBD, 13.

¹⁶ The defendant's closing submissions, Slide 5, [WM2], email at p 9.

¹⁷ The defendant's AEIC, [A11], CBD 48 – 49.

¹⁸ Defence, [12].

date of the advertisement as on or about 25 July 2023¹⁹, but the defendant said he had placed the advertisement on 24 July 2023.²⁰

18 Between 24 and 26 July 2023, the defendant and Ms Gan had discussions on Mr Alex’s offer. The defendant informed Ms Gan that his asking price was \$3.288 million plus what she wanted as her commission. Using 1% plus GST as commission, this would bring the asking price to \$3.323 million.²¹

19 Ms Gan informed the defendant that this price might drive Mr Alex away, and shared a newspaper article on falling private home prices.²² The defendant then told her to offer \$3.288 million inclusive of her commission.²³

20 Later in the night of 26 July 2023, Ms Gan communicated to the defendant Mr Alex’s offer of \$3.03 million.²⁴ On 27 July 2023, the defendant informed Ms Gan that this was too low, that he was only prepared to accept \$3.2 million and she would have to reduce her commission. Ms Gan said that she could not reduce her commission.²⁵

21 On 30 July 2023, Ms Gan told the defendant that Mr Alex was improving his price to \$3.1 million, but “all basics should be there, like doors, aircons and appliances should be in working conditions [sic]”. The defendant told Ms Gan that this was too low and reiterated that he needed a minimum of

¹⁹ Statement of Claim, [12]; Ms Gan’s AEIC, [15].

²⁰ Defence, [12].

²¹ CBD 13.

²² CBD 13 – 14.

²³ CBD 14.

²⁴ CBD 14.

²⁵ CBD 14.

\$3.2 million. Finally, Ms Gan proposed counter-offering \$3.235 million, of which \$35,000 would be her commission, to which the defendant said “you can do that but if this is rejected we close this case please!” He also stated that he believed he would sell to a direct buyer who came through his posting on Carousell.²⁶

22 There were no further WhatsApp messages between Ms Gan and the defendant after 30 July 2023, until 11 August 2023 when Ms Gan asked if she could bring another buyer for a viewing.

Mr Alex purchased the Level 4 Unit directly from the defendant

23 According to the defendant, on 31 July 2023, Mr Alex contacted the defendant and made an offer for the Level 4 Unit which the defendant said included a “much lower upgrade scope and no rental guarantee”.²⁷

24 In evidence are the following messages exchanged between Mr Alex and the defendant on Carousell dated 31 July 2023²⁸:

[Mr Alex]:

Hello Werner, thank you for your advertising. I like the location.

I would like to offer \$3.1 m for this unit

Please let me know

[The defendant]

Hi Alexnav, please let me have your contact so we can take it from there!

²⁶ CBD 15.

²⁷ The defendant’s AEIC, [A11].

²⁸ CBD 50 – 51.

[Mr Alex]: my phone is [phone number redacted] and email:
[email address redacted]

25 The mobile number and email address provided matched those in the email which the defendant said Mr Alex sent him on 23 July 2023.

26 The defendant's pleaded case was that Mr Alex had initiated contact with him by responding directly to the Carousell advertisement, and at that time, the defendant had no knowledge that Mr Alex was the buyer who viewed the Unit with Ms Gan on 23 July 2023.²⁹

27 However, the defendant admitted in his affidavit of evidence-in-chief ("AEIC") and on the stand, that when Mr Alex contacted him on Carousell on 31 July 2023, he had in fact realised it was the same buyer who had viewed the Level 4 Unit on 23 July 2023".³⁰ Nonetheless, he decided to negotiate with Mr Alex as the defendant did not have any exclusivity agreement with Ms Gan and he had checked with his property lawyers if there was any issue with this.³¹

28 The defendant said he was not obliged to tell Ms Gan about Mr Alex's contact via Carousell. He also did not want Ms Gan to endanger the potential sale as she had other similar units at Ocean Front @ Sentosa Cove for sale for the same or lower price.³²

29 There are no other documents in evidence relating to the defendant's negotiations with Mr Alex.

²⁹ Defence, [17].

³⁰ The defendant's AEIC, [A11]; CT, 16 June 2025, 101:11-20.

³¹ The defendant's AEIC, [A11].

³² The defendant's AEIC, [A11].

30 On 15 August 2023, the defendant issued an OTP to Mr Alex.³³

31 On 25 August 2023, Ms Gan brought a potential Japanese buyer to view the Level 4 Unit (the “Japanese Buyer”). The claimant said that the defendant told Ms Gan to quote a price of \$3,388,888.³⁴ The defendant however said that he had informed Ms Gan that he was on the verge of selling the Level 4 Unit, but Ms Gan persisted with conducting the viewing.³⁵

32 Mr Alex exercised the OTP on 29 August 2023.³⁶ He lodged a caveat against the Level 4 Unit on 8 September 2023.

33 On 5 October 2023, Ms Gan did a search on the Singapore Titles Automated Registration System, and found out about Mr Alex’s caveat, and the purchase price of \$3.138 million. She contacted Mr Alex, who eventually revealed that he bought the Level 4 Unit and told her to look to the defendant for her commission.³⁷

34 Ms Gan contacted the defendant on 5 October 2023. She stated that she was entitled to commission as Mr Alex had informed her that he purchased the Level 4 Unit. The defendant denied knowing Ms Gan’s buyer’s name. He stated that he had advertised on Carousell “for quite some time”, that his buyer’s name was not “Alex” and his buyer was not referred by Ms Gan but had responded to his Carousell advertisement.³⁸

³³ Defence, [14].

³⁴ Statement of Claim, [14].

³⁵ Defence, [13].

³⁶ Defence, [16], CBD 40.

³⁷ Ms Gan’s AEIC, [20].

³⁸ CBD 19.

35 When Ms Gan responded stating that her buyer's name was "Alexey Navolokin", the defendant said he was not aware of his name until he replied to the advertisement. He maintained that she was not entitled to any commission as the sale arose out of a response to his advertisement.³⁹

36 The claimant commenced these proceedings against the defendant in December 2023.

Preliminary issue: what is the effect of non-compliance with s 44 of the EA Act?

37 As noted above, there is a dispute as to whether there was an agreement between the claimant and the defendant as pleaded by the claimant, whether this had been terminated, and whether Ms Gan was the effective cause of the sale.

38 However, even if there was an agreement as pleaded by the claimant in force between the claimant and the defendant, a preliminary issue is whether s 44 of the EA Act bars the claimant from recovering any allegedly agreed commission.

39 S 44 provides:

Estate agency agreement required as regards certain proposals and undertakings

44.—(1) Subject to subsection (4), where an estate agent proposes or undertakes (whether or not for a commission or other fee) to perform estate agency work for a client, whether as regards a particular property or not, a right or other cause of action whereby agreed sums, damages or any other relief or remedy may be recovered or obtained in legal proceedings as regards the proposal or undertaking shall lie at the suit of the estate agent if, and only if --

³⁹ CBD 19 – 20.

(a) an estate agency agreement embodying the terms of the proposal or undertaking, being an agreement between the estate agent and the client which is in the form prescribed and which contains such particulars (if any) in respect of the proposal or undertaking as are prescribed for the purposes of this section has been entered into and, in the case of a written document, properly executed; and

(b) the estate agent was a licensed estate agent at the time when the estate agency agreement was so entered into and executed.

...

(4) Regulations made under section 72 may exclude any class or description of estate agency work from the operation of subsections (1) and (2).

40 The Estate Agents (Estate Agency Work) Regulations 2010 (the “2010 Regulations”) contain the prescribed forms of these estate agency agreements. In particular, Regulation 10(1)(a) provides that an estate agency agreement for the sale of residential property on a non-exclusive basis shall be in Form 1.

41 It is not disputed that Form 1 was never executed by the claimant and the defendant. This was even though the estate agency work in question was not one of the classes excluded from the application of s 44(1) (see Regulation 11).

42 The defendant pleaded that as the claimant did not comply with s 44 of the EA Act, it is thereby precluded from even making this claim against the defendant in any event.⁴⁰

43 I first deal with the claimant’s argument that the defendant had abandoned reliance on s 44 of the EA Act.

⁴⁰ Defence, [19].

44 The claimant referred to how in re-examination, the defendant said “let’s not talk about section 44”.⁴¹ However, it is clear from the context of his answers that he was merely stating that the claimant was not entitled to commission in any event because Ms Gan did not meet his asking price of \$3.2 million.⁴² This statement quoted by the claimant, therefore cannot amount to the defendant abandoning this defence. The defendant had also specifically cross-examined the claimant on the non-compliance with s 44.⁴³

45 Next, the claimant relied on the defendant’s closing submissions, whereby he stated that it is “not relevant any longer how we interpret [s 44] as Ms Gan was no longer engaged and had not been the cause of the sale”. I do not find this statement as amounting to the defendant abandoning reliance on s 44 altogether, as this was in the context of his arguments that the claimant was in any event not entitled to commission because any agreement had been terminated and Ms Gan was not the effective cause of the sale.

46 I therefore do not consider the defendant to have abandoned his reliance on s 44.

47 In any event, whether the effect of non-compliance with s 44 is to bar the present claim for commission is an important preliminary issue that this court has to deal with.

48 It has been held that the effect of s 44 of the EA Act is that a licensed estate agent has the right to seek relief in legal proceedings in respect of its undertaking to perform estate agency work for a client, only if the agreement

⁴¹ CT, 16 June 2025, 122:14 – 15.

⁴² CT, 16 June 2025, 121: 15 – 122:20.

⁴³ CT, 16 June 2025, 10:10 – 29.

embodying the terms of the undertaking is in the relevant form prescribed under the 2010 Regulations and the said agreement has been properly executed, meaning that it complies with the requisite formalities for the execution of written contracts: *OrangeTee & Tie Pte Ltd v Ivanka Jiang* [2022] SGDC 241 (“*OrangeTee*”) at [24].

49 As such, in *OrangeTee*, the court struck out the claim for unpaid commission for being legally unsustainable.

50 While I am not bound by *OrangeTee*, I agree with the court’s interpretation of s 44 in that case (see [23] – [38]). This is based on a textual analysis of s 44, as well as considering its legislative purpose.

51 The claimant sought to distinguish *OrangeTee*. First, it relied on an email from one Nurul Idris, Assistant Manager (Licensing) from the Council for Estate Agencies (“CEA”) dated 10 May 2024⁴⁴, as representing the CEA’s views that such prescribed forms are not mandatory. It argued that this court should adopt the views of the CEA.

52 However, it is important to understand the context of the CEA’s email. The email from the CEA was in response to a query posed by one of Ms Gan’s clients, one Ms Chung.

53 Ms Chung had asked⁴⁵:

...

We understand that the prescribed forms are not mandatory and not compulsory to be signed although it is recommended, we believe no one is coerced into signing.

⁴⁴ CBD 59.

⁴⁵ CBD 60.

Would appreciate if you could answer our question directly: Is it mandatory or not mandatory to sign the said prescribed forms?

54 CEA then responded⁴⁶:

...

It is not compulsory for consumers or property agencies to use the prescribed estate agency agreements. However, we encourage the use of the agreements to safeguard parties' interests.

55 CEA's views were therefore not sought specifically on s 44. The question posed and the answer in response, were merely on whether the prescribed forms were "mandatory". It did not relate specifically to the issue of whether the absence of an agreement in the prescribed form affects the estate agent's right to sue on the undertaking to perform estate agency work. The claimant did not call any representative from the CEA to clarify its answer.

56 I am therefore not able to find, based on the above, that the CEA takes the view that s 44 does not bar an estate agent from suing for unpaid commission where an agreement in the prescribed form has not been executed.

57 In any event, it is for the court, not the CEA, to determine how s 44 is to be interpreted.

58 Next, the claimant argued that the interests of the defendant are sufficiently safeguarded, such that it is not necessary to strictly apply s 44, as the terms of the agreement were proposed by the defendant himself. In contrast, to interpret s 44 of the EA Act in the manner which the court did in *OrangeTee*

⁴⁶ CBD 61.

would result in a “miscarriage of justice” because Ms Gan was the effective cause of the sale.

59 Even if the terms of the agreement were proposed by the defendant, this did not take the agreement outside the scope of s 44. The purpose of s 44 is to ensure that mandatory clauses which are intended to protect consumers are included. While Form 1 offers some flexibility for parties to agree on additional terms, these cannot conflict with, vary, or otherwise limit the prescribed terms.⁴⁷

60 In the circumstances, even if there was an agreement as pleaded by the claimant in force between the claimant and the defendant, and even if Ms Gan was the effective cause of the sale, in the absence of an agreement in the prescribed form, s 44 of the EA, as construed, bars the claimant from recovering any agreed commission against the defendant.

61 On that basis alone, the claim ought to be dismissed in full. I will however consider the other arguments raised by parties for completeness.

Was an agreement reached between the claimant and the defendant and what were its terms?

62 According to the claimant, the terms of the agreement were as follows⁴⁸:

- (a) The defendant would pay the claimant a commission at 1.5% of the transacted price if the claimant sold each unit at his asking price;

⁴⁷ CBD 55.

⁴⁸ Statement of Claim, [4].

(b) The defendant would pay the claimant a commission at 2% of the transacted price if the claimant sold each unit at above his asking price;

(c) The defendant would pay the claimant a commission at 1% of the transacted price if the claimant sold the property at below his asking price.

63 The defendant had pleaded that his discussions with Ms Gan were only preliminary, and he was merely expressing his initial thoughts about the commission he might offer if a sale was secured.⁴⁹ Further and/or alternatively, the defendant denied having any dealings or agreement with the claimant, whose identity and/or existence was never disclosed to the defendant at all material times.⁵⁰

64 The defendant did not appear to be maintaining the argument that no agreement had been reached. Under cross-examination, the defendant accepted that he had engaged Ms Gan's services to find him a buyer for the Level 4 Unit and the Level 3 Unit.⁵¹

65 In any event, I do not see the discussions with Ms Gan as merely preliminary. Ms Gan had specifically asked if she could market the Level 4 Unit, to which the defendant agreed. She had also asked about commission, and the defendant had set out his rates. There was no further negotiation on the rates. Ms Gan next requested to take photographs of the Level 4 Unit for a potential buyer, and in response, the defendant provided his own photographs.

⁴⁹ Defence, [4].

⁵⁰ Defence, [18].

⁵¹ CT, 16 June 2025, 81: 5 – 24.

66 I am also satisfied that the agreement was reached with the claimant. Ms Gan’s evidence was that she had given the defendant her business card in May 2021, and that all property agents in Singapore cannot operate individually but must be with a company registered with the CEA.⁵² The defendant only denied receiving Ms Gan’s business card during their meeting on 23 July 2023, but could not remember if he had ever received her business card.⁵³

67 As for the terms of the agreement, the defendant had taken the position in cross-examination and closing submissions that the agreement also provided that the claimant would not be entitled to any commission if the price obtained by Ms Gan was below the defendant’s “walk-away price”.⁵⁴ He elaborated that a “walk-away price” was one where he walked away from the deal, because if there was no deal, there would be no commission payable.⁵⁵

68 I accept that if no sale was concluded with a buyer brought by Ms Gan, the claimant would not be entitled to any commission. Nonetheless, if the defendant decided to accept an offer brought by Ms Gan notwithstanding that it was below his asking price (leaving aside the issue of whether Ms Gan was the effective cause of the eventual sale to Mr Alex which I will come to later), the claimant would still be entitled to commission, albeit at a lower rate of 1%.

69 That is clear from the defendant’s own WhatsApp message of 18 June 2022 by which he stated “below asking price down to 1% [commission]”.

⁵² CT, 16 June 2025, 9:14 – 10:9.

⁵³ CT, 16 June 2025, 9:27 – 10: 12; 80: 13 – 81:3.

⁵⁴ The defendant’s closing submissions, Slide 2, [WM1] – [WM2].

⁵⁵ CT, 16 June 2025, 85:2 – 19.

Was the agreement terminated on 31 July 2023?

70 The defendant had pleaded, further and/or alternatively, that any proposal by the defendant was expressly on the basis that the sale would be procured on an expedited basis, which Ms Gan failed to do.⁵⁶ He also pleaded that as he did not hear from Ms Gan until almost 10 months later, on or about 3 May 2023, any offer, proposal and/or agreement on commission would have lapsed by then.⁵⁷

71 The defendant did not pursue these lines of arguments at trial or in closing submissions. Instead, he said that any agreement had come to an end on 31 July 2023, because Ms Gan was not able to obtain an offer for \$3.2 million (net of commission).⁵⁸

72 The defendant relied on his message sent to Ms Gan on 31 July 2023, which I reproduce below (with the messages leading up to it for context)⁵⁹:

[30/7/23, 11:52:45 PM] [Ms Gan]: So if \$3.235 wud [sic] still be possible then as the \$35k for the [agent's] commission n yours at \$3.2m correct?

[30/7/23, 11:54:11 PM] [Ms Gan]: If so then I wud [sic] put forward this counter offer to them. Pls confirm

[30/7/23, 11:55:11 PM] [The defendant]: You can do that but if this is rejected we close this case please!

73 The claimant denied that the defendant had discharged Ms Gan from marketing the Level 4 Unit.⁶⁰ It relied on how the defendant had, on 25 August

⁵⁶ Defence, [4].

⁵⁷ Defence, [5].

⁵⁸ AEIC, [L2], [L3] [L7]; The defendant's closing submissions, Slide 7, [WM4], [WM6].

⁵⁹ CBD 15.

⁶⁰ Ms Gan's AEIC, [15].

2023, allowed Ms Gan to bring the Japanese Buyer to view the Level 4 Unit. The defendant however said that he merely allowed the Japanese Buyer to view the Level 4 Unit as a “reference” for the Level 3 Unit.⁶¹ This is disputed by the claimant.

74 I am not persuaded that the defendant merely allowed Ms Gan to conduct a viewing of the Level 4 Unit for the Japanese Buyer as a “reference” for the Level 3 Unit.

75 First, this was not something raised in the defendant’s pleadings. He had only pleaded that the Japanese Buyer was also interested in viewing the Level 3 Unit, and that he had told Ms Gan that he was on the verge of selling the Level 4 Unit but Ms Gan persisted with conducting the viewing.⁶²

76 Next, the WhatsApp messages between Ms Gan and the defendant do not support the defendant’s version. When Ms Gan asked if she could show them the defendant’s unit (without expressly identifying which one), the defendant specifically referred to the Level 4 Unit and said initially that he would have to give this Japanese Buyer a miss as he had received a good offer for the Level 4 Unit. He also mentioned that the Japanese Buyer will also be seeing his Level 3 Unit via another agent. This shows that he understood that Ms Gan was asking to bring the Japanese Buyer to view the Level 4 Unit, with the intention of potentially selling the Level 4 Unit to the Japanese Buyer.

77 There was also no reason for the Japanese Buyer to view the Level 4 Unit as a “reference” for the Level 3 Unit, given that he/ she would also be

⁶¹ AEIC, [L4].

⁶² Defence, [13].

viewing the Level 3 Unit through another agent.⁶³ The defendant agreed that the Level 3 Unit was bigger than the Level 4 Unit by 97 square feet and would be sold at a much higher price than the Level 4 Unit.⁶⁴

78 Further, the defendant was still open to offers for the Level 4 Unit from any potential buyer brought by Ms Gan even though the OTP had been issued to Mr Alex by then. This is evident from the defendant's message of 24 August 2023 to Ms Gan whereby he said "I let you show them just for a reference but as said price would be \$3.388 m and not negotiable if they sign the OTP by Monday [28 August 2023]".⁶⁵

79 On the stand, the defendant said that even though he had an OTP issued, if he received a substantially better offer, he could offer to pay the option money back. He agreed that he did not tell Ms Gan that he had already signed an OTP for the Level 4 Unit.⁶⁶

80 I therefore find that the agreement to engage Ms Gan to market the Level 4 Unit had not been terminated and was still in force when Mr Alex exercised the OTP.

Was there an implied term that the claimant would be entitled to commission if Ms Gan was the effective cause of the sale?

81 The claimant relied on *Goh Lay Khim and others v Isabel Redrup Agency Pte Ltd* [2017] SGCA 11 ("*Goh Lay Khim*") for the proposition that

⁶³ CBD 16.

⁶⁴ CT, 16 June 2025, 81:25 - 83: 5.

⁶⁵ CBD 16.

⁶⁶ CT, 16 June 2025, 107:25 – 109:3.

there is an implied term that an agent is only entitled to commission if his services were the effective cause of the transaction.

82 The court found that such a term would be implied in the absence of any terms stating when an agent would be deemed to have earned its commission or clear and express language to the effect that the agent's right to commission would only crystallise if it saw the transaction to the end. Otherwise, it would be all too easy for vendors selling properties to deprive their agents of commission simply by terminating the agency relationship shortly before executing the OTP: *Goh Lay Khim* at [33].

83 Here, while the agreement provided for the applicable commission rates depending on the sale price, it did not state when the claimant is deemed to be entitled to commission or whether it is only if it saw the transaction to the end.

84 The defendant did not appear to dispute that such a term ought to be implied. Instead, he argued that the claimant was not entitled to any commission as Ms Gan was not the effective cause of the sale to Mr Alex.

Was Ms Gan the effective cause of sale?

85 Whether a real estate agent was the effective cause of a sale is a fact-specific inquiry: *Goh Lay Khim* at [37].

86 The court in *Goh Lay Khim* cited *Grandhome Pte Ltd v Ng Kok Eng and another* [1996] 1 SLR(R) 14 ("*Grandhome*") at [31] for guidance on what may constitute effective cause:

Where as in this case it is established that:

- (a) an owner agreed to pay an agent a commission for finding a buyer for a property;

(b) the agent engendered the interest of a buyer in the property;

(c) the buyer made an offer for the property which the agent conveyed to the owner;

(d) the owner eventually sells the property to the same buyer at the same price offered through the agent; and

(e) (b) and (d) take place within a short space of time;

the agent would have discharged the necessary burden of proof to establish a *prima facie* case for being the *causa causans* or effective cause of the sale. The owner can of course seek to show why despite all this the agent is not the effective cause. But if he fails to do so the agent will succeed.

87 The *Grandhome* factors only serve as a rough-and-ready guide in assessing an estate agent's contributions. No one factor is determinative and the inquiry entails a holistic assessment of all the relevant facts of each case. It is insufficient for the agent to show that it was one of the causes of the sale; it would have to show that it was the critical cause: *Goh Lay Khim* at [37].

88 The claimant asserted that it was to avoid paying the claimant 1% commission, that the defendant had a private arrangement with Mr Alex to sell the Level 4 Unit to him without Ms Gan's knowledge. In the meantime, the defendant gave Ms Gan an unrealistic price target, then tried to fend her off by representing that he was advertising the Level 4 Unit through Carousell. This, it argued, was a ploy to show proof that he found Mr Alex through Carousell. The defendant thereafter refused to tell Ms Gan that the Level 4 Unit had been sold to Mr Alex. The claimant highlighted the close proximity between the date of the advertisement and when Ms Gan had introduced Mr Alex to the defendant.⁶⁷

⁶⁷ Statement of Claim, [17].

89 The defendant denied that there was any private arrangement with Mr Alex with the intention to circumvent Ms Gan. It was Mr Alex who initiated contact by responding directly to the defendant's Carousell advertisement.⁶⁸

90 At this juncture, I note that the defendant continued to argue, even in closing submissions, that it was not until 5 October 2023 that Ms Gan mentioned that her potential buyer's name was "Mr Alex", referring to her WhatsApp message of the same date. However, he had admitted that he was aware when Mr Alex messaged him on Carousell on 31 July 2023, that this was the same buyer who Ms Gan brought to the Level 4 Unit (see [26] - [27] above).

91 Further, in his closing submissions, he included an image of an email purportedly sent from Mr Alex to him on 23 July 2023 at 9.42pm (see [16] above).⁶⁹

92 Even accepting that Mr Alex did send this email to the defendant on 23 July 2023, this in fact lends support to the claimant's case that the defendant was aware of Mr Alex's identity since 23 July 2023, even if he had not been referred to by name in Ms Gan's WhatsApp messages until 5 October 2023.

93 As noted above, prior to the disclosure of this 23 July 2023 email, the only correspondence between Mr Alex and the defendant in evidence were Mr Alex's and the defendant's messages on Carousell on 31 July 2023.⁷⁰ During trial, the defendant had stated that there were no other messages between him and Mr Alex.⁷¹

⁶⁸ Defence, [17].

⁶⁹ The defendant's closing submissions, Slide 5, [WM2], email at p 9.

⁷⁰ CBD 50 – 51.

⁷¹ CT, 16 June 2025, 41:2 – 13.

94 The claimant submitted that the defendant had made only selective disclosure, and there must have been a reply from the defendant and further email exchanges between the defendant and Mr Alex from 23 July 2023. The claimant asked for an adverse inference to be drawn against the defendant that these exchanges, if produced, would not be in favour of the defence. Pursuant to s 116(g) of the Evidence Act 1893, an adverse inference may be drawn that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

95 Parties had, via Ms Gan, been in active negotiations since 23 July 2023. The defendant and Mr Alex knew of each other's identities, and the belatedly disclosed email of 23 July 2023 from Mr Alex shows they were already in direct contact with each other, or at least, already had each other's contact details. 1 – 2 days after their meeting, the defendant put up a Carousell advertisement for the Level 4 Unit. As of 30 July 2023, Mr Alex had improved his offer to \$3.1 million. One day later, on 31 July 2023, Mr Alex somehow stumbled onto the defendant's Carousell advertisement and decided to reach out to the defendant directly to offer the same \$3.1 million for the Level 4 Unit.

96 When Ms Gan confronted the defendant on 5 October 2023 about the sale of the Level 4 Unit to Mr Alex, the defendant claimed he did not know Ms Gan's buyer's name and that his buyer's name is not "Alex". The defendant had however in these proceedings, conceded that he was aware when Mr Alex messaged him on Carousell on 31 July 2023, that this was the same buyer who Ms Gan brought to the Level 4 Unit.

97 These circumstances suggest that there is more than meets the eye.

98 The defendant could simply have disclosed the full correspondence with Mr Alex to set the record straight. These would be documents within his possession. Yet, he did not do so. His claim that there were no other messages between them is contradicted by his own belated disclosure of the email from Mr Alex dated 23 July 2023, as well as his submission that “the subsequent emails were the typical exchange to prepare an Offer-to-Purchase based on a SIGNIFICANTLY REDUCED SCOPE FOR AN EVEN BETTER PRICE HE OFFERED THEN WITH 3.1M SGD”.⁷² None of these emails were disclosed.

99 Even if any communications were made over the phone or in person, he could have at the very least provided details of these or call Mr Alex as a witness. When asked why he had not called Mr Alex as a witness, the defendant only said that the claimant’s counsel could check out for himself that the Level 4 Unit sold to Mr Alex did not have “upgrade concept elements”.⁷³ That is not a satisfactory answer.

100 In the circumstances, it is appropriate to draw an adverse inference that such correspondence between the defendant and Mr Alex, if disclosed, or Mr Alex’s evidence, if produced, would be adverse to the defendant’s case that there was no private arrangement between him and Mr Alex to avoid paying the claimant commission.

101 Even if there was no such private arrangement between the defendant and Mr Alex, I find that Ms Gan was the effective cause of the sale.

102 I agree that Ms Gan engendered the interest of Mr Alex in the Level 4 Unit. Ms Gan did not merely introduce Mr Alex to the defendant but brought

⁷² The defendant’s closing submission, Slide 11, [WM2].

⁷³ CT, 16 June 2025, 101: 21 – 102:9.

Mr Alex, his wife and his daughter for a viewing of the Level 4 Unit. Without a prior viewing, it is unlikely that Mr Alex would have responded to a Carousell advertisement with an immediate offer of \$3.1 million. It should also be noted that the floor plan attached to the Carousell advertisement reflected the unit number of the Level 4 Unit⁷⁴, so Mr Alex knew that this was the same unit he had viewed with Ms Gan.

103 The WhatsApp correspondence show that Ms Gan was actively speaking separately to both Mr Alex and the defendant to see if they could come to a mutually agreeable price.⁷⁵ Ms Gan also advised the defendant as to what a suitable asking price would be, and provided the defendant a news article about falling private home prices in Singapore due to the government's cooling measures, which the defendant admitted receiving.⁷⁶

104 Mr Alex had also made an offer for the Level 4 Unit, which Ms Gan conveyed to the defendant. The last offered price through Ms Gan was \$3.1 million, which is not far from the eventual sale price, being \$3.138 million.

105 I note the defendant's arguments that the eventual sale was on materially different terms and amounted to a significantly improved offer from what Ms Gan had procured. The defendant argued that he was not willing to sell to Mr Alex at a price below \$3.2 million (net of commission) as the price included extensive renovation works to be performed by the defendant. According to the defendant, the initial scope of renovation works would cost at least \$80,000.⁷⁷ Ms Gan also insisted on receiving at least \$35,000 in commission.

⁷⁴ Ms Gan's AEIC, p 45; CT, 16 June 2025, 102:10 – 24.

⁷⁵ CBD 13 – 29.

⁷⁶ CBD 30 – 33; CT, 16 June 2025, 90:6 - 29.

⁷⁷ The defendant's AEIC, [A9].

106 In his AEIC, the defendant additionally asserted that the initial price offered by Mr Alex through Ms Gan also included a rental yield guarantee.⁷⁸

107 The defendant said he had substantial direct negotiations with Mr Alex, including the possibility of a sale with tenancy, an option of early possession of the Level 4 Unit and a significant reduction of the scope of renovation works. It was only after these negotiations that Mr Alex improved his offer to \$3.138 million with a significantly reduced scope of works and the option of taking early possession of the Level 4 Unit, which the defendant accepted.⁷⁹ The eventual accepted price of \$3.138 million did not include a rental guarantee.⁸⁰ Under cross-examination, the defendant said the eventual sale price amounted to a price increase of \$120,000.⁸¹

108 However, the defendant has not disclosed any documents to support his assertions that there were substantial direct negotiations with Mr Alex and that the terms of the eventual sale included a significantly reduced scope of works, the option of taking early possession of the Level 4 Unit and/or no rental yield guarantee. He acknowledged in closing submissions that there were emails exchanged on the OTP⁸², but did not disclose any of them.

109 The defendant could also have called Mr Alex as his witness. As noted above, when the defendant was queried on why he did not, the defendant said that the claimant's counsel could check out for himself that the Level 4 Unit

⁷⁸ The defendant's AEIC, [A9].

⁷⁹ Defence, [20].

⁸⁰ The defendant's AEIC, [A11].

⁸¹ CT, 16 June 2025, 101:21 - 32.

⁸² The defendant's closing submission, Slide 11, [WM2].

sold to Mr Alex did not have “upgrade concept elements”.⁸³ However, it is for the defendant to produce evidence to back his assertion that the Level 4 Unit did not have such “upgrade concept elements”.

110 For the same reasons, it is therefore appropriate to draw an adverse inference that such correspondence between the defendant and Mr Alex, if disclosed, or Mr Alex’s evidence, if produced, would be adverse to the defendant’s case that there were substantial negotiations with Mr Alex or that the eventual sale was on significantly different terms.

111 It was also a fairly short span of time (less than a month) between when Ms Gan engendered Mr Alex’s interest in the Level 4 Unit (being 23 July 2023 when she brought Mr Alex for a viewing) and the eventual sale (15 August 2023, when the OTP was issued).

112 In the circumstances, had the claimant and the defendant entered into an agreement in the prescribed form under the 2010 Regulations, the claimant would have been entitled to 1% of the sale price of \$3.138 million, as Ms Gan was the effective cause of the sale to Mr Alex.

Conclusion

113 Unfortunately, as they did not do so, I am bound to apply s 44 of the EA Act. The claimant is therefore not entitled to recover any commission against the defendant, and I dismiss the claim entirely.

114 Unless parties can agree on costs, they are to file brief costs submissions, limited to 10 pages, within 2 weeks of the date of this judgment.

⁸³ CT, 16 June 2025, 101: 21 – 102:9.

Sim Mei Ling
District Judge

Kanagavijayan Nadarajan (Kana & Co) for the claimant;
the defendant in person.
