IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 20

Suit 1177/1997

Between

Tropical Associated
Construction Co Pte Ltd

… *Plaintiff*

And

Tan Wee Gee

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Tropical Associated Construction Co Pte Ltd v Tan Wee Gee

[1999] SGHC 20

Suit 1177/1997
Goh Joon Seng J
23 January 1999

Judgment :

GROUNDS OF JUDGMENT

1 The Plaintiff's claims were for:

(i) $141,377.54 being amount overdrawn by way of advances to account of commission payable to the Defendant; and

(ii) $84,023.28 being loans to the Defendant.

2 The claims were denied by the Defendant who also counterclaimed $474,102.46 being balance of commission due after setting off $270,000 drawn by him to account of commission.

3 I gave judgment to the Plaintiff in terms of its claim with interest at 6% per annum from date of commencement of proceedings and costs. I dismissed the Defendant's counterclaim with costs. The Defendant has appealed to the Court of Appeal. I now give my reasons.

The Parties

4 The Plaintiff is a member of the Kea Group of companies. It was incorporated on 18 October 1994. It carries on business as a general contractor and provides interior design services. It is also a retail supplier of building materials. Since 1994, it also undertakes joinery works in developers' projects principally supplying and installing doors and door frames. Its managing director is Kea Kah Kim ('Kah Kim'). Its associate company within the Kea Group in Indonesia holds timber concessions and exports timber and timber products.

5 The Defendant was one of the shareholders of Mainland Trading (S) Pte Ltd ('Mainland') from 1988 to 1992. He was also the manager. Mainland was wound up on 12 February 1993. Mainland was the agent for or distributor of hard-top surfaces/kitchen/sanitary systems known as 'Nevamar', 'Rational' and 'Allia' ('the three agency lines).

The factual background

6 Kah Kim became acquainted with the Defendant in the late 1980s or early 1990s through golfing at the Singapore Island Country Club.

7 In or about April/May 1992, the Defendant informed Kah Kim that there were differences between him and other shareholders of Mainland. He also disclosed to Kah Kim that he was in financial difficulties. He said he had approached in vain many people for help. He pleaded with Kah Kim to buy over the assets of Mainland and take over the three agency lines.

8 To assist the Defendant, Kah Kim agreed to acquire the assets of Mainland with the three agency lines, and take over the staff of Mainland. The acquisition

Version No 1: 20 Nov 2026 (00:35 hrs)

for $369,600 was through another member of the Kea Group namely Tropical Associated Co Pte Ltd ('TAC') pending the incorporation of the Plaintiff. The acquisition was completed in May 1992 and the Defendant joined TAC along with his secretary and the other staff of Mainland.

9 TAC on taking over the three agency lines created two accounting divisions, one of which was called Rational Studio. This division kept the records of the sales of the products of the three agency lines. The other division was for the original business of TAC in logs and plywood.

10 On joining TAC, the Defendant was paid a month $1,000 termed 'consultancy fee' and an advance of $5,000 to account of commission. He was given the title of 'General Manager'.

11 There was no dispute that the monthly payment of $5,000 was to account of commission. The disputes that arose later in these proceedings were:

(i) was the Defendant entitled to 2% commission on all sales achieved by TAC/Plaintiff or only on retail sales with or without installation of the three agency line products; and

(ii) what was the monthly payment of $1,000 for.

12 The Plaintiff's position was set out by Kah Kim stated in his affidavit of evidence-in-chief:

> "8 The Defendant boasted about his experience and familiarity with the hard top surfaces/kitchen/sanitary systems under Mainland and told me that he would be of assistance to my company. He requested for a sum of S$5,000 a month as his living expenses. I was not prepared to give him S$5,000 per month as I was not even sure how the sales of the 3 agency lines would perform. I therefore asked him how much sales on

Version No 1: 20 Nov 2026 (00:35 hrs)

> the 3 agency lines he could generate and he confidently gave me a figure of S$3,000,000 per year. Based on the figure of S$3,000,000 per year, I calculated that the Defendant's request for S$5,000 per month would mean a total of S$60,000 per year which would be 2% of S$3,000,000.
>
> 9 As such, I told him that as I do not know his ability and have not seen his performance, I could not give him S$5,000 a month as a salary. Instead, the S$5,000 per month would be given to him only as an advance of commission. If the Defendant can really generate sales of S$3,000,000 per year, then he can keep his S$5,000 per month. However, if he generates sales of less than S$3,000,000, he would have to return to the company based on a commission of 2% on the retail sales of the 3 agency lines i.e. "Nevamar", "Rational" and "Allia" less the advance given to him. The scenario where he procures more than the sales target of S$3,000,000, was never discussed.
>
> 10 The Defendant therefore became the "General Manager" of Tropical [referring to TAC] and later, became the "General Manager" of the Plaintiffs, when it was incorporated. He was given a consultancy fee of S$1,000 per month.
>
> 11 This agreement between the Defendant and Tropical was subsequently adopted and taken over by the Plaintiffs in October 1994 after the Plaintiffs was incorporated."

13 The position of the Defendant was set out in his affidavit of evidence-in-chief:

> "14 Remuneration wise, I was to be paid a 2% commission on the gross turnover (or value) of all businesses/contracts secured by me for Rational Studio. In addition, TAC agreed to pay the road tax on the motor vehicle (QEZ 4867T) which had been acquired by TAC from Mainland, and which was used by me.
>
> 15 The 2% commission was to be calculated and paid on a yearly basis in arrears. In the meantime, I was to be paid $5,000 per month as advance. The road tax for QEZ 4867T was in the region of $15,000 per year and TAC also paid me $1,000 per month towards that."

14 From May 1992, when the Defendant joined TAC, to April 1997, the Defendant did not achieve sales of $3,000,000 per year for the three agency line

Version No 1: 20 Nov 2026 (00:35 hrs)

products. For that period TAC and subsequently the Plaintiff incurred losses as follows:

(i) 6 May 1992 to 31 December 1992 - $325,389

(ii) 1993 - $575,329

(iii) 1994 - $466,758

(iv) 1995 - $409,862

(v) 1996 - $2,016,716

15 In 1994, TAC went into developers' project sales. Developers' project sales were quite different from retail sales of the three agency line products. In the case of the latter, the sales involved ready made products with or without installation. In developers' project sales, the client's specifications have to be studied and pricing done. The Plaintiff would then have to submit a tender and/or negotiate with the client. On the award of the project, supplies complying with the specifications would have to be sourced or manufactured. This would then be followed by installation and project management. During the Defendant's tenure, TAC and/or the Plaintiff carried out joinery works being principally supplying and installing of doors and door frames in thirteen developers' projects with a total invoiced value of $30,550,000.

16 According to Kah Kim, the thirteen developers' projects were not within the scope of the 2% commission agreement entered into between him and the Defendant. In any case it was Nissho Iwai Corporation that was instrumental in TAC and/or the Plaintiff securing the said projects. This was what Kah Kim stated in his affidavit of evidence-in-chief:

Version No 1: 20 Nov 2026 (00:35 hrs)

> "20 Seeing that the company was in such a poor state of performance, I decided to tap into my connections and initiated the projects business by contacting various property developers and main contractors in the construction industry and introduced the Defendant to them. After the jobs were procured i.e. upon the successful award of a project, the Defendant was only required to carry out the follow-up work such as estimation, quotation and project management. If his performance is good, then I can consider rewarding him by paying him a bonus but he is certainly not entitled to commission on these project sales.
>
> 21 These contracts were awarded by the developers and main contractors based on the recommendations of Messrs Nissho Iwai, on their knowledge of the Plaintiffs' holding company, Messrs Kea Holdings Pte Ltd's established timber manufacturing facilities in Indonesia and its serious and reliable attitude and image as well as its financial resources to support the operations of the projects. It was never intended that the project sales secured by me and through my effort should be included in the 2% commission scheme discussed between us in April or May 1992."

17 Consistent with Kah Kim's evidence, the Defendant throughout his service with TAC/Plaintiff received monthly $1,000 and draw $5,000 as advance against commission. He was informed through the monthly credit advice note of the amount of commission accruing to him for the month. He also received statements of account at regular intervals showing the monthly advances, commission credited to and loans taken by him.

18 It was clear from the amount of commission shown on the credit advice notes and the statements of account, that no commission was being credited to the Defendant in respect of any of the thirteen developers' projects. The Defendant had read the credit advice notes. He did not raise any objection as to the correctness of the same:

> "Q: See folio 30, page 79. Have you ever received this credit advice?
>
> A: No. I only saw these credit advice when I went to collect my cartons. They presented them in a plastic folder saying that

Version No 1: 20 Nov 2026 (00:35 hrs)

> they were my documents. I refused to acknowledge them. Subsequently, when I retrieved the cartons I found them inside.
>
> Q: Are you saying from May 1992 to December 1996 you never saw such credit advice?
>
> A: I have.
>
> Q: When you saw them, did you read them?
>
> A: Must have.
>
> Q: From May 1992 to December 1996, did you see any credit advice pertaining to the 13 projects?
>
> A: No."

19 While the Defendant was with TAC/Plaintiff, the monthly advances drawn by him amounted to a total of $270,000 as against total commission credited to him of $128,622.46. $141,377.54 thus was the amount overdrawn.

20 The Defendant left the service of the Plaintiff in March/April 1997. The accounts of the Plaintiff show that he had also taken loans amounting to $84,023.28, the particulars being as follows:

Particulars

S/No	Description	Date loan given	Paid or Evidenced by	Loan Amount (S$)
1	Deposit for motor vehicle (11th December 1992)	11/12/92	TLB cheque no. 153335	15,000.00
2	Loan for purchase of vehicle (QEZ 4867T)	On or about 24/04/1992	Amount included in following cheques:UOB 494232 UOB 784777	45,000.00

Version No 1: 20 Nov 2026 (00:35 hrs)

			UOB 324875	
3	Cash loan given on 26th January 1995	On or about 26/01/1995	UOB cheque no. 658100	10,000.00
4	Telephone expenses (1994)	31/12/1994	Cash	97.00
5	Composition fine for failure to pay road tax for the vehicle (QEZ 4867T) (1994)	On or about 10/06/1994	UOB cheque no. 526119	5,565.00
6	Postage Charges (UPS) (1995)	26/09/1994	Debit note no. 005/94	20.00
7	Payment to Messrs In Tong Woodwork Consultants (1995)	26/07/1995	UOB cheque no. 760175	900.00
8	Personal purchases from Rational Studio (4 invoices)	19/06/199520/06/1995 14/11/1994 25/02/1995	Invoice No. 2401Invoice No. 2402 Invoice No. 1973 Invoice No. 2253	6,361.28
9	Purchase of handphone	27/09/1994	UOB cheque no. 580776	1,480
10	Less:Proceeds for sale of vehicle	06/04/1994	MBB cheque no. 661196	(400.00)

	(QEZ 4867T)			
Total:	S$84,023.28			

21 Subsequent to the Defendant's resignation, the Plaintiff demanded of the Defendant repayment of the amount overdrawn against commission and the loans.

22 As the demand elicited no response, the Plaintiff, on 11 June 1997 commenced these proceedings.

The proceedings

23 On the Plaintiff's claim for repayment of the overdrawn commission, the Defendant in his Defence admitted receipt of $270,000 to account of commission. But he denied that the commission due was only $128,622.46. His Defence read:

> "6(a) After he joined Tropical, he switched the focus of Rational Studio to supplying building materials manufactured by Tropical's associated company in Indonesia instead of relying on imports from third parties. The Defendant began to introduce these Indonesian products to developers and contractors of development projects in Singapore and after a considerable amount of hard work, met with success.
>
> (b) Under the Defendant's guidance, Rational Studio's volume of business grew substantially so much so that it was set to overtake Tropical's export division. For fear of losing Tropical's GST exempt status, Kea Kah Kim decided to incorporate the Plaintiffs and transfer the business carried on by Rational Studio to it. The Defendant was asked and agreed to join the Plaintiffs firstly as Consultant and subsequently as General Manager on the same terms and conditions, ie,
>
> (i) that he would continue to run the business of Rational Studio except that it would be operated under the name of the Plaintiffs; (ii) he would be paid a commission of 2% of the gross turnover (or value) of business/contracts secured by the

Version No 1: 20 Nov 2026 (00:35 hrs)

> Defendant for the Plaintiffs; and (iii) the Plaintiffs would pay the road tax on a new motor vehicle purchased by the Defendant himself.
>
> (c) The commission of 2% of gross turnover was, similarly, to be calculated and paid in arrears on a yearly basis and the Defendant was to receive $5,000 per month as advance towards commission. The road tax for the Defendant's motor vehicle was to be paid to the Defendant at $1,000 per month."

24 On the Plaintiff's claim for repayment of the loans totalling $84,023.28, the Defence was one of bare denial. It put the Plaintiff to proof of its claim and contended that if the amount was due it ought to be set off against commission due to him. The Defendant then counterclaimed as follows:

> "10 The Defendant says that the oral agreement between Tropical and subsequently the Plaintiffs, and him called for Tropical and the Plaintiffs to pay to him a 2% commission on the gross turnover (or value) of all business/contracts secured by the Defendant for Rational Studio and (subsequently) the Plaintiffs, and not 'a 2% commission on the sales of the retail section of the Plaintiffs pertaining to the supply and/or installation of those products which the Plaintiffs took over from M/s Mainland Trading Pte Ltd'…
>
> 11 The Defendant says that based on his efforts he secured the following business/contracts for Rational Studio and/or the Plaintiffs:

	Project/Contractor(s)	Value
(a)	Parkshore Condo/Mitsui Construction	$650,000
(b)	Merasaga Condo/Contech Construction	$800,000
(c)	Albert Court/Hexacon	$1,100,000
(d)	Condominium /Sumitomo Construction	$900,000
(e)	Bayshore/Mitsui Construction	$8,500,000
(f)	Condominium/Hazama Corp	$8,000,000

Version No 1: 20 Nov 2026 (00:35 hrs)

(g)	NUS Housing/Yee Hong	$900,000
(h)	Condominium/Hup Soon	$1,900,000
(i)	Condominium/Kwok Group	$1,800,000
(j)	Service apartment/Buildspeed	$700,000
(k)	Maplewoods/Kajima Corp	$900,000
(l)	Tan Tock Seng Hospital/Ssangyong	$2,400,000
(m)	Various other miscellaneous projects	$2,000,000
	Total	$30,550,000

> 12 Based on the agreed rate of 2% on gross turnover (or value), the Defendant is therefore entitled to commission of $611,000 on the contracts secured by him as particularized in paragraph 11 above. This sum does not however include the commission of $133,102.46 that the Plaintiffs admit was due to him in respect of retail sales. The Defendant is therefore entitled to the aggregate sum of $744,102.46 as commission of which only $270,000 has been paid to him. The Defendant is therefore claiming the balance sum of $474,102.46."

The amount of commission admitted by the Plaintiff to be due to the Defendant was $128,622.46. Consequently the Defendant's counterclaim should be for $469,622.46 instead of $474,102.46.

My decision

25 There is conflict of evidence on why Rational Studio's operations with the staff including the Defendant was transferred to the Plaintiff from TAC. According to Kah Kim:

> "The falseness of the Defendant's allegations regarding his efforts in developing Rational Studio and the incorporation of the Plaintiffs, is borne out by his allegation that the Plaintiffs

Version No 1: 20 Nov 2026 (00:35 hrs)

> were incorporated to retain the GST exempt status of Tropical. The truth of the matter is that when the 3 agency lines were acquired by Tropical from Mainland, it was too rushed and there was no time for a company to be incorporated and therefore Tropical was used as the vehicle to acquire the 3 agency lines. Tropical had been a GST registered company since the implementation of the GST scheme on 1st April 1994 because the export division business of Tropical boasts a business volume in excess of a hundred million dollars a year. Tropical had never been a GST exempt company as the Defendant claim [sic]. The incorporation of the Plaintiffs in October 1994 had nothing to do with the GST status of Tropical but was for the purpose of carrying out the business of the 3 agency lines."

26 The Defendant on the other hand in line with his Defence affirmed in his affidavit of evidence-in-chief, para 26, as follows:

> "26. Under my guidance, Rational Studio's volume of business grew substantially so much so that it was set to overtake TAC's export division. For fear of losing TAC's GST exempt status, Kea Kah Kim decided to incorporate the Plaintiffs and transfer the business carried on by Rational Studio to it. I was asked to join the Plaintiffs as Consultant on the same terms and conditions as before, which I agreed."

27 Under cross-examination, the Defendant conceded:

> "Q: See your folio 22, para 26. You stand by your paragraph that T.A. [C] had GST exempt status?
>
> A: This paragraph is not correct. At that time no GST had yet been introduced."

28 On his terms of engagement as a consultant by TAC and later by the Plaintiff, if the $1,000 paid to him monthly was for reimbursement of road tax on car QEZ 4867T, then the road tax had to be paid by the Defendant. He did not pay the road tax for the period 1 January 1994 to 30 April 1994. This resulted in action being taken against the registered owner of the car Kea Meng Cheng, a director of TAC. The summons was compounded by the Plaintiff paying $5,565

Version No 1: 20 Nov 2026 (00:35 hrs)

on 10 June 1994. Cross-examined on his failure to pay the road tax the Defendant changed his position:

> "A: … Our original agreement was they would pay me an advance of $5,000 against overriding commission of 2% of the turnover. They would pay the road tax on the company's car they acquired and I was using. It was only towards the end of 1992 that PW1 (KKK) [referring to Kah Kim] suggested I sell the company's car and he would advance me the initial downpayment for a new car. Instead of paying the road tax of $15,000 a year, pay me $1,000, termed consultancy fee.
>
> Q: When was this car sold?
>
> A: In April 1994."

29 The Defendant's evidence on this point was totally discredited by the evidence of his own witness, Florence Foong Siew Lan, his former secretary. She confirmed that he had been receiving $5,000 and a further sum of $1,000 monthly from the day he joined TAC and later the Plaintiff. The $1,000 monthly payment had nothing to do with the road tax payable on QEZ 4867T. It was the Defendant's monthly allowance or basic pay besides his entitlement to commission.

30 Due to frequent prevarications in his testimony, I found his evidence not worthy of credit. See for example his evidence below:

> "Q: See folio 29, page 64. You were made a bankrupt from 12.2.93 to 2.12.94?
>
> A: Yes. When the QAF suits were presented to me, I was disputing QAF's claim on the ground that they were not to hold me responsible for the guarantees I issued to the banks. At the same time because of the claim from Mainland bankers, I had decided to make a global settlement with all my creditors.
>
> Q: Is there an indemnity by QAF in favour of you for the guarantees you signed?
>
> A: No.
>
> Q: The QAF's agreement not to hold you responsible for the guarantees, was it in writing?

Version No 1: 20 Nov 2026 (00:35 hrs)

> A: No. But there were exchanges of correspondence.
>
> Q: Was there judgment against you by QAF in Suit 661/90?
>
> A: No.
>
> Q: See page 242 of folio 29 and page 243. Judgment was entered against you?
>
> A: Yes.
>
> …
>
> Q: See Goh's affidavit, folio 30, page 13. Why did you ask for cash cheques from March 1993 onwards?
>
> A: Because I needed cash for convenience.
>
> Q: The real reason was because in February 1993 you were made a bankrupt?
>
> A: Disagree, although I was made a bankrupt on 12.2.93.
>
> Q: Your financial affairs had to be managed by the O.A.?
>
> A: Yes. I only had to pay $100 a month to O.A. The arrangement started way before January 1993.
>
> Q: Did you inform O.A. you were receiving $5,000 a month?
>
> A: The O.A. did not ask."

31 It was quite clear that his request for payment of the monthly advance and consultancy fee by cash cheques was to prevent the proceeds from falling into the hands of the Official Assignee.

The claims and counterclaims

32 I now proceed to deal with the claims and counterclaims. There was no dispute that the Defendant had drawn a total of $270,000 to account of commission. There was also no dispute that the commission credited to the Defendant on Rational Studio's sales of the three agency line products amounted to $128,622.46. What was in dispute was whether the Defendant was entitled to 2% commission on the thirteen developers' projects with a total

Version No 1: 20 Nov 2026 (00:35 hrs)

invoiced value of $30,550,000. At 2% the commission thereon would amount to $611,000.

33 Based on his pleaded case the Defendant must show that his oral agreement with Kah Kim in 1992 applied to sales outside the three agency line products and to the thirteen developers' projects on the ground that they were 'secured' by him.

34 According to Kah Kim, the oral agreement arrived at between him and the Defendant in 1992, was for TAC to take over the three agency lines from Mainland. TAC was not in developers' project sales business at the time. Developers' project sales therefore could not have featured in their discussion. If it did, he would not have agreed to give 2% commission on developers' project sales because the nett profit margin on such sales was only 3%. In the case of retail sales, the nett profit margin was between 30% and 35%. A 2% commission on developers' project sales would translate into 30% of the nett profits. This was Kah Kim's evidence-in-chief:

> "19 It should further be noted that project sales started only sometime in 1994 through my effort and connections with developers and main contractors, and through the trust the developers had in the Plaintiffs' holding company, Messrs Kea Holdings Pte Ltd. When the agreement for commission was made in 1992, there was no project sales at all. I would also add that it was precisely because the Defendant had failed to achieve his promised sales target of S$3,000,000 per year that I procured project sales to help boost the Plaintiffs' business. In fact, the sales were so poor that the business was not even breaking even. The Plaintiffs had lost about S$4 million since the Defendant joined the company. I annex hereto at pages 105 to 112 of "**KKK-1**" a copy of the audited accounts of Tropical (Rational Studio) for the years ended 31st December 1992 to 31st December 1994 and for the Plaintiffs for the years ended 31st December 1995 and 31st December 1996. The cause of the poor sales was because the Defendant was playing golf almost everyday during the period from about May 1992 to February 1993 and did not concentrate his time and efforts to generate the S$3,000,000 sales he had promised.

Version No 1: 20 Nov 2026 (00:35 hrs)

> 20 Seeing that the company was in such a poor state of performance, I decided to tap into my connections and initiated the projects business by contacting various property developers and main contractors in the construction industry and introduced the Defendant to them. After the jobs were procured i.e. upon the successful award of a project, the Defendant was only required to carry out the follow-up work such as estimation, quotation and project management. If his performance is good, then I can consider rewarding him by paying him a bonus but he is certainly not entitled to commission on these project sales.
>
> 21 These contracts were awarded by the developers and main contractors based on the recommendations of Messrs Nissho Iwai, on their knowledge of the Plaintiffs' holding company, Messrs Kea Holdings Pte Ltd's established timber manufacturing facilities in Indonesia and its serious and reliable attitude and image as well as it [sic] financial resources to support the operations of the projects. It was never intended that the project sales secured by me and through my effort should be included in the 2% commission scheme discussed between us in April or May 1992.
>
> 22 As I mentioned earlier, project sales were brought in by me as a result of the poor performance of the Defendant. Further, commission is an incentive given to the Defendant for securing business for the Plaintiffs and since project sales are not secured by the Defendant, no commission should be paid to him on such sales. Right from the beginning when I discussed and agreed with the Defendant to pay him commission, there was only retail sales. Project sales were never featured as it was not in existence at that time. It should also be noted that the gross profit for retail sales is about 30% to 35% of the turnover therefore it is reasonable to give the Defendant a 2% commission but for project sales, the profit is only about 3% nett according to industry norm. It is therefore impossible for me to give to the Defendant 2% commission on project sales."

35 Kah Kim's evidence under cross-examination was consistent

> "Q: Your agreement with Defendant was to pay the 2% commission. When Defendant joined you in May 1992, there were only three agency lines?
>
> A: That's so.
>
> Q: The three lines were taken over by Rational Studio?
>
> A: Yes.

Version No 1: 20 Nov 2026 (00:35 hrs)

> Q: So, it is not wrong for Defendant to say he is entitled to 2% commission on the total turnover of business secured by him for Rational Studio?
>
> A: That's so at that time.
>
> Q: You said in 1993-4 Plaintiffs went into project sales?
>
> A: Yes.
>
> Q: You said Plaintiffs were then incorporated in 1994 and took over business being conducted by Rational Studio?
>
> A: Yes.
>
> Q: The business conducted by Rational Studio was only the three agency lines. By October 1994 project sales had already started. Why did you not incorporate another company to do project sales if they are not to be included in Defendant's commission entitlement?
>
> A: There were two decision making platforms. In platform (1) I created in April 1992 the formula of 2%. It was worked backwards, based on his projected sales of $3,000,000. In platform (2), I had the option (1) of stopping the business, and options 2(a) and 2(b). 2(a) was to transfer all the contracts to Kea Timber [another member of the Kea Group]. 2(b) was I wanted to show I could turn the business around with Defendant. I chose 2(b).
>
> Q: But you never discussed your options with Defendant?

A: That's so.

> Court:
>
> Q: But you never discussed the terms of remuneration with Defendant on the project sales?
>
> A: That's so. I said if we made money I would give him a bonus."

36 The Defendant's affidavit of evidence-in-chief on this point read:

> "If not for my entitlement to commission on the gross turnover (or value) of all businesses/contracts secured by me for Rational Studio *(as opposed to 2% commission on the sales of the retail section of TAC pertaining to the supply and/or installation of products that TAC took over from Mainland, as alleged by the Plaintiffs)* I would not have agreed to join TAC.

Version No 1: 20 Nov 2026 (00:35 hrs)

> Although I was not making money from Mainland I had other sources of income. I was, before I joined TAC, being paid $6,000 a month from a Malaysian company on a project that I had been advising them on in Kuala Lumpur. I was also being paid $5,000 per month as consultancy fee from a Singapore company. My monthly income easily exceeded $10,000 per month and I was only advising from time to time. There was no need for me to spend all my time with these companies that retained me as their consultant.
>
> I was enthusiastic about the terms agreed between Kea Kah Kim and myself because I knew that with my connections and some hard work, I could secure substantial contracts/businesses for Rational Studio. My 2% commission on gross turnover would then be meaningful. If the 2% commission was calculated on the sales of the retail section of TAC pertaining to the supply and/or installation of products that TAC took over from Mainland, as allegedly by the Plaintiffs, it would not have made financial sense for me to join TAC."

37 His financial position could not have been as comfortable as he claimed. See his evidence under cross-examination when for the first time he claimed to be entitled to a 10% share in the profits over and above the 2% commission:

> "Q: You said you were in financial difficulty from 1988 to 1994?
>
> A: Yes. By that I meant I was being pressed by banks on my personal guarantees.
>
> Q: Those financial difficulties did result in your being made a bankrupt in 1993?
>
> A: By 1992 to 1993 I got all my bankers together to negotiate settlement on all my personal guarantees. Bangkok Bank took a judgment and made me a bankrupt. However, at that time I placed with the O.A. a property which allowed me to negotiate with all the creditors. When final settlement was reached with all creditors and were paid off, my other assets which were not required to pay the creditors, e.g. SICC and Pinetree Club memberships, were returned and I was reinstated.
>
> Q: Nonetheless, you were made a bankrupt on 12.2.93?
>
> A: Yes.
>
> Q: And only discharged in December 1994?
>
> A: Yes.

Version No 1: 20 Nov 2026 (00:35 hrs)

> Q: In May 1992, in view of your financial difficulty and your problem with your partners, you were happy that PW1 was prepared to acquire the assets of Mainland Trading?
>
> A: There was no sense of being happy or unhappy. PW1 was one party approached by myself. The proposition to him was he could acquire the assets at written down book value which represented a discount. When PW1 agreed to acquire the assets and at the same time gave me the impression that he was able to finance the building up of the business and allowing me a 2% overriding commission and a 10% profit sharing. That's agreeable.
>
> Q: Why is the 10% profit sharing not pleaded or mentioned in your affidavit?
>
> A: My counsel advised me not to put it because it's by word of mouth."

38 Bearing in mind the narrow margin of profit for developers' project sales, Kah Kim could not have agreed or intended to apply the 2% commission agreement to the developers' project sales especially when neither Mainland nor TAC was in that field of business at the time. This is supported by the fact that from 1992 to end of 1996, the credit advice notes and statements of account furnished to the Defendant quite clearly showed that no commission on the development project sales were being credited to him and there was no objection or query from the Defendant.

39 I therefore accepted Kah Kim's evidence that he did not have in mind developers' project sales when he agreed to pay the Defendant 2% commission which was to be on the retail sales of the three agency line products only. I also accepted his evidence that when TAC embarked on developers' project sales, he promised to give the Defendant a bonus if the latter's performance merited it.

Version No 1: 20 Nov 2026 (00:35 hrs)

40 Even if the 2% commission agreement applied to the developers' projects sales, the Defendant must, as pleaded by him, have secured these projects to entitle him to such commission.

41 In his affidavit of evidence-in-chief this was what he stated:

> "19 After I joined TAC, I immediately started to look into project business. In fact, the idea of going into project business was brought up by a senior manager [referring to Kenzo Sawazaki] from a Japanese company known as Nissho Iwai. He knew most of the major Japanese contractors operating in Singapore and in the region and was willing to make the necessary introductions to me. Obviously, after the first introductions I had to do the follow-up work.
>
> 20 Some of the project business secured by me involved products from the agencies carried forward from Mainland while others involved a combination of products carried over from Mainland and products carried by TAC.
>
> 21 In the event, I secured numerous contracts, among which are:
>
> 21.1 Parkshore Condominium - supply of timber doors and frames.
>
> 21.2 Merasaga Condominium - supply of kitchen cabinets and wardrobe.
>
> 21.3 Albert Court development - timber doors and windows.
>
> 21.4 Former US Embassy site (residential project) - timber doors and frames.
>
> 21.5 The Bayshore Condominium - timber doors and frames, parquet flooring and other woodwork.
>
> 21.6 The Anchorage Condominium - timber doors and frames, parquet flooring.
>
> 21.7 NUS Housing - kitchen cabinets.
>
> 21.8 Changi Court/Changi Green Condominium - timber doors and frames, insulation of timber floors.
>
> 21.9 Darby Park (service apartment) - kitchen cabinets and shelving.
>
> 21.10 Maplewoods Condominium - timber doors and frames, parquet flooring.

Version No 1: 20 Nov 2026 (00:35 hrs)

> 21.11 Tan Tock Seng Hospital - timber doors and frames.
>
> 21.12 Sedona Hotel, Equatorial Hotel, both in Myanmar - timber doors and frames."

42 The Defendant's claim was denied by Kah Kim who in his affidavit of evidence-in-chief stated:

> "23 … The Defendant had no role in initiating the projects business at all and he certainly could not and did not, as he alleged, single handedly secure the projects business.
>
> 24 As such, I categorically deny the Defendant's allegation that he was the one who secured the following contracts for the Plaintiffs. These projects were procured by me through my connections and efforts and based on the recommendations of Messrs Nissho Iwai and the trust placed by the developers on the Plaintiffs' holding company, Messrs Kea Holdings Pte Ltd. It is therefore without basis and wholly untrue that the Defendant was the one who 'secured' these contracts."

43 Nissho Iwai Corporation's relationship with the Kea Group goes back to 1979. That relationship is still on-going. This is evidenced by a letter from K Matsuda of the head office of Nissho Iwai Corporation to the holding company of the Kea Group. It reads:

"

July 30, 1998

Kea Holdings Pte Ltd

Att: Mr Edmund Kea

Dear Mr Edmund,

> I have appreciated long time business relationship with you as log business since 1979, plywood business since 1982 and woodworking and building material business since 1985. Talking into latest situation of Indonesia, we would like to make

> further development of the business and would like to discuss it with you on August 6 in Jakarta on may [sic] next trip. Looking forward to see you soon.

Signed

Nissho Iwai Tokyo

K. Matsuda"

44 The Plaintiff's dealings with Nissho Iwai Corporation's Singapore office was through one Tanaka to whom Kenzo Sawazaki reported. Under cross-examination the Defendant said:

> "Q: Sawazaki and Ishiguro would have to report to Tanaka?
>
> A: I do not know. They have to report to Tanaka in Singapore and to their respective departmental heads in Tokyo.
>
> Q: Can Sawazaki proceed with project arrangements with T.A.C. if Tanaka objects to it?
>
> A: I do not know their internal set up. I relied completely on Sawazaki's advice.
>
> Q: Can Sawazaki proceed with the arrangement if Tokyo objects?
>
> A: No.
>
> …
>
> Q: So, is it fair to say Sawazaki in introducing projects to T.A.C. was carrying out instructions of Tokyo HQ?
>
> A: No. The proposals came from Sawazaki and were approved by his departmental heads in Tokyo.
>
> Q: But if Tokyo disapproved, nothing could be done?
>
> A: That's so.
>
> Q: So Sawazaki in introducing business to T.A.C. was doing what N.I. agreed with Kea company?
>
> A: Yes."

Version No 1: 20 Nov 2026 (00:35 hrs)

45 That Nissho Iwai Corporation played the pivotal role in the Plaintiff's getting the developers' projects is evidenced by two drafts of an agreement to formalise this relationship whereby Nissho Iwai Corporation would be paid a commission on the developers' projects secured by the Plaintiff with its assistance. The first draft was dated 30 September 1994. The second draft was dated 11 January 1995. Cl. 3.1 of the second draft read:

> "3.1 When any sale/purchase contract is made concerning the Products between TAC and a customer ("Contract") through or with NIIS's assistance as stipulated in Article 1, TAC shall pay NIIS the following commission in the following manner unless otherwise agreed between NIIS and TAC.
>
> (Contracts between contractors introduced by NIIS and)
>
> ( )
>
> (TAC ..... 3% on invoiced value of Contracts.) "

46 In the schedule to the second draft would be listed the developers' projects secured by the Plaintiff with Nissho Iwai Corporation's assistance. At that stage of the negotiation the schedule listed the following:

"

SCHEDULE				
	Project Name	Parties	Date of Contract	Total ContractSum
1	CHILTERN PARK COND	PENTA-OCEAN		$1,091,768.30
2	PARKSHORE COND	MITSUI CONST		$447,260.00
3	"	"		$277,000.00
4	"	"		$84,368.92
5	MERASAGA COND	CCL PROPERTI		$816,926.00

Version No 1: 20 Nov 2026 (00:35 hrs)

		ES (CON TECH)		
6	SPRING GROVE COND	SUMITOM O CONST	28.5.94	$1,834,839. 90

"

47 The negotiation with Nissho Iwai fell through eventually because the 3% commission asked for was too high for developers' project sales. But while the negotiations were on-going, Nissho Iwai Corporation continued to assist the Plaintiff in securing business. That the Plaintiff's relationship with Nissho Iwai Corporation is still cordial is evidenced by the said letter from K Matsuda.

48 Three of the developers' projects listed in the schedule to the second draft are among the thirteen developers' projects claimed by the Defendant to have been secured by him. The Defendant was one of the representatives of the Kea Group negotiating with Nissho Iwai Corporation on the draft agreement. If Parkshore, Merasaga and Spring Grove were secured by the Defendant to which he would be entitled to commission thereon, rather than Nissho Iwai Corporation, it is surprising that the Defendant did not object to Nissho Iwai Corporation's claim that they were secured by the Plaintiff with its assistance.

49 It was after lengthy cross-examination that the Defendant finally confirmed on re-examination by his counsel:

> "Q: You said apart from Parkshore, Merasaga, and Spring Grove in which N.I. played a small part, the others were secured on your own merit. What do you mean?
>
> A: I did not claim I got it on my own merit."

50 I therefore rejected the Defendant's claim to entitlement of 2% commission on the invoiced value of the thirteen developers' projects.

Version No 1: 20 Nov 2026 (00:35 hrs)

Claim for repayment of the loans amounting to $84,023.28

51 By his Defence, the Defendant denied the claim and put the Plaintiff to strict proof thereof.

52 By his supplementary affidavit, the Defendant affirmed that he did not request for the alleged loans.

53 The main item of this claim was for $45,000 described as loan for the purchase of vehicle QEZ 4867T. This car belonged to Mainland but it was for the exclusive use of the Defendant while he was with Mainland. According to the Defendant, this car was acquired by TAC for his use. This is clearly untrue. Kah Kim agreed to TAC buying it over from Mainland on the Defendant's undertaking to 'repurchase' it from TAC. This was evidenced by the Defendant's letter of 1 April 1992 to Kah Kim:

> "Dear Kim
>
> …
>
> The car refer to the vehicle I am driving [referring to QEZ 4867T]. The transfer has not been executed to save transfer fee at the time. The book value of the car is currently $45,000. As this has not been discussed with you I feel obliged that I will re-purchase the vehicle from you after the takeover but after I have settled with the banks, etc.
>
> … "

54 Only when confronted with this letter did the Defendant agree that he had to reimburse the Plaintiff this sum. See his evidence under cross-examination:

> "Q: Do you agree that the $45,000 paid for the purchase of QEZ car you have to pay back to the Plaintiffs?
>
> A: Yes.
>
> Q: … After the takeover of the Mainland assets you did not repurchase the car from T.A. [TAC]?

Version No 1: 20 Nov 2026 (00:35 hrs)

> A: That's so, because I had not settled [with] the banks."

55 On the Plaintiff's claim for reimbursement of $5,565 paid by the Plaintiff to compound the summons arising from default in payment of the road tax in respect of car QEZ 4867T for the period 1 January 1994 to 30 April 1994, this was the Defendant's evidence under cross-examination:

> "Q: … Who is to pay the fine for failure to pay road tax?
>
> A: Plaintiffs were to pay because the fine was for that period for which they undertook to pay the road tax and before it was changed to their paying $1,000 per month and I would pay my own road tax.
>
> Q: This is not what you said in your affidavit, para 15. It suggests you were getting $5,000 plus $1,000 from the beginning?
>
> A: That paragraph is not correctly worded.
>
> …
>
> Q: The road tax not paid was for 1.1.94 to 30.4.94. Tender "**P2**" which shows as early as January 1993 he was paid the $1,000 called consultancy fee?
>
> A: I stand by what I said.
>
> Q: See PW1's folio 29, page 115, from you to PW1 dated 1.4.92. Are you now saying you did not have to "repurchase" the car by payment of $45,000 and did not have [to pay] the road tax on the car?
>
> A: They are different issues… I now agree that I should pay the road tax for which the default led to the fine."

56 The Plaintiff's claim for repayment of the loans was fully supported by documents exhibited in the affidavit of Kah Kim and that of Goh Siew Hwa, the Group Accountant of the Kea Group. On the other hand, the Defendant was so badly discredited that his counsel in his written submission conceded, and rightly so, as follows:

> "For obvious reasons, no substantive submissions are being made on the recoverability of the loans. It is the Defendant's contention, however, that he is entitled to set-off any amount

Version No 1: 20 Nov 2026 (00:35 hrs)

> that may be found due by him to the Plaintiffs in respect of the alleged friendly loans from the commission that he is entitled to."

57 As I had found that the commission due to the Defendant amounted to only $128,622.46 from the sales of the three agency line products, I entered judgment for the Plaintiff for $141,377.54 being amount overdrawn by the Defendant against commission. I also entered judgment for the Plaintiff for $84,023.28 being the amount of loans extended by Plaintiff to the Defendant. Both sums are to carry interest at 6% per annum from date of commencement of proceedings to date of judgment. I dismissed the Defendant's counterclaim with costs. I also awarded the Plaintiff costs on its claims.

GOH JOON SENG

JUDGE

Goh Joon Seng J

Hee Theng Fong with Doris Damaris Lee (Hee Theng Fong & Co)
for the plaintiff
Raymond Tan (Raymond Tan & Co) for the defendant

Version No 1: 20 Nov 2026 (00:35 hrs)