IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 8

Suit 3314/1987

Between

Swissland Pte Ltd

… *Plaintiff*

And

Eng Keong Holdings Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Swissland Pte Ltd v Eng Keong Holdings Pte Ltd

[1993] SGHC 8

Suit 3314/1987
S Rajendran J
12 January 1993

1 **Judgment:**

2 Coram: S Rajendran, J

3 **GROUNDS OF JUDGMENT**

4 1. The plaintiffs, Swissland Pte Ltd, were a firm of real estate agents. The defendants, Eng Keong Holdings Pte Ltd, were a firm of property developers. The plaintiffs' claim against the defendants was for commission in connection with the purchase of certain properties by the defendants.

5 2. Robert Tan ("Tan"), a director of the plaintiff company, testified that in early 1987 he met one Dato Sri Tay Kia Hong ("Dato Tay") and learnt that Dato Tay wished to sell certain properties at Lorong Chuan. Tan approached Ng Hock Lye ("Ng"), a director of the defendant company. Ng was interested in purchasing the said properties. Tan told Ng that before he introduced the vendor to Ng, Ng must agree to pay him a commission of $600,000 if the sale was completed. Ng agreed. On Ng's instructions, Ng's solicitors M/s Wong & Lim,

issued to Tan a letter (AB2) dated 11 March 1987 addressed to the plaintiffs which read as follows:

6 Dear Sirs Lots 2335, 2338, 2332, 2201 & 3344 We act for the intending purchaser in the purchase of the abovecaptioned properties from your clients for which we had already written a letter of intention to the owner's representative Dato' Sri Tay Kia Hong dated 11th March 1987. A copy of which is enclosed for your information and retention.

7 As discussed between yourself and our intending purchaser upon completion of the abovementioned transaction our client shall pay you a commission of $600,000.00.

8 The letter to Dato Tay (AB1) referred to in the said letter (AB1) was as follows:

9 Dear Sir Re Lots 2335, 2338, 2332, 2201 & 3344 We act for the intending purchaser in the purchase of the above properties from you subject to contract. The basic terms are as follows: 1) vacant possession shall be given on completion. 2) purchase price shall be $9,225,000.00. 3) purchase shall be subject to planning approval being granted for the development of the properties; and 3) completion shall be two months after the date the planning approval is granted. If the above terms are acceptable please instruct your solicitors to forward to us the draft contract for our approval as soon as possible.

10 Dato Tay was the chairman of two companies ("Vendor Companies") that owned the properties in question.

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11 3. Tan testified that upon receiving these two letters from the defendants' solicitors he immediately took the solicitor (Victor Wong of M/s Wong & Lim) and Ng to Johor Baru where he introduced them to Dato Tay and handed AB1 to Dato Tay. After the introduction Ng and Victor Wong discussed the sale and purchase directly with Dato Tay. Tan played no part in these negotiations. He subsequently learnt from Dato Tay that the defendants had entered into an agreement with the Vendor Companies for the purchase of the properties.

12 4. The sale and purchase agreement between the defendants and the two Vendor Companies was signed on 28 May 1987 and the sale was completed on 20 October 1987. Sometime after the completion the plaintiffs made a demand for the commission of $600,000 which the defendants failed to pay.

13 5. For the defence, Ng testified that on 11 March 1987 at the office of Victor Wong and in the presence of Tan he instructed Victor Wong to prepare the two letters AB1 and AB2. He said that he was at the time aware of the price being asked for the lands as Tan had told him that if he were to purchase the lands for $9.225m he would have to pay Tan a commission of $600,000. He testified that he was prepared to pay a commission of $600,000 only if the purchase price was $9.225m. He was not prepared to pay such a commission irrespective of the purchase price.

14 6. Ng denied that Tan had taken him and Victor Wong to see Dato Tay on 11 March 1987. He said that Tan took him (and Victor Wong) to see Dato Tay about 2 months later. On 11 March 1987 when AB1 was written Tan did not mention that there would be a meeting between him and Dato Tay. When Ng met Dato Tay the figure of $9.225m was not mentioned at all. Instead, Ng directly negotiated with Dato Tay a new price and on new terms. The purchase price under the new terms was $8m and the defendants were to give to Dato Tay

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two semi-detached houses and two terrace houses after the lands had been developed. Ng agreed that it was because of Tan's introduction of Dato Tay that the defendants purchased the said lands.

15 7. Counsel for the defendants submitted that the commission of $600,000 referred to in AB2 must be construed in the context of AB1 and that when so construed the $600,000 would be payable only if completion of the transaction referred to in AB1 took place, ie. the lands were purchased at $9.225m. He submitted that the transaction envisaged in AB1 and AB2 was oceans apart from the sale and purchase agreement that was in fact entered into and on the basis of which completion took place.

16 8. The case for the plaintiffs was that the sale and purchase was entered into and completion of the transaction took place as a direct result of the introduction of the vendors to the defendants by the plaintiffs. That being so the agreed commission was payable. In support of this submission, counsel relied mainly on the judgment of Chan Sek Keong J in Ong Kee Ming v Quek Yong Kang & Anor < 1991 > 2 MLJ 294.

17 9. In the case of Ong Kee Ming v Quek Yong Kang & Anor, the vendor granted an option to the purchaser to purchase his house for $1.42m. The option included a clause (cl 9) confirming that a commission of 1% of the purchase price was payable to the plaintiff (the broker) upon completion of the sale. As the reply to one of the requisitions was unsatisfactory, the purchaser asked for and the vendor agreed to return the option fee of $15,000 with the result that the option ceased to have effect. Subsequently, the purchaser got in touch with the vendor directly and agreed to purchase the property at a reduced price of $1.38m. An agreement for sale and purchase was entered into and the sale was subsequently completed. The broker claimed his 1% commission on the

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principle that he was the effective cause of the sale to the purchaser. In giving judgment for the broker Chan Sek Keong J said (at page 295):

18 As the claim is one in contract, it is necessary to look at the terms of the contract. The terms are simple. The defendants agreed to pay 1% commission to the plaintiff if he could find a purchaser for the property, the commission to be paid upon completion. ... 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. The role of the plaintiff was to find a buyer for the property.

19 10. In the present case there was no dispute that the plaintiffs were the effective cause of the sale and purchase. The only question was whether there were any special contractual terms in the present case that specified that the agreed commission was payable only if the purchase was concluded at $9.225m.

20 11. I could find nothing in AB2 (even when read with AB1) that could be said to constitute such a special contractual term. The reference in AB2 to the letter written to Dato Tay appears to be no more than a passing reference. In my view, the intent and effect of AB2 was that commission of $600,000 was payable to the plaintiffs upon the defendants completing the purchase of the properties described. There was nothing in AB2 to suggest that the commission was payable only if completion took place on the exact terms stated in AB1.

21 12. Accordingly, I gave judgment for the plaintiffs with costs.

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S Rajendran J

V Ramakrishnan (V Ramakrishnan & Co) for the plaintiffs/respondents
James Ponniah with Christine Lee (Wong & Lim) for the defendants/appellants

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