

Toh Ah Leng v Four Sea Circuit Board Ltd
[2010] SGHC 113

Case Number : Suit No 405 of 2006
Decision Date : 14 April 2010
Tribunal/Court : High Court
Coram : Lai Siu Chiu J
Counsel Name(s) : Parwani Vijai Dharamdas (Parwani & Co) for the plaintiff; Charles Phua Cheng Sye, Chan Ai Ling Charmaine and Ray Shankar (Tan Kok Quan Partnership) for the defendant
Parties : Toh Ah Leng — Four Sea Circuit Board Ltd

Contract

14 April 2010

Judgment reserved

Lai Siu Chiu J :

1 This was a claim by Toh Ah Leng ("the plaintiff") against Four Sea Circuit Board Ltd ("the defendant") for commission arising from the plaintiff's introduction of customers to the defendant.

The facts

2 The plaintiff is a sole-proprietorship while the defendant is a Hong Kong company that purchases printed circuit boards ("PCBs") from a circuit board manufacturer in China and on-sells the same to its customers. The plaintiff was once a marketing manager of the PCBs division of a Singapore company and acquired considerable experience in the industry, both practical and technical.

3 Some time in 1997 or 1998, the plaintiff was introduced to the defendant's marketing manager Chow Tai Lok Danniell ("Danniell") when the defendant participated in an exhibition in Singapore that showcased its products to potential customers. The introduction was with a view to the plaintiff's then employer acting as the defendant's agent in Singapore but no contract materialised from the negotiations between the plaintiff's employer and the defendant in that regard.

4 The plaintiff left the employment of his then employer in October 1999. Danniell had kept in touch with the plaintiff and was contacted by the latter who inquired if the defendant was interested to expand its customer base in Singapore. Danniell expressed his interest and flew to Singapore to meet the plaintiff and to discuss what customers the plaintiff would be able to acquire for the defendant. The plaintiff took Danniell to meet prospective customers with whom the plaintiff already had a relationship and from whom the plaintiff was confident he would be able to procure orders for the defendant. These customers included Creative Technology Ltd ("Creative") and Panasonic Matsushita Graphic Communication Systems (S) Pte Ltd ("Panasonic").

5 The discussions between Danniell and the plaintiff culminated in an agreement dated 1 December 1999 ("the First Agreement") (drafted by the plaintiff) wherein the plaintiff was appointed the defendant's representative to source for customers in Singapore and Malaysia for its PCBs. The defendant's marketing director Cheung Kong Tim signed the Agreement on the company's behalf.

6 The salient terms of the First Agreement included the following:

- (a) the agreement was for one year (clause 1);
- (b) commission would be payable to the plaintiff, by bank transfer, within seven working days after the defendant's receipt of payment from its customers (clause 7);
- (c) customers would make payment directly to the defendant's bank account in Singapore and upon written confirmation by the defendant, the plaintiff's commission would be transferred to the plaintiff's bank account in Singapore (clause 11);
- (d) the defendant's accounts department was to release to the plaintiff information on the defendant's bank account relating to payments and deposits (clause 12);
- (e) in the event of termination of the agreement, the plaintiff was entitled to full commission on all subsequent orders placed by customers who had previously been referred by the plaintiff (clause 8);
- (f) the agreement was governed by Singapore law (clause 13).

7 There were two versions of the First Agreement presented before this court with the plaintiff arguing that he had not agreed to the defendant's version in which cl 12 (at (d) above) was deleted. The defendant, on the other hand contended that cl 12 was deleted at the defendant's request with the plaintiff's consent because of the discomfort of the defendant's managing director ("the MD") with the clause (which will be elaborated on later). I shall refer to the defendant's version of the Agreement as the "revised First Agreement". In any case, between 1 December 1999 and 13 April 2000, no purchase orders were placed with the defendant by customers procured by the plaintiff.

8 In or about early April 2000, the plaintiff informed Danniell that he had made headway with Creative and Panasonic which companies indicated to the plaintiff that they were willing to place orders for PCBs with the defendant at their requested prices ("the indicative prices"); the plaintiff forwarded the indicative prices to Danniell.

9 After due consideration of the offers made by Creative and Panasonic, Danniell decided that it was viable for the defendant to sell PCBs to both companies based on the indicative prices provided the plaintiff was paid no more than 3% commission. The plaintiff was agreeable to the defendant's condition and the parties signed an addendum dated 13 April 2000 to the First Agreement, to record the terms.

10 On 1 September 2001, the parties entered into yet another agreement which was backdated to 1 March 2001 ("the Supplemental Agreement"). The purpose of the Supplemental Agreement was to regulate the payment of 1.5% commission to the plaintiff for purchase orders from Creative and 2% commission for purchase orders from Panasonic as well as from two other customers viz Epson and Hewlett Packard.

11 Pursuant to a telephone request from the plaintiff to Danniell in July 2003, the defendant agreed to increase the plaintiff's commission for orders placed by Creative from 1.5% to 2% for sales that exceeded US\$70,000 each per month, even though there was no contractual obligation on the part of the defendant to do so.

12 Three Hong Kong companies in the Casio group had been customers of the defendant well before the plaintiff's appointment as the defendant's agent. Danniell managed the business from Casio on the defendant's behalf.

13 In 2001, Casio's Singapore entity, Casio Singapore Pte Ltd ("Casio Singapore"), contacted Danniell with a view to the defendant supplying Casio Singapore with PCBs. Although purchase orders were placed by Casio Singapore, the components ordered were delivered to Asahi Industries Malaysia Sdn Bhd ("Asahi") for assembly on Casio Singapore's behalf. Subsequently in late 2001, Casio Singapore changed its mode of operations and Asahi issued purchase orders directly to the defendant.

14 In or about July 2002, Casio Singapore replaced Asahi with Flextronics Manufacturing (HK) Ltd ("Flextronics") to carry out the assembly of Casio's products in South East Asia. Consequently, the defendant ceased receiving purchase orders from Asahi and received orders from Flextronics instead.

15 Although the plaintiff was not entitled to receive commission for orders placed by or on behalf of Casio Singapore (as it was not his customer), the defendant was willing to pay the plaintiff commission to oversee the business from Casio Singapore provided the percentage did not exceed 1.5% of payments received from Casio Singapore. The plaintiff accepted the defendant's offer.

16 In or about November 2003, the plaintiff contacted Danniell by telephone to inform Danniell that he no longer wished to manage the account of Casio Singapore. The plaintiff felt that the commission he received was not commensurate with the amount of effort he put in to oversee the account as the orders placed were not large.

17 Danniell was of the view that Casio Singapore was an important customer even if its orders were not large. Accordingly, he offered to increase the defendant's commission to 5%. The plaintiff accepted his offer and this was confirmed in Danniell's email to the plaintiff dated 28 November 2003.

18 After his email of 28 November 2003, Danniell followed up by forwarding an agreement to the plaintiff for his signature. The MD, however was uncomfortable with the 5% commission rate and requested Danniell to renegotiate the same down to 3.5%. Danniell accordingly contacted the plaintiff by telephone to convey the MD's concerns. The plaintiff agreed to reduce his commission for purchases by Casio Singapore from 5% to 3.5%. Danniell sent an email to the plaintiff on 2 December 2003 to record the agreement reached.

19 In or about June 2004, the MD pointed out to Danniell that orders for PCBs from Casio Singapore were being placed by Flextronics with whom the defendant had a good on-going relationship. He did not see the need for the plaintiff to maintain a relationship with Casio Singapore. Danniell was therefore instructed to inform the plaintiff that he should cease all contact with Casio Singapore. As Casio Singapore was never a customer procured by the plaintiff, the latter agreed. The defendant ceased paying the plaintiff commission from June 2004 onwards for payments received from Casio Singapore.

20 The payment of commission to the plaintiff under the Supplemental Agreement included orders received from the subcontractors of Panasonic such as SQ (HK) Ltd ("SQ") and from Panasonic's

Indonesian affiliate PT Matsushita Kotobuki Electronics Industries Indonesia ("MKI"). MKI also instructed its subcontractors Sheen World Trading Limited ("Sheen") and Worldwide Unix (S) Pte Ltd (Worldwide") to order their PCBs from the defendant. The defendant considered orders placed by SQ as emanating from Panasonic and paid the plaintiff 2% commission thereon as provided under the Supplemental Agreement. Between end 2003 and early August 2004, the defendant paid the plaintiff commissions on all payments received from MKI at an agreed commission rate of 3.5%. . Purchase orders placed by Sheen and Worldwide were considered as purchase orders placed by MKI for the purposes of determining commissions payable to the plaintiff.

21 In or about early August 2004, the plaintiff contacted Danniell to request an increase in his commission payment from MKI in view of the termination of commission to him on payments received from Casio Singapore. The defendant agreed to increase his commission from MKI orders to 5% on all payments received by the defendant from 14 August 2004 to 31 December 2004. The defendant would pay the same rate of commission to the plaintiff on payments not exceeding US\$150,000 received from MKI with effect from 1 January 2005. For payments from MKI that exceeded US\$150,000, the plaintiff's commission rate would be 3.5%. As requested by the plaintiff, Danniell sent him an email on 14 August 2004 to confirm the above agreement.

22 In early December 2004, the defendant was informed by MKI through the plaintiff that MKI had encountered problems with the PCBs supplied by the defendant. Danniell was tasked by the defendant's management to resolve the problem. Daniel arranged to review the manufacturing process at MKI after which a report dated 11 December 2004 on corrective action was prepared. The defendant agreed thereunder to assume liability for any losses incurred by MKI if indeed the losses resulted from the defendant having supplied PCBs that were defective. The defendant and MKI jointly agreed to appoint an expert from Hong Kong Polytechnic University to ascertain whether the defendant had indeed supplied defective PCBs. Due to the high cost involved, both sides ultimately abandoned the idea of an expert report.

23 Subsequently, after discussions between the defendant and MKI, the latter conceded that the PCBs supplied by the defendant could not have been defective as they had passed MKI's quality control tests that were conducted at the time of receipt by MKI of the defendant's PCBs. Consequently, MKI did not pursue the issue of compensation from the defendant nor did the defendant pay any compensation to MKI. MKI continued to place orders for PCBs with the defendant through Sheen and Worldwide.

24 The defendant eventually terminated the plaintiff's services under the revised Agreement and the First and Supplemental Agreement by a letter dated 18 July 2005 ("the Termination Letter"). Danniell felt that the plaintiff was becoming increasingly irrational and his behaviour was disrupting the defendant's business and its operations. The plaintiff had repeatedly alleged that the defendant had not adhered to its contractual obligations and had even threatened to take legal action against the defendant. On his part, the plaintiff refused to issue invoices to the defendant to enable the defendant to pay commission that was due to him. Prior to July 2005, Danniell had prepared the plaintiff's invoices on the plaintiff's behalf.

The pleadings

25 The plaintiff took the position that notwithstanding the Termination Letter, he continued to be entitled to be paid his commission under cl 8 of the First Agreement so long as his customers continued to place orders for PCBs with the defendant. On 17 June 2005, the plaintiff through his solicitors demanded that the defendant account to him for all the purchase orders that were placed by the defendant's customers. In a separate letter dated 12 June 2006, the plaintiff demanded that

the defendant open a bank account in Singapore to credit payments received from its customers and that the defendant provide all relevant banking documents to enable the plaintiff to verify the commission that was due to him. When his demands were not acceded to, the plaintiff commenced this suit on 28 June 2006.

26 In his statement of claim, the plaintiff alleged, *inter alia*, that although he had received some commission from the defendant, the latter did not render to him an account of the purchase orders received from the plaintiff's customers to enable him to verify the commission that was due to him. The plaintiff added that in supplying defective PCBs to MKI, the defendant had breached the express and/or implied term under the First Agreement and the Supplemental Agreement that the defendant would take reasonable steps to ensure that the PCBs supplied to the plaintiff's customers were of merchantable quality and fit for the purpose for which they were ordered. As a result of the defendant's breach, the plaintiff alleged that MKI had significantly reduced its orders with the defendant, thereby causing the plaintiff to suffer loss and damage by way of reduced commission.

27 The plaintiff prayed for the following reliefs:-

- (a) an account of all purchase orders received by the defendant from the plaintiff's customers;
- (b) payment of all outstanding commission due and owing to the plaintiff after an account in (a) above had been taken;
- (c) an order that the defendant open an account with a local bank and deliver monthly bank statements to the plaintiff;
- (d) damages arising from the defendant's alleged supply of defective goods to MKI.

28 The defendant, not surprisingly, denied all the plaintiff's allegations of breach of the two agreements in question and denied his claim, contending that the defendant had paid the plaintiff whatever commission that was due to him.

The evidence

29 In his affidavit of evidence-in-chief ('AEIC'), the plaintiff deposed to five heads of claim:

- (a) outstanding commission;
- (b) commission from sales to Casio;
- (c) claim for the correct commission rate;

(d) commission due from sales to Creative Technology Qingdao Co Ltd ("Creative Qingdao");

(e) damages arising from the defendant's alleged failure to deliver products of merchantable quality to MKI.

30 The plaintiff was the only witness for his case while the defendant's witness was Danniell as well as Bob Yap Cheng Ghee ("Yap"), an executive director of KPMG Advisory Services Pte Ltd ("KPMG"), who prepared a report (and supplementary report) on the actual commissions paid by the defendant to the plaintiff, and compared the figures with the plaintiff's actual entitlement under the two agreements.

31 As the mode of payment of commission was highly contentious between the parties, it would be appropriate to deal with the issue at this juncture.

32 Pursuant to discovery orders obtained by the plaintiff, the defendant provided to the former copies of purchase orders, invoices as well as credit advice statements of its customers. The documentation, however, did not seem to satisfy the plaintiff who, in his AEIC, contended that the documentation was self-serving in nature unless the defendant also disclosed its bank statements. The plaintiff added that, contrary to the defendant's case he had not given up his entitlement to commission from Casio Singapore in exchange for an increase in commission from Panasonic/MKI.

33 In his AEIC, the plaintiff further claimed commission relating to orders for PCBs placed by an affiliate of Creative viz Creative Technology Qingdao Co Ltd China ("Creative Qingdao"). He disputed the defendant's contention that the orders were placed by Creative Qingdao with He Shan Four Sea Circuit Board Ltd, the defendant's affiliate company, and not with the defendant.

34 The allegation in [\[33\]](#) was neither pleaded in the plaintiff's statement of claim nor reply. It had not been raised by the plaintiff before the commencement of this suit nor referred to in any correspondence/emails exchanged between the parties prior thereto. Yet, the plaintiff applied to court and was granted an order on 23 August 2007, to administer Interrogatories to Creative to answer the following questions:

(a) What is the relationship between Creative and Creative Qingdao?

(b) Did you and do you issue purchase orders for and on behalf of Creative Qingdao to the defendant from the year 2001 to current date?

(c) Has Creative Qingdao ever issued purchase orders in its own name to the defendant for domestic purchases?

35 Creative had answered the three Interrogatories as follows:-

(a) Creative Qingdao is a subsidiary of Creative.

(b) No.

(c) Creative cannot answer on behalf of Creative Qingdao. However, to the best of its knowledge, information and belief, Creative Qingdao has previously issued purchase orders in its name to the defendant for domestic purchases.

36 Not satisfied with Creative's Answer to his third Interrogatory, the plaintiff again applied to court and obtained an order on 13 November 2007 for Creative to file a Supplementary Answer. In its Supplementary Answer filed on 27 November 2007, Creative (by its vice-president of legal services) pointed out that it was being asked to answer on behalf of Creative Qingdao which was a separate entity from Creative being incorporated under the laws of China and which was not a party to the plaintiff's application for Interrogatories (for which the plaintiff offered no explanation nor did the court inquire). Creative added that the third Interrogatory was framed in such wide terms with no fixed time frame stipulated. Creative therefore gave its answer relying on its own files, documents and records as opposed to oral information from Creative Qingdao.

37 Still undaunted, the plaintiff applied to court for the third time and obtained yet another order on 7 December 2007 for Creative to further answer Interrogatory (c) (see [\[34\]](#) and [\[35\]](#) above) which it did as follows:

As directed by the Honourable Court, Creative has asked the senior manager of procurement of Creative Qingdao the interrogatory namely "Has Creative Technology (Qingdao) Co Ltd ever issued purchase orders in its own name to the *Defendants* for domestic purchases?" and Creative Qingdao's answer, via its senior management of procurement, is that it had previously issued purchase order(s) in its own name to the Defendants for domestic purchase. [emphasis in italics in original]

38 On the defendant's application (made in Summons No. 4126 of 2008), I expunged paras 92 to 105 (and exhibits TAL-9, TAL-10 and TAL-15) of the plaintiff's AEIC relating to his claim for commission on Creative Qingdao orders placed with the defendant, before commencement of this trial. The claim was never pleaded and should not have been raised in the plaintiff's AEIC notwithstanding that it was the subject of Interrogatories granted by the court below.

39 In the course of his cross-examination, the plaintiff raised for the first time his argument that the defendant was obliged to provide him with copies of purchase orders under cl 3 of the Supplemental Agreement. This is incorrect as can be seen from the wording of cl 3 which states:

FOUR SEA shall submit to **Representative** [the plaintiff] monthly statements of commissions due and payable to **Representative** under the terms of this agreement, with reference to the specific Purchase Order, invoices and customers name on which the commission are being paid.

It was the defendant's case (which I accept) that on a plain reading, cl 3 does not entitle the plaintiff to be furnished with copies of the defendant's purchase orders but only with monthly statements of commission that were due to him, with reference to purchase orders, invoices and customers, as a means of verification. After repeated cross-examination by counsel for the defendant and after being pressed by the court, the plaintiff eventually conceded [\[note: 11\]](#) that his interpretation was incorrect.

40 The plaintiff had further relied on cl 4 of the Supplemental Agreement which states:

FOUR SEA CIRCUIT BOARD LTD must release original bank payment records to verify the accuracy of commissions paid by **FOUR SEA** under the terms of this agreement.

Again, cl 4 does not entitle the plaintiff to receipt of the defendant's purchase orders or invoices but only to the defendant's bank payment records including credit advices to verify the accuracy of the commissions that he received.

41 The defendant relied on the voluminous documents they had produced [\[note: 2\]](#) to support its defence that it had disclosed all purchase orders and bank advices which it had received from the plaintiff's customers. The plaintiff produced no evidence to contradict the defendant's contention and documents.

42 Having dealt with cll 3 and 4 of the Supplemental Agreement, I turn now to the parties' dispute regarding cl 12 of the First Agreement. That clause has to be read together with the preceding cl 11. The clauses state:

11 The customer will make payment directly to FOUR SEA controlled bank account located in Singapore and upon written confirmation by FOUR SEA the remaining due payment will be automatically transferred to the Representative account in Singapore.

12 With respect to the account into which customer receipts are to be paid, Representative [the plaintiff] shall not have any authorization to remove any funds from the account, but FOUR SEAL CIRCUIT BOARD LTD Accounting Department must release customer payment statement from bank account, concerning deposits and payments from such account. The parties shall take all steps necessary to guarantee that Representative shall promptly receive its commission on amounts paid into such account.

43 In his AEIC (paras 10-12), Danniell had deposed that the MD had expressed concerns with cl 11 and more so with cl 12 as that gave the plaintiff an unfettered authority to make inquiries concerning deposits and payments from the bank account into which payments from customers would be made. As a result, Danniell subsequently brought to Singapore a reformatted and identically worded draft agreement containing the same terms as those in the First Agreement for discussion with the plaintiff. Danniell deposed that the plaintiff agreed to cross out cl 12 after some discussion. Danniell and the plaintiff then executed the revised First Agreement which, as it was intended to supersede the First Agreement, was similarly dated 1 December 1999. Danniell explained that cll 3 and 4 were inserted into the Supplemental Agreement because the parties had dispensed with cl 12 in the First Agreement.

44 In his AEIC, Danniell deposed that payments from the plaintiff's customers were made to the defendant in Hong Kong and the defendant then paid the plaintiff by telegraphic transfer. Upon receipt of payments from customers in respect of which commission was due to the plaintiff, Danniell would forward bank records in respect of such payments to the plaintiff for his information. Such bank records consisted of copies of cheques from customers or credit advices issued by the defendant's bank, Nanyang Commercial Bank Ltd. Danniell would prepare an invoice on behalf of the plaintiff who, for reasons unknown to the defendant, refused to issue any invoice to the defendant for his commission. Danniell at the plaintiff's request, agreed to help the plaintiff to issue invoices in lieu of monthly statements of commissions to be furnished pursuant to cl 3 of the Supplemental Agreement. Danniell would email the invoice he had prepared on the latter's behalf to the plaintiff for comments before payment to the plaintiff was processed.

45 Danniell asserted the parties arrived at and practised this standing agreement until July 2005 when he decided he would no longer prepare the plaintiff's invoices for the plaintiff in view of the

plaintiff's unreasonable attitude. When he requested the plaintiff to prepare his own invoices thenceforth, the plaintiff refused and demanded that the defendant pay his commission without any invoices from the plaintiff.

46 In the light of the plaintiff's uncooperative attitude, Danniell started preparing monthly commission lists that supported the commission sums paid to the plaintiff. He would forward the lists to the plaintiff and request for invoices which the plaintiff eventually did issue.

47 The defendant pointed out that prior to the plaintiff's solicitors' letter of demand dated 17 June 2005, the plaintiff had never once raised objections to the defendant's omission to open a bank account in Singapore. In cross-examination [\[note: 3\]](#), the plaintiff sought to explain his silence over four years by claiming that he had sent repeated reminders (referring to incorrect documents) and by asserting he had spoken to random persons in the defendant's organisation (which was not substantiated), on the opening of a bank account by the defendant in Singapore. The defendant contended that by his conduct, the plaintiff had waived the requirement of the opening of a bank account under cl 12. The defendant argued that in any case, the plaintiff had suffered no loss by its failure to open a bank account in Singapore. Whether a bank account was or was not opened in Singapore by the defendant had no bearing whatsoever on the commission that the plaintiff earned from the defendant. This was conceded as much by the plaintiff during cross-examination [\[note: 4\]](#).

48 It was patently clear from his answers during cross-examination that apart from his own belief, the plaintiff did not have any inkling of what his case against the defendant for commission was premised on. It is also telling that the plaintiff admitted [\[note: 5\]](#) that even with all the voluminous documents that the defendant had provided to him in discovery, he would still not be able to calculate the commission payable to him. To adopt the defendant's closing submission, the plaintiff was merely taking a shot in the dark against the defendant in the desperate hope of procuring some commercial settlement. The plaintiff constantly shifted his stance and his repeated prevarications rendered his evidence unreliable.

49 I arrived at my poor impression of the plaintiff after noting the highly unsatisfactory answers given by him both in cross-examination and to questions posed by the court. To elaborate, the plaintiff was unable to furnish even a ballpark figure of what he was claiming in unpaid commission [\[note: 6\]](#) despite repeated questioning. It was only after the court explained that his filing his suit in the High Court meant that his claim must exceed \$250,000 that he ventured a guess of \$250,000 to \$300,000 over and above the US\$141,523.48 the defendant had paid him, but without providing any evidence. He further alleged that US\$130,000 to US\$150,000 of that ballpark figure related to commission due from sales to Creative while the balance was for sales to Creative Qingdao, which evidence I had already expunged from his AEIC as it was not part of his pleaded claim. Consequently, the plaintiff's claim relating to Creative Qingdao was disregarded along with his closing submissions (paras 74 to 79) in that regard.

50 As was rightly pointed out in the defendant's closing submissions (citing s 103 of the Evidence Act (Cap 97, 1997 Rev Ed)) the burden was on the plaintiff to prove his case – that the defendant still owed him commission over and above the US\$141,523.48 he had already received; it was not for the defendant to prove or disprove his case. Apart from his bare assertions, the plaintiff agreed [\[note: 7\]](#) that he had no supporting documents or any other evidence to substantiate his case that the defendant still owed him commission for the period July 2001 to June 2006.

51 I turn next to the issue of the actual commission that the defendant had paid to the plaintiff to determine whether the plaintiff was short paid as he alleged.

52 Although his statement of claim stated that he was entitled to a commission rate of 1.5% for sales to Creative which rate increased to 2% for monthly sales in excess of US\$70,000, the plaintiff changed course midstream and during cross-examination [\[note: 8\]](#), he claimed that his commission rate for sales to Creative was 5% commencing in 2003. After being pressed further, the plaintiff eventually conceded that 5% was not his pleaded case.

53 The next issue to address is the plaintiff's claim to commission from sales to Casio for which he relied on cl 8 of the First Agreement which states:

In the event of termination of this agreement, REPRESENTATIVE shall be entitled to full commission in accordance with paragraph 6, on all subsequent orders placed by customers who had been previously referred by REPRESENTATIVE.

54 However, Casio was not a customer procured by the plaintiff but the defendant's own customer. Consequently, the plaintiff was not entitled to commission from the defendant. However, the defendant agreed to pay him commission nonetheless as a form of incentive to the plaintiff to service Casio. Once the plaintiff stopped servicing Casio, he was not entitled to any commission for sales to Casio as Casio was not a customer that he had referred to the defendant under cl 8 above. Consequently, the plaintiff has failed to make out his case for commission as regards sales to Casio after June 2004.

55 The last aspect of the plaintiff's claim related to his allegation that the defendant's supply of defective PCBs to MKI caused him loss in that his commission was reduced. The defendant contended that it owed no duty at law to the plaintiff to supply goods of merchantable quality to MKI, pointing out that if there was a term (whether express or implied) that goods supplied must be of merchantable quality and/or fit for its purpose, that was a term, if any, in the sale contract between the defendant and MKI, to which the plaintiff was not a party; it was not a term in either of the two agreements that governed the relationship between the plaintiff and the defendant.

56 In any case as the defendant pointed out, the plaintiff by his own admission [\[note: 9\]](#) had no direct knowledge that the defendant had supplied defective PCB to MKI, nor had he taken steps to verify that MKI's complaint in December 2004 was true. Neither did the plaintiff call any witness from MKI to substantiate his allegation nor did he have documentary evidence that the defendant had paid compensation to MKI for supply of defective PCBs. His reliance on emails [\[note: 10\]](#) exchanged between Danniell and MKI's representatives in that regard is misconceived – all that the correspondence showed was that the two parties were making arrangements for the defendant to test a sample of the allegedly defective PCBs. The plaintiff had also relied on a document headed Pre-Agreement for PCBs problem dated 7 December 2004 ("the defects liability agreement") [\[note: 11\]](#) signed by the defendant and MKI which contents stated:

This is to certify that we, Four Sea Circuit Board LTD is agreed to bear all the cost which will be arises due to defect of our PCB Product (Part No. LSJB2186-1 with week code 3504).

Payment term will be discussed after clear total amount; total amount will be informed by MKI later.

57 The defendant submitted that on a plain reading (to which the plaintiff agreed) [\[note: 12\]](#), all that the defects liability agreement said was that the defendant agreed to bear all costs arising from any defects in a particular model of PCBs, it did not reflect any agreement by the defendant to pay

compensation to MKI. MKI still had to prove that that model of PCBs was defective before the defendant's obligation to compensate MKI arose.

58 I accept the defendant's arguments. The plaintiff's claim in this regard is a non-starter and fails *in limine* on two counts:

(a) It is trite law that a non-party to a contract cannot make any claim thereunder;

(b) There was no evidence that the defendant paid any compensation to MKI pursuant to the defects liability agreement or otherwise. Indeed, it was Danniell's testimony that MKI continued to place orders for PCBs after December 2004 with the defendant which conduct would not be consistent with the defendant having supplied defective PCBs to MKI previously and not having paid compensation for the same. The fact the orders placed by MKI may have been less than those placed before December 2004 did not without more, mean that it was due to the defendant having sold defective PCBs previously. There could be any number of commercial reasons for MKI's decision as the court pointed out to the plaintiff. [\[note: 13\]](#)

I would add that Danniell was a far more credible witness than the plaintiff. His testimony was consistent with the documents that the defendant produced before the court.

59 Finally, although it was unnecessary for the defendant to do so, it embarked on the time-consuming and expensive exercise of engaging KPMG to verify the commissions paid to the plaintiff against his contractual entitlement. It was noted from Yap's report and supplementary report (at exhibit D1) that the defendant's payment of US\$141,523.49 to the plaintiff (which he admitted) was at rates higher than even those pleaded by the plaintiff in his statement of claim. Regardless of whichever rates were applied, the defendant had in effect overpaid the plaintiff as can be seen from the following table:

Commission payable to the plaintiff based on contractual rates	Commission payable based on plaintiff's Statement of Claim	Actual commission received by the plaintiff
US\$138,343.09	US\$127,404.50	US\$141,523.49

Conclusion

60 In the event, the plaintiff is not entitled to any of the four reliefs (at [\[27\]](#)) that he has claimed. He is not entitled to an account of all purchase orders received by the defendant because the defendant has paid all that was due to him as commission based on all the purchase orders it received and which were already disclosed to him. There is no outstanding commission due to him from the defendant. The plaintiff had waived the requirement of the defendant's opening of a bank account in Singapore. His claim for damages by way of reduced commission arising from allegedly defective PCBs supplied by the defendant to MKI has no basis at law.

61 Consequently, I dismiss the plaintiff's claim with costs to the defendant.

[\[note: 1\]](#) NE 24-25, 29 September 2008

[\[note: 2\]](#) 1AB75-788

[\[note: 3\]](#) N/E 67-70, 30 September 2008

[\[note: 4\]](#) N/E 70-71, 30 September 2008

[\[note: 5\]](#) N/E 244-245, 28 October 2009

[\[note: 6\]](#) N/E 36-42, 29 September 2009

[\[note: 7\]](#) N/E 66, 30 September 2008

[\[note: 8\]](#) N/E 50-51, 29 September 2008

[\[note: 9\]](#) N/E 87-88, 30 September 2008

[\[note: 10\]](#) 2AB35-38

[\[note: 11\]](#) 2AB24

[\[note: 12\]](#) N/E 78-80, 30 September 2008

[\[note: 13\]](#) at N/E89-90, 30 September 2008

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