IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 21

Suit 1697/1991

Between

Deans Property Pte Ltd

… *Plaintiff*

And

Land Estates Apartments Pte Ltd
Another

… *Defendant*

GROUNDS OF DECISION

Agency; Civil Procedure

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

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

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

[1994] SGHC 21

Suit 1697/1991
Lai Siu Chiu JC
29 January 1994

1 **The facts**

2 Cur Adv Vult

3 The plaintiffs are licensed real estate agents. At the material time, the first defendants were the registered owners of a factory cum warehouse situated at No 170-178 Paya Lebar Road, Singapore 1440 (`the property`). The second defendant was a director of the first defendants and concurrently a director and shareholder of a company known as Heshe Holdings Pte Ltd (`Heshe`), whose managing director was/is Chia Shi Teck (`Chia`).

4 In or about March/April 1989, the second defendant requested the plaintiffs` managing director, Dean Ong (`Ong`), to find a purchaser for the property as well as for his shares in Heshe (`the shares`). Towards that intent, Ong (PW1) received from Chia (DW4) a valuation report (done in 1983) which valued the property at $22,055,000. Ong also received from the second defendant (DW3) certain confidential documents (`AB7-39`) pertaining to Heshe. According to Ong, the second defendant instructed him to secure a

purchaser for the property and to secure another buyer for the shares alternatively to secure one purchaser for both the property and the shares. The second defendant wanted $20m for the property but in the event it was one purchaser for both the shares and the property, he was willing to sell the property at $18m. It was orally agreed that he would pay the plaintiffs a commission amounting to 1% of the sale price. The plaintiffs did not receive an appointment letter for the property or the shares from either defendant. In the past (since 1984) the plaintiffs had sold other properties for the second defendant and had been paid commission for their services without any agreement in writing.

5 Ong and his associate Tay Tien Guan (`TTG`), who was then the plaintiffs` project director, set about marketing the property and the shares respectively. On his part, Ong prepared an investment proposal dated 13 May 1989 (`exh P1`) offering the property at a price of $22m which he sent, inter alia, to companies like First Capital Corporation (`FCC`), Far East Organisation, the Wing Tai group and Inchcape.

6 According to Ong, FCC expressed an interest in both the property and the shares. As regards the property, Ong said he arranged two viewings for FCC sometime in June 1989, he attended both viewings. Ultimately, FCC purchased both the property and the shares, the shares at $10m and the property at $19m, which sales were completed in August and September 1989 respectively. The plaintiffs, however, were only paid their commission for selling the shares ($120,000) but not for the property.

7 On 29 September 1989, TTG had written on the plaintiffs` behalf to First Capital Management Pte Ltd (`FCM`) attentioned to Wong Kwai Choy (`WKC`) who was then FCC`s general manager as follows (`the letter`):

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

> *We refer to the purchase of five units of factory/warehouse at Nos 170-178 Paya Lebar Road, Singapore by First Capital Properties Pte Ltd a wholly owned subsidiary of the First Capital Corporation Ltd (FCC) Group on 25 September 1989.*
>
> *We confirmed the commission payable of $75,000 by the FCC Group to us as agreed between your Mr Wong Kwai Choy and our Mr Tay Tien Guan in respect of the above purchase. Such commission shall be payable to us upon the completion of the sale and purchase of the above properties.*

8 Kindly acknowledge your agreement to the above terms by signing and returning to us the duplicate copy of this letter.

9 There was no acknowledgment by FCC to the letter (see AB61) but they paid the plaintiffs the commission of $75,000.

10 On 31 May 1991, Ong wrote on the plaintiffs` behalf to the first defendants, marked for the attention of Chia as follows (`AB62`):

> *We refer to the sale of the above property to First Capital Properties Pte Ltd through our introduction.*

11 As agreed, prior to the said sale, our fees of 1% of the sales price amounting to $190,000 will be payable to us upon completion of the sale.

> *Inspite of various telephone conversations/meetings with your Mr Chia, we have yet to receive payment.*
>
> *We would appreciate if you could send us your cheque for the sum of $190,000 being payment of our brokerage fees for the above sale, as soon as possible.*

12 There was no response from the defendants to the above and another letter from the plaintiffs. Upon a further reminder from the plaintiffs to the first defendants dated 25 July 1991 (`AB65`), the second defendant replied on the first defendant`s behalf. His letter dated 29 July 1991 (`AB66`) is as follows:

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

> *We are amazed that you sent us a bill for an event that took place way back in 1989. The matter was explained and accepted by you. The sale was concluded by the undersigned directly with two general managers of the purchasing company. For records, you were not party to the deal. Neither were you given exclusive marketing rights. You had in fact made several offers to us which were not acceptable. The subsequent sale was done by us directly. For goodwill sake, the undersigned had requested that the purchasers pay you some token commission, which they agreed to. We were informed that they had paid you.*
>
> *We therefore reject all claims whatsoever. The undersigned had spoken to you on several occasions and you had in fact agreed to drop the matter.*
>
> *Your invoice is now returned.*

13 The defendants` letter drew a sharp reply from the plaintiffs` solicitors (see AB69) who gave notice that unless they received a positive response by a certain deadline, proceedings would be commenced. The first defendants had, by 14 August 1991, also appointed solicitors who wrote (see AB76) to the plaintiffs` solicitors reiterating their clients` stand. In the event, the plaintiffs commenced this suit in August 1991.

14 **The claim**

15 In the statement of claim, the plaintiffs alleged:

> (i) they introduced FCC to both the property and the shares and this was known to, and acknowledged by, the defendants;
>
> (ii) under the terms of the plaintiffs` appointment, a commission of 1% was payable; alternatively, the market commission then payable was 1% of the sale price;
>
> (iii) the property was sold for $19m with the transfer effected sometime in December 1989, notwithstanding which the first defendants failed to effect payment of the commission due or any part thereof; and

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

(iv) the first defendants purported to renege on the payment due on or about 29 July 1991 by suggesting it was the second defendant who secured the purchaser.

16 The plaintiffs prayed for a declaration that they were the effective cause of the sale and that they are entitled to the said commission and if the same had been paid to the second defendant the moneys are properly due to the plaintiffs and accountable by the second defendant to the plaintiffs.

17 In the common defence they filed:

(i) both defendants denied that the plaintiffs are entitled to the alleged or any commission;

(ii) the first defendants contended that:

(a)) the sale of the property was brought about by direct negotiations between the first defendants` director, Chia, and FCC`s management after FCC had purchased the shares;

(b)) after the plaintiffs had introduced the property to FCC, the management of FCC, in particular Lay Kok Weng, had expressed no interest and FCC was never a ready or willing buyer;

(c)) thereafter the plaintiffs were never involved or participated in the sale of the property to FCC;

(iii) the first defendants denied that there were any terms of appointment of the plaintiffs for payment of the alleged or any commission.

18 **The evidence**

19 As proceedings were commenced after 1 August 1991, the suit came under the provision of the new O 38 r 2 of the Rules of the Supreme Court 1990 (`RSC`) and witnesses were required to file affidavits of their evidence-in-chief (hereinafter referred to as the affidavit[s]).

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

20 In his affidavit and in his testimony, Ong said:

> (1) When he met with the second defendant in March/April 1989 it was understood (after negotiations started off with his request for 2%) that commission of 1% of the purchase price of the property would be payable to the plaintiffs upon the successful completion of the sale vide the plaintiffs` introduction of a purchaser. This was the practice of past dealings between them where the second defendant paid the plaintiffs commission in excess of $300,000 for selling, inter alia, properties at Branksome Road and Pasir Ris Avenue and two units at Peninsula Plaza without the need for any appointment letters/documentation on the agreed commission rate; the plaintiffs trusted the defendants. He understood from the second defendant that Heshe was applying for a listing on SESDAQ, the secondary board of the Stock Exchange of Singapore.
>
> (2) After he had sent exh P1 to prospective purchasers, including FCC, he wrote to Chia on 24 June 1989 (AB69) to confirm Chia`s instructions to market the property confidentially and to confirm FCC had been introduced by the plaintiffs.
>
> (3) When FCC expressed an interest in the property, he and TTG dealt with WKC on both the property and the shares and with LKW on the property.
>
> (4) At the first viewing of the property, WKC, TTG and Chia were present. At the second viewing, LKW was present together with Chia. FCC never indicated to him that they were not interested in the property, neither did Chia call him to say he was not to market the property after his letter to Chia dated 24 June 1989.
>
> (5) The first defendants had bought the property for $8.61m and, in selling it to FCC at $19m, they made a profit of about $10.39m. Further, they obtained a better price then their asking price of $18m.
>
> (6) Between January 1990 and April 1991, he tried to call Chia no less than five to ten times but Chia did not take his calls. During the same period, neither the defendants nor Chia indicated to him that they would not be paying the commission.
>
> (7) By May 1991, the plaintiffs were worried why the commission was not forthcoming but they were unwilling to initiate legal proceedings because of their long term working relationship with the defendants, who were one of the plaintiffs`

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

major accounts. Hence his polite letter to the first defendants dated 31 May 1991, to which there was no response from either Chia or the second defendant.

(8) He did not understand what was meant by the second defendant`s letter dated 29 July 1991 that the matter had been explained and accepted by him.

(9) He had disclosed to the defendants the commission of $75,000 paid by FCC, it was not a token payment but an agreed commission.

21 Under cross-examination the following facts and or events were adduced from Ong:

(a) His testimony that the first viewing of the property took place pursuant to telephone conversations between TTG and LKW was not stated in his or TTG`s affidavits; at the first viewing, the attendees saw Heshe`s manufacturing process, they were shown round by Chia. There was no focus on the property at the first viewing as WKC was in charge of the shares aspect; he did not know why LKW was not present at the first viewing. He agreed that in early June 1989, FCC was only interested in the shares and the discussion at the first viewing centred on the shares.

(b) He was not sure whether the second viewing took place in early or mid-June 1989, nor could he recall what LKW said, but he was not aware that LKW had in fact said that FCC was not interested in the property. He did not inquire of FCC after the first viewing whether they were interested in the property.

(c) Chia and the second defendant were so eager to sell the property that the former indicated that he would be prepared to take a lease from the purchaser after the sale and, if necessary, Heshe would consolidate its operations into three units at the property and return the remaining two units to the purchaser; this was an internal arrangement which was not important and was not told to FCC at the material time but FCC was aware there was a lease. Again this evidence was not in his affidavit.

(d) The second defendant paid him the commission for the shares by two cheques, one for $50,000 in favour of the plaintiffs and the remaining $70,000 by a cash cheque. He denied that the mode of payment was at his request and that it was because he wanted to keep the $70,000 for himself instead of sharing it with TTG and that he had not paid TTG`s share

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

thereof. Rather, the same was suggested by the second defendant who asked for a discount on the commission (which should be $142,000 based on 1% of the sale price [$10m] and the increase in paid-up capital of $4.2m) because the former said he/plaintiffs would make back the commission on the property.

(e) Some time before the option was signed on 25 September 1989, TTG conveyed to him that WKC said FCC was interested in the property.

(f) Even after the second viewing, he still looked for purchasers and advertised the property in the newspapers as well as brought one or two persons to inspect it.

(g) Although it was not stated in his affidavit due to his oversight, at end September 1989, he participated in negotiations on the price of the property. He was informed by TTG that Chia told WKC that the price was $19.5m whereas he had indicated previously that the price would be $18m - WKC`s mandate was only for $19m. Ong then intervened and negotiated with the second defendant to reduce the price to $19m.

(h) He repeatedly pressed the second defendant for payment of the commission but the latter pushed him to Chia, it was `like a game of badminton.` He did not write to the defendants for 11/2 years before his letter dated 31 May 1991 because it was not his practice to write letters and he did not dare to offend them. In any event, he was paid the commission for the shares without having to write any letter. It was an oversight on his part that he did not send the plaintiffs` invoice dated 22 July 1991 (AB64) earlier, he denied it was part of his attempt to compile documents to build up his claim.

(i) He had a meeting `by force` with Chia. One of FCC`s subsidiaries is an advertising company called Conceptional Advertising & Promotions (`CAP`) who was the plaintiffs` advertiser. As the commission was not paid, he froze advertising charges due to CAP. WKC called him to find out the reason for the plaintiffs` non-payment. When he explained, WKC said FCC had already paid its share of the commission and the plaintiffs` problems cannot be linked to CAP. Eventually he agreed to pay CAP $50,000 when WKC promised that he would arrange a lunch meeting for Ong with Chia.

(j) At the lunch (where LKW and WKC were present), there was a general discussion about the property market after which he and Chia adjourned to the lobby at the Marina Mandarin to discuss the commission issue. He insisted that Chia revert to

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

him saying he was sick of the badminton game, Chia did not. Notwithstanding that Chia did not revert to him as promised, Ong did not write to Chia until 31 May 1991 because he `was busy doing other things` but eventually his patience ran out.

(k) On the eve of the plaintiffs` application for summary judgment, the second defendant contacted him and offered him $50,000 to drop the matter, he refused and counter-proposed $125,000.

(l) After the completion of the property, he sold the Pasir Ris property for the second defendant and he was paid his commission immediately.

(m) He denied that he had told the second defendant that the reason for his 1991 letters to the defendants was because TTG suspected that Ong may have received commission for the property and failed to pay TTG his share.

(n) So long as FCC ultimately purchased the property, it did not matter what were the reasons for their change of mind if, indeed, they had initially decided not to purchase. A purchaser cannot say he is not interested after seeing a property then go back and purchase it.

(o) The sum of $75,000 was paid by FCC after negotiations between him and WKC; it was partly for his efforts in reducing the purchase price from $19.5m to $19m; he denied the payment was ex gratia. He did not think it unusual to take commission from both the vendor and the purchaser.

22 The other witness for the plaintiffs was TTG, who left the plaintiffs` services in March 1991. He deposed in his affidavit to the following:

(1) He was first introduced to FCC by a friend in Barclays Bank for another project which did not materialize. Pursuant to that introduction, he met FCC`s general manager of operations, WKC, in early 1989 and they kept in touch. When he knew of the two deals through Ong, he immediately introduced them to LKW as reflected in his letter to FCM marked for LKW`s attention (on the property) dated 30 May 1989 (AB56).

(2) Thereafter, he was directly involved in negotiations with WKC and LKW as regards the shares as well as the property. He arranged and attended a viewing of the property in early June 1989 with Ong, WKC and Chia to enable WKC to discuss the sale of the shares with Chia. They were shown the premises

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

including the factory by Chia, who explained the whole Heshe operations to WKC; that was the first time he met Chia. He was not told by LKW between May-December 1989 that FCC was not interested in the property. If there had been such indication he would not have wasted his time in further negotiations after August 1989. In the negotiations after August 1989, he did not deal with LKW.

(3) The letter to FCM was to confirm that the deal had been concluded. Between the date of the letter (29 September 1989) and the commencement of proceedings (14 August 1989), FCC never wrote to deny the letter; they paid the $75,000 subsequently; the sum was not a token. Neither did the defendants inform him that they objected to his collecting commission from FCC nor that they were doing a direct deal and commission would not be paid to the plaintiffs. Neither Chia nor the defendants approached him about the `misunderstanding` set out in WKC`s affidavit, namely, that the second defendant did not want the plaintiffs to chase him for the commission, it being a direct deal.

(4) After making the introduction, he could not prevent the parties from dealing directly with each other, especially after FCC bought the shares and thereby had a 60% stake in Heshe. WKC then become directly involved as he had to take care of FCC`s interests in Heshe. By August 1989, Chia had no reason to approach FCC except to buy the property.

(5) He disputed Chia`s affidavit which stated that Chia was not present at the viewing in June 1989.

(6) He denied he had told the second defendant that Ong had pocketed the commission. He left it to Ong to handle the commission issue with the defendants as his role was to handle FCC.

(7) After negotiations on the shares had concluded, he, Chia and WKC immediately entered into telephone discussions over the property. As Chia had a vested interest in the same and it was awkward for Chia to speak to WKC, he was the natural intermediary that Chia approached for negotiations.

(8) The first time he became aware that the defendants were alleging a direct deal was when he saw the second defendant`s letter (dated 29 July 1991). It was not true that the plaintiffs had `disengaged` themselves from the sale of the property as suggested by the second defendant. The first indication that his services were terminated was from the second defendant`s affidavit, prior thereto he had not been informed by either FCC or the defendants.

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

(9) At the time of negotiations, Chia said he wanted $19m for the property; after reverting to FCC he told Chia that FCC would pay the price, whereupon Chia told him that the second defendant wanted $19.5m. He then left it to Ong to negotiate and finalize the price at $19m with the second defendant.

23 When cross-examined, TTG:

(a) said that the reason what he did in the negotiations was not set out in his affidavit (apart from a bare statement) and in his earlier affidavits (filed for the plaintiffs` application for summary judgment) was because, as a layman, he thought the letter was `good enough`; he provided the plaintiffs` solicitors with copies of the letter and other letters and he left it to them to put into his affidavit what was relevant. For the same reason, he did not rebut the second defendant`s contention (see the second defendant`s affidavit filed 19 October 1991) that FCC`s purchase of the property was a direct deal between FCC and the first defendants, since `[a]nyone who has concluded a deal is not obliged to go through how a deal is concluded`;

(b) explained that it was `so obvious` that his first letter to FCM (dated 30 May 1989) was `to register our interest and the [subsequent] letter was to confirm the conclusion of the deal.` It was equally obvious that WKC`s affidavit did not mention what he had done. It was market practice that once an agent had registered its interest in a property and initiated meetings and viewings between the vendor and the purchaser, its claim for commission is justified. In any event, if he was really not involved in the negotiations, WKC would have objected to the way he wrote the letter;

(c) said that when LKW saw the property, it was before the conclusion of the shares sale. Although the property by itself may not be a good investment, the whole scenario changed after FCC acquired the shares. He had not deposed to FCC`s change of mind in his affidavit nor rebutted WKC`s contention that the commission was a token sum for the same reason he had earlier given;

(d) explained that he received 1% commission ($142,000) from FCC for the shares but less than 1/2% commission for the property because WKC told him it would be very difficult for WKC to justify 1% when FCC was already a shareholder of Heshe, further the two transactions were so close. He accepted WKC`s reasoning and reduced the commission to $75,000. However, the same reasoning need not necessarily apply to the

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

second defendant. He agreed that Ong`s affidavit did not mention how the $75,000 payment came to be made;

(e) although he asked for the same, he did not receive an acknowledgment from FCC for the letter, but it did not matter as WKC had proven himself to be trustworthy in paying the commission for the shares promptly after the deal was concluded. There had been an acknowledgment by FCC for a similar letter for the shares;

(f) confirmed that the first viewing had nothing to do with the property but was in relation to the shares. When LKW told him about FCC`s disinterest in the property, it was in the midst of discussions for the shares after the second viewing. Some time in September 1989, WKC told him FCC would be interested in the property if the price was right and there then followed two weeks of negotiations between himself, Chia and WKC;

(g) maintained that so long as FCC was his contact for both transactions he was entitled to the commission claimed.

24 I next turn to the case for the defendants. The defendants called Chia, the second defendant, WKC and LKW as their witnesses. Dealing first with WKC (who is currently with the Hong Leong group and based in London), he deposed in his evidence-in-chief and in his affidavit to the following:

(1) As the general manager in charge of operations and development at FCC, he was responsible for looking for new investments.

(2) TTG and Ong introduced him to Chia. Prior thereto, his colleague, LKW, had turned down Ong`s offer of the property as not a good investment. At the first viewing (before he met Chia), he had told TTG that he was only prepared to consider the purchase of the shares provided the purchase of the property was not attached as a condition. If indeed FCC was interested in the property at that stage, he was not the right person to handle the matter, it would have to be LKW who was in charge of FCC`s property division.

(3) He was told by TTG that Chia desired an equity investor to help expand Heshe. After several rounds of negotiations in which TTG, not Ong, participated, FCC eventually purchased the shares and, by virtue of its 60% stake, FCC became the parent company of Heshe.

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

(4) Chia then approached FCC to purchase the property pointing out the advantages for long term planning. WKC supported the proposal and based on LKW`s recommendation to the management on the price, FCC bought the same for $19m. Chia stayed out of the price negotiations to avoid a conflict of interest but he helped WKC to persuade the second defendant to reduce the price to $19m.

(5) The same afternoon that the deal was concluded (in September 1989) the second defendant reminded Chia (who in turn telephoned WKC) that although Ong was not involved in the deal, the second defendant did not want any misunderstanding with Ong and to have the latter chase him for commission. WKC then telephoned Ong at Chia`s request to say that the deal was done by FCC and no commission was payable. Ong was unhappy, saying he wanted a token sum as he introduced FCC to Chia and the second defendant, WKC, offered him a sum and, after much haggling, they settled on a figure of $75,000 on the basis that it was an ex gratia payment and Ong would have no claims against either party whatsoever over the transaction.

(6) Ong never told WKC that he would be asking for commission from the first or the second defendant, but Ong well knew that the figure agreed upon between them would be the one and only payment and that FCC would pay the sum.

(7) Ong`s and TTG`s testimony that the $75,000 was arrived at after a discussion with him was incorrect because, as the purchaser of the property, FCC is not obliged to pay any commission at all. FCC had never agreed to pay any commission for the property. It was also not true that TTG participated in the negotiations for the sale of the property with WKC and Chia and that the matter was referred to Ong when there was a stalemate in the price. Right from the outset, Chia had declared his deemed interest in the transaction and stayed out of the negotiations on the price, saying it would be decided by the second defendant.

(8) He arranged a lunch meeting for Ong with Chia when he was made a director of CAP and was told at a CAP management meeting in March/April 1990 that the plaintiffs owed $50,000 to CAP which Ong refused to pay `because Chia still owed [him] some money.` He called up Ong for an explanation and Ong mumbled something to the effect that Chia and the second defendant owed him for past services but did not mention the property, so he thought it related to other property transactions. Ong claimed that Chia was avoiding him. WKC then spoke to Chia who denied that any money was owed to Ong saying that Ong had sold more properties subsequently for

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

> the defendants and had been paid higher than 1% commission for the transactions. WKC then went back to Ong to warn that unless CAP was paid the $50,000, a writ would be issued. Ong agreed to pay after WKC said he would set up a meeting for Ong with Chia.
>
> (9) At the lunch (which WKC attended together with LKW and other FCC colleagues), there was no mention of the commission, it was strictly a social event. After the meal, Chia or Ong suggested going to a hotel lobby for a drink but he and his FCC colleagues did not follow them. Subsequently, CAP received payment from Ong.
>
> (10) After completion TTG introduced other deals to him, one of which was concluded, but TTG never raised the issue of commission on the property. Indeed, if Ong or TTG had brought up the subject, he would have strangled them as he thought the matter was settled by FCC`s payment of $75,000.

25 When cross-examined by counsel for the plaintiffs, the following additional facts were adduced from WKC:

> (i) He worked for FCC from February 1989 to February 1991; FCC had no shares in, and was not connected with, the first defendants; there was no falling out between FCC and Ong or TTG.
>
> (ii) It is not correct to say that it was of no relevance to FCC in 1989 whether the first defendants paid commission to the plaintiffs; paying the `token` sum of $75,000 to the plaintiffs increased FCC`s purchase consideration and that was why he haggled with Ong over the figure.
>
> (iii) It was very clear to FCC that the first defendants were not liable to pay commission because it was a direct deal between the parties.
>
> (iv) He agreed that his testimony regarding Chia`s approach to FCC to purchase the property and the subsequent decision of FCC`s board to do so was not stated in his affidavit, nor was his meeting with Chia and the second defendant when the deal was concluded or his conversation with Ong when the $75,000 was agreed upon, and neither was there mention that the sum formed part of the purchase consideration. He explained that he had prepared the affidavit himself in England and he was not told how detailed it had to be, it was also the first time that he had drafted an affidavit, he prepared what he thought was

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

an important summary of the whole matter. Had he put in all the details it would have been a very long document.

(v) Although FCC was not obliged to pay any commission, he struck a deal with Ong at $75,000. It was then a question of who would pay the sum, either FCC or the second defendant. The second defendant said he had already come down from his price by $0.5m and, as a gesture of goodwill, FCC should absorb the $75,000 as part of the purchase price. He then went back to FCC`s chairman Quek for approval to pay the sum. When he had the approval, he told Chia and TTG, who then sent the letter; he did not negotiate with TTG on the commission. The payment of $75,000 was made after completion (16 December 1989).

(vi) It was his mistake that when he received the letter he should have, but did not, write back to say that the sum was in full and final settlement. Because he trusted TTG, he did not reply. Similarly, when FCC handed over the cheque, they should have insisted that it was in full and final settlement against vendor and purchaser. From his viewpoint, the fact that the cheque was encashed meant that there was settlement over the whole issue as, otherwise, the cheque should have been returned and the defendants invoiced for $190,000. It never dawned on him that Ong would renege on the deal. As far as FCC was concerned, the wording of the letter did not bother him as he had agreed to pay the $75,000, although he would have reacted otherwise had the figure been different. He did not send a copy of the letter to the first defendants, nor did he inform Chia or the second defendant of its contents.

(vii) When FCC was considering purchasing the shares, it did not think of purchasing the property and it never made any offers to purchase the property through the plaintiffs.

(viii) He denied that he was giving evidence to assist Chia to ensure that the first defendants avoided paying the commission.

(ix) Before the filing of his first affidavit (22 October 1991) until his appearance in court, he had not spoken to Ong.

26 The evidence of LKW (DW2) currently a director of FCM (since January 1993) was as follows:

(1) He was only involved in the final negotiations with the second defendant on the price sometime in September-October

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

> 1989 after he received a mandate for $19m from his management. He had given some input to WKC on the relocation costs of Heshe if FCC did not buy the property. He did not recommend the property to the management but only the purchase price of $19m.
>
> (2) He inspected the property in early June 1989 after receiving exh P1 and TTG`s letter to FCM dated 30 May 1989; he was shown round by Ong, Chia was not present. A few days after the visit, he told TTG that he was not interested in the property, he did not visit the property again between June-October 1989.
>
> (3) He went with WKC to the second defendant`s office at Textile Centre in Jalan Sultan to negotiate the price; Chia was present but not Ong or TTG. The meeting lasted about an hour and started off with he and WKC offering $18m on behalf of FCC and the second defendant counterproposing $19.5m - the transaction was finally concluded at $19m. No one brought up the issue of commission to the plaintiffs and he did not think that commission was payable to either Ong or TTG.
>
> (4) He came to know of the $75,000 only after it had been paid when his chairman queried the same and he understood from WKC it was a token sum paid as a gesture of goodwill.
>
> (5) Subsequent to FCC`s purchase, neither Ong nor TTG raised the point that commission was due to the plaintiffs by FCC or the first defendant when one or the other called on him to introduce properties or other deals.
>
> (6) TTG`s evidence that he was present at meetings between him, WKC and Chia in August 1989 concerning the property was not true. Neither was Ong present at the meeting where the second defendant reduced the price from $19.5m to $19m.

27 It was pointed out by counsel for the plaintiffs during cross-examination that LKW`s affidavit made no mention of the meeting with the second defendant where the price was finalized at $19m.

28 Next, I turn to the evidence of the second defendant (DW3), which can be summarized as follows:

> (1) He denied that he had asked Ong to market the property and the shares together when the latter approached him at end May

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

1989; he only told Ong to market the property at not less than $22m, not the shares.

(2) In early June 1989, he was told by Ong that FCC was not interested in the property.

(3) In the middle of June 1989, Chia told him that FCC was interested in the shares; Chia did not mention the property.

(4) Negotiations with FCC on the property took place in September-October 1989 at a meeting at his office between representatives of FCC and himself and Chia; neither Ong nor TTG were present. Bargaining on the price was between himself and WKC; Chia did not take part in the discussion nor was the question of commission discussed.

(5) After the meeting, he telephoned Chia, said Ong was his good friend and, to avoid any future misunderstanding, he requested Chia to ask WKC to inform Ong that the sale had been concluded directly and he hoped no one would ask him for commission later.

(6) After completion, and before the plaintiffs` letter dated 31 May 1991 (AB62), he did not hear from either Ong or TTG to say they were entitled to commission. Even in August 1990, when he engaged Ong to sell a bungalow at Pasir Ris, Ong did not say that commission was owing on the property. He paid Ong the commission for the Pasir Ris bungalow immediately after completion (in August 1990). At Ong`s request, he paid 2% instead of 1% commission.

(7) When he received from Chia a copy of AB62, he was surprised. He telephoned Ong to say the first defendant did not owe the plaintiffs any money, Ong`s response was that TTG thought he (Ong) had taken the commission and AB62 was meant to show TTG that Ong had not.

(8) Upon receipt from Chia of the plaintiffs` reminder for payment dated 29 June 1991 (AB63), he contacted Ong. When he queried him on AB63, Ong explained that he had a problem with TTG who wanted to sue him as TTG thought Ong had taken the commission. From Ong`s tone, he gathered that Ong wanted some payment from him. He inquired how much Ong wanted, but Ong declined to give a figure and the second defendant on his part refused to make an offer; the conversation ended there.

(9) He then received the plaintiffs` invoice (AB64) and the plaintiffs` letter (AB65) dated 22 and 25 July 1991 respectively. He tried to telephone Ong but the latter appeared to be avoiding him. He finally succeeded and he told Ong that he did not owe

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

him any money but asked what Ong wanted. Ong said he wanted $80,000 to settle the matter, which he did not accept.

(10) As he felt the matter was no longer that simple, he wrote to Ong on 29 July 1991 (supra) wherein he referred to the telephone conversation they had when he received Ong`s first letter dated 31 May 1991.

(11) Upon receipt of the plaintiffs` solicitors letter dated 14 August 1991 (AB69), he telephoned Ong to ask how the matter could be resolved. Ong again requested for $80,000 - he counterproposed $20,000. At a meeting which he had with Ong at the Singapore Swimming Club, Ong reduced his figure to $50,000, to which he did not agree. There the matter ended as he then instructed solicitors to act for the first defendants.

(12) For the shares, he paid Ong 1% commission in August 1989 by two cheques; one a cash cheque for $70,000 and the other cheque for $50,000 in favour of the plaintiffs. The actual commission should have been $100,000 based on the sale price of $10m but Ong asked for more; he did not haggle over the figure as Ong alleged. Contrary to Ong`s evidence, the mode of payment was at Ong`s request, it was of no benefit to him.

(13) TTG`s evidence that TTG negotiated for the property and that when there was a stalemate in the price Ong intervened is untrue. Ong had never called him with regard to the sale to FCC to reduce the price.

(14) Before these proceedings, WKC did not tell him that agreement had been reached with Ong on $75,000 being in full and final satisfaction.

29 Under cross-examination, the second defendant:

(a) agreed that for the other sales of his/his companies` properties by the plaintiffs there were no letters of appointment;

(b) said he saw in court for the first time exh P1, notwithstanding that it was referred to in Ong`s first affidavit, similarly he was not told that a copy of exh P1 had been given to FCC;

(c) said he had no knowledge of FCC`s interest in the property until a few days before the September meeting when Chia called to inquire whether he intended to dispose of the property;

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

(d) agreed that in his affidavit/evidence-in-chief there was no mention that, in early June 1989, Ong had told him (either in person or in a telephone call) that FCC was not interested in the property;

(e) denied he was aware that FCC was the plaintiffs` contact, the purported direct negotiations with Chia were wrong and that if Ong was not removed, somehow there would be the `misunderstanding` he raised;

(f) pointed out that, besides the property, Heshe also sold A-Z Building to FCC (for about $80m) and Ong had not claimed any commission for the sale even though TTG had forwarded a write-up on the same to FCM (see AB56) at the same time that he introduced the property to FCM. Ong had introduced prospective buyers who offered $10-12m for the property, which offers he refused. Had these prospective buyers purchased the property, he would have paid Ong the commission;

(g) said he did not, nor was he obliged to, tell Ong about the meeting with FCC which concluded the sale;

(h) maintained that the representatives from FCC were introduced to him by Chia, not Ong.

30 Finally, there is the evidence of Chia, who said:

(1) He was away in the United States between 29 May-15 June 1989. Upon his return to Singapore, he inquired of Ong and was told that FCC was not interested in the property but only in the shares.

(2) Ong brought TTG to see him and TTG, in turn, introduced WKC to him. Several more meetings followed between himself, WKC and TTG, which culminated in the sale of the shares in August 1989. At these discussions the property was not mentioned and Ong was not present.

(3) As the seller of the shares was the second defendant, he did not know what was the agreement between the latter and the plaintiffs on the commission payable, but he knew it was paid.

(4) After the sale of the shares, he, on his own accord, approached FCC`s chairman to say it was economically unwise in the long term for Heshe to be the first defendants` tenant, there was also a conflict of interest as he was a director of the first defendants as well as the managing director of Heshe, it would be preferable for Heshe to own its own premises. The

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

management of FCC looked into his suggestion and agreed to purchase the property on WKC`s recommendation. He then met LKW on WKC`s introduction.

(5) Ong`s and TTG`s evidence that he attended the first viewing of the property in June 1989 is incorrect as he was not then in Singapore; their claim that they were involved in the negotiations leading to a reduction in the price from $19.5m to $19m is also untrue.

(6) Equally, the assertion in the plaintiffs` first letter after the sale (dated 31 May 1991) that there were several telephone conversations and meetings with him was untrue.

(7) In the course of negotiations on the shares, he showed Heshe`s manufacturing facilities at the property to WKC.

(8) When he returned to his office after concluding the property sale in September 1989, the second defendant telephoned to say that as it was a direct deal, there was no commission payable but because of the second defendant`s friendship with Ong the second defendant did not want any misunderstanding with Ong and requested that the matter be made clear to Ong through WKC. Chia contacted WKC and conveyed the second defendant`s message, WKC said he would deal with Ong and called him subsequently to confirm that the matter had been settled with Ong. He had no knowledge of FCC`s payment to the plaintiffs of $75,000 and he was not told by either Ong or TTG. In any event, it did not concern the first defendants. The plaintiffs did not know about the sale to FCC until WKC told Ong.

(9) He was taken aback by the plaintiffs` demand for commission after a lapse of two years. In the interval, he had further dealings with TTG and FCC acquired another company through TTG, but TTG never mentioned that commission was still owing on the property. He requested the second defendant to take the matter up with Ong and was told that the plaintiffs` various letters were written to prove to TTG that Ong had not taken commission for the property. He nevertheless felt uncomfortable and asked the second defendant to reply to the plaintiffs` letters to clarify the situation and this was done by the letter dated 29 July 1991.

(10) After completion, he attended a lunch at which Ong was present; it was a strictly social event and there was no mention by Ong of the alleged commission. Even after he and Ong adjourned for drinks at the latter`s suggestion, the subject of commission was not raised although he had been told by WKC (who arranged the lunch) that Ong had alleged that there was

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

> some commission still due and outstanding. He was puzzled as, at about that time, Ong had sold two units at Peninsula Plaza for Heshe and commission had been paid to the plaintiffs therefor.

31 Under cross-examination, Chia said he could not recall showing to the second defendant the plaintiffs` letter dated 24 June 1989 (AB58) as he received many such letters from other agents, like Jones Lang Wootton. The reason he had asked Ong to `confidentially` market the property in 1988 was because he did not wish to create an impression in the market that Heshe was not doing well and had to sell its building. There was no discussion of the commission payable to the plaintiffs for the sale as he left such matters to the second defendant. He was not informed after his United States trip that FCC`s representatives had viewed the property but he believed many parties saw the property. The plaintiffs were not appointed as exclusive marketing agents nor were their services terminated after he was told by Ong that FCC were not interested in the property. When LKW looked at the property in May/June 1989, it was from the viewpoint of what return FCC could get for an investment in a property. However, after FCC acquired the shares, Heshe became a subsidiary and there were different considerations altogether as, at that time, Heshe had a three-year lease from the first defendants at $60,000 per month. He agreed that FCC was never told that in February 1988 the property had been transferred to the first defendants from Heshe at $8.61m. He explained that the rationale for the exercise was because Heshe was going public and owning properties was not part of Heshe`s fashion business. If indeed any commission was payable it should be paid to him as he was responsible for the sale as, although FCC was the plaintiffs` contact, the plaintiffs were not party to the negotiations nor to the conclusion of those negotiations; merely introducing the property to FCC did not guarantee the plaintiffs that commission was payable. Similarly, he was

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

instrumental in selling A-Z Building to FCC and the plaintiffs did not claim any commission for this other sale. There was no deliberate attempt to cut off the plaintiffs as the sale to FCC was unplanned. The reason he passed the plaintiffs` letters to the second defendant to reply was because he felt the second defendant was closer to Ong and he did not handle the first defendants` matters in any event.

32 **The findings**

33 It is not disputed that the plaintiffs introduced FCC to the first defendants, it is the result of that introduction which is disputed. On the evidence, in particular that of TTG, there can be no doubt that FCC`s second viewing of the property (when WKC met Chia) was in relation to Heshe`s operations and, therefore, in relation to the sale of the shares. I have no doubt either that Ong`s and TTG`s testimony that Chia was present at the first viewing in early June 1989 is untrue as Chia was then not in Singapore; I am equally certain that LKW spoke the truth when he said he turned down the property as not being a good investment for FCC at the first viewing.

34 I would also like to make the following observations on the evidence of Ong and TTG:

> (1) Neither have offered any, let alone satisfactory, explanation as to why the plaintiffs sent an invoice to the first defendants for the commission claimed of $190,000 almost two years ***after*** the transaction had been concluded. This is strange in the light of the testimony of the second defendant and Chia (neither of which was challenged) that the plaintiffs, and Ong in particular, were in the habit of sending invoices promptly for other properties they sold for Heshe or other companies of the second defendant and which amounts were far less than $190,000.

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

(2) TTG`s explanation that he did not think it necessary to record in his affidavit the role he played in the negotiations leading to the conclusion of the property sale is unconvincing. Granted both parties were equally remiss in not setting out in the affidavits of their witnesses all the evidence-in-chief that was adduced in court with the result that the court had to constantly exercise its discretion under O 38 r 2(3) of the RSC to allow the oral testimony to be admitted. However, in the case of WKC, the omission is to some extent excusable as he resides in England and counsel for the defendants left it to him to decide what should be set out in the affidavit instead of drafting the same for him. The same excuse cannot be made for either Ong or TTG, their testimony was too pat giving rise to a strong suspicion that it had been tailored for the plaintiffs` case. With respect, I do not accept TTG`s explanation that the letter `was good enough` to register the plaintiffs` interest and to confirm the conclusion of the deal - registering the plaintiffs` interest without more does not entitle the plaintiffs to commission, they must be the effective cause of the sale (see ***Ong Kee Ming (t/a FL Development and Property Consultants) v Quek Yong Kang & Anor***). If I accept TTG`s argument, then I find it strange that the plaintiffs did not make a similar claim for commission for FCC`s purchase of A-Z Building, which they marketed at the same time as the property; all the more so when the commission would have been more substantial as FCC bought it for about $80m.

(3) It would not be difficult for anyone who allegedly participated in negotiations to be able to give some if not all the details relating to the same; I find the evidence of Ong and TTG sadly lacking in this respect.

(4) I cannot accept Ong`s claim that the first defendants, in particular Chia, were `playing a game of badminton` with him. Even if Chia and the second defendant alternately pushed him to the other on the commission issue, one would have thought that he would call personally on them or would have written to them much earlier than 31 May 1991. That allegation, in any case, cannot be true as, after completion, Heshe and the second defendant still engaged the plaintiffs` services to sell other properties for which the plaintiffs requested, and were paid promptly, the commission due to them. There was ample opportunity for Ong to raise the outstanding $190,000 if indeed it was payable. Even if one accepts as reasonable his explanation that he did not write earlier for fear of offending the defendants who were a major account, one would still question why he would be galvanized to write so many letters within such a short span of time after 31 May 1991. I believe there is more

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

> than a grain of truth in the allegation of WKC, Chia and the second defendant that:
>
> (a)) there was some misunderstanding between Ong and TTG over the $120,000 commission for the shares and the mode of payment (requested no doubt by Ong); and
>
> (b)) TTG may have been suspicious over the non payment of commission by the defendants despite the $75,000 payment by FCC.

35 There is also an inconsistency between Ong`s testimony that Chia was avoiding him and his letter dated 31 May 1991 where he referred to `various telephone conversations/meetings with your Mr Chia`.

> (5) It is equally significant that neither Ong nor TTG complained to WKC or LKW about the alleged commission when TTG introduced other deals to them subsequent to completion. On the occasion when WKC spoke to Ong on the debt due to CAP, there was every excuse for Ong to raise the subject since he alleged non-payment of commission was the reason why he withheld payment to CAP.

36 Between the two, I prefer the evidence of FCC`s representatives to that of the plaintiffs - there is no reason for either WKC and LKW 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 to avoid payment. I accept the evidence of LKW that he told WKC after the first viewing that the property was not a good investment and this was conveyed by Ong to Chia. The negotiations after the second viewing (in which TTG participated) were in regard to the shares and not the property. This is clear from the fact that LKW, who was the general manager of FCC`s property division, never attended the subsequent meetings between TTG, Chia and WKC. FCC`s later interest in the property was due to different considerations, as the parent company of Heshe who was then the tenant of the first defendants and not as a property investor.

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

37 The issue really is whether FCC`s expressed disinterest in the property in June and then Chia`s efforts in August-September 1989 which caused FCC`s management to change its mind formed the break in the chain of causation sufficient to disentitle the plaintiffs to the 1% commission; on the evidence I am satisfied that it does. The plaintiffs` introduction of FCC was spent, as it were, by LKW`s decision that the property would not be a good investment for FCC`s property portfolio. It is noteworthy that there is no correspondence subsequent to exh P1 and their letter dated 24 June 1989 from the plaintiffs to follow-up on their introduction of the property to prospective purchasers. Therefore, LKW`s decision must have been made known to TTG and/or Ong contrary to their denials and that explains why neither of them pursued the matter with FCC.

38 Counsel for both parties sought to rely on differing authorities to support their respective stands. In support of the plaintiffs` claim, their counsel cited, inter alia, ***Green v Bartlett*** , ***Glentree Estates Ltd v Gee*** , ***Wilkinson v Alston*** , ***James T Burchell v Gowrie & Blockhouse Collieries Ltd*** and ***Ong Kee Ming*** `s case.1 Counsel for the defendants relied on ***Travis v Coates*** , ***Millar v Radford*** , ***Jack Windle Ltd v Brierley*** and ***McKinnon & McKinnon v Benjaminson Apartments*** . I agree with the submission of counsel for the defendants that the decisions in most if not all the foregoing cases turn on their findings of facts and, therefore, cannot be applied generally. Similarly, my findings are based on the facts of this case.

39 Although it was not cited by either counsel I would like to refer to the Court of Appeal decision in ***John D Wood & Co v Dantata*** . The facts therein are not relevant as the claim was for commission by two firms of estate agents; what is relevant is the meaning ascribed to the words `effective cause` by

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

Nourse LJ who said (at p 25) in interpreting the words `successful in introducing a purchaser with whom a sale is completed`:

> *The difficulties in clarifying the mind on this question are I think caused by the familiar meaning of the word `introduction` as the bringing together of two persons who have not previously met. Thus, it is natural, when looking at the word in its present context, to attach significance to the first bringing together of the property and the person who ultimately purchases it. But the full phrase is `the introduction of a purchaser` and I think that that can only mean the introduction of the person who ultimately purchases, not to the property but, to the purchase or, if you look at it from the vendor`s angle, to the sale; in either case, to the transaction which ultimately takes place. And, if you then apply the primary dictionary meaning of `introduction`, you find that what you are looking for is the leading or bringing in of the purchaser to that transaction. That makes it clear that first acquaintance is not paramount and it explains why the test is expressed by reference to the effective cause of the transaction.*

40 Granted there was no formal letter of appointment that calls for interpretation here and Nourse LJ`s dictum was in relation to a specific letter of appointment, but I believe his definition offers a useful guideline as to what is required to satisfy the test of `effective cause`.

41 Contrary to the contention of counsel for the plaintiffs that FCC`s payment of $75,000 has nothing to do with the plaintiffs, I am of the view that it is most relevant. The issue is not whether the plaintiffs did or did not disclose FCC`s payment to the defendants - what is pertinent is to question why FCC would pay the plaintiffs commission for their purchase of the property when the practice in Singapore is that commission for a property transaction is usually the vendor`s responsibility. This practice was acknowledged by counsel in his cross-examination of Chia. The answer is obvious - that the payment by FCC was to be in full and final settlement of whatever claims the plaintiffs had for commission.

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

42 The position at law is that the plaintiffs have compromised their claim and, regardless of the merits thereof, a court will not permit them to raise the claim afresh in the context of a new action (see ***Foskett`s The Law and Practice of Compromise*** , at p 77). Therefore, even if I am wrong on my finding and it can be said that the plaintiffs were the effective cause of the sale to FCC, they are precluded from making this claim. Indeed, it was wrong of the plaintiffs to lodge a fresh claim against the defendants when Ong well knew that the commission had been paid by FCC. One can only speculate that TTG may have been unhappy with Ong`s compromise with FCC over the commission and, when FCC did not respond to the letter to deny what TTG had stated therein, they both decided to revive the plaintiffs` claim since there was no written confirmation that FCC`s payment was in full and final settlement so as to preclude the plaintiffs from claiming.

43 I will next deal with an ancillary issue. Counsel for the plaintiffs had pointed out that the plaintiffs` services were never formally terminated by the defendants. I see no reason for the requirement since the plaintiffs` appointment was casual and not to the exclusion of other agents like Jones Lang Wootton or Richard Ellis, who also attempted to market the property.

44 Accordingly, I dismiss the plaintiffs` claim with a separate set of costs to each of the two defendants.

45 ***Plaintiffs` claim dismissed.***

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

Lai Siu Chiu JC

Manjit Singh and Anil Sachdev (Manjit & Pnrs) for the plaintiffs
Lee Mun Hooi (Lee Bon Leong & Co) for the defendants

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