



**IN THE FIRST HALL CIVIL COURT.
HONOR MADAME JUSTICE MIRIAM HAYMAN
JUDGE**

Sworn application no: 846/2014

In-Sight Limited [C-80061

Vs

**Juheng Chen [Identity Card Number 31286A] and his wife
Yunjung Ling [Chinese Passport Number G20038626]**

Today, 3rd of February, 2023.

The Court,

Having seen the sworn application entered by plaintiff wherein it was premised and at requested that:-

“1. That the applicant company operates the international real estate agency under the name 'PropertyLine International' ('the Agency') which has offices in China amongst other countries, and offers various services related to real estate, including the promotion of sale of property in Malta, Latvia, Cyprus, Portugal, Greece and Spain, to the Chinese market.

2. that on the 20th March 2012 the applicant company concluded a commission agreement (copy hereto attached, exhibited and marked as

Doc. A) with respondent Juheng Chen who resides in Malta, in virtue of which agreement the parties regulated the sharing of commission due from sales of property in Malta, Latvia and Cyprus concluded with the involvement of respondent.

3.that subsequently, as would result from the private agreement dated 1st July 2012, and from an email dated 19th July 2012 (copies attached hereto and exhibited and marked as Doc. B and Doc. C respectively,) the parties agreed that the respondent would render his services as a property negotiator as well as a translator for applicant company in Latvia and Cyprus, in respect of those clients that the Agency would have identified directly itself, such that respondent would receive from applicant company those rates of commission agreed to between them for the services so rendered in the case of clients provided directly by the Agency.

4.that the applicant company, as operator of the Agency, was already at that time one of the agents of the Cypriot company Lanitis Development Limited, for the sale of its property consisting in a complex of villas and apartments known as Aphrodite Hills, in Pafos, Cyprus, as would result from the agreement a copy of which is hereto attached, exhibited and marked as Doc. D.

5. That one of the Chinese clients who acquired property in the said complex ' Aphrodite Hills' in Cyprus with the intervention of the Agency, was a certain Dai Lingyun, who subsequently entered into an agreement with the Agency for the payment of commission upon the conclusion of every sale of property in Cyprus to Chinese clients who would be identified and referred to the Agency by Dai Lingyun. In fact, Dai Lingyun had informed Trafford Busuffil, one of the directors of the applicant company,

that he had several friends of his from China who were interested in the Cypriot Residential Program and who were therefore also interested in acquiring property specifically in Aphrodite Hills.

6. That subsequently, applicant company learnt that the contracts of sale of various properties forming part of the complex 'Aphrodite Hills' in Cyprus, to the Chinese clients who were introduced by Dai Lingyun to respondent Juheng Chen as translator and property negotiator of the Agency in Cyprus, were concluded without applicant company having been informed by said respondent of the relative transactions and without applicant company having received payment of the commission due to it on these sales in accordance with the agreement in force between the parties.

7. That Trafford Busuttil, director of the applicant company, learnt of these sales around March 2014 when Dai Lingyun informed him that he is owed substantial amounts of money by applicant company because its "partner", that is respondent, had not paid him his share of commission as agreed between applicant company and said Dai Lingyun, on the sale of property in Cyprus to Chinese clients introduced by him to the Agency.

8. That it also results that the Chinese clients who were introduced by Dai Lingyun, as mentioned above, were introduced to the Agency through respondent Juheng Chen (as the official translator and property negotiator of the Agency in Cyprus, as per agreement Doc. C) specifically because respondent had informed Dai Lingyun that he was the Agency's partner and that every contact with the Agency regarding sale of property in Cyprus had to be made through him.

9. That the contracts of acquisition of property in Cyprus, that is in the complex Aphrodite Hills, by Chinese clients who were introduced to respondent Juheng Chen who falsely presented himself as the partner of the Agency, were four (4) in total. These acquisitions of property were made by Jian Ye u Haiying Li, Weiguo Peng and Dongmei Li, Lan Mu, and Liang Xue and Wenjian Wu, and in fact, it results that respondent Juheng Chen conducted unbeknownst to applicant company, all the negotiations that led to the conclusion of the contracts of sale of the properties in Cyprus to the said purchasers.

10. That as would result during the course of the lawsuit, the total value of the sales of properties in Aphrodite Hills, Cyprus, to the abovementioned purchasers, was of circa two million Euro, and therefore the sum of one hundred ninety two thousand four hundred fifty seven Euro and thirteen cents (€192,457.13) was due in commission, which commission resulted to have been paid entirely and directly to respondent on the 17th September 2013 by vendor Lanifis Development Limited. However, respondents failed to pay the relative amount to the Agency in accordance with the agreement in force between them.

The Reasons for the Claims

11. That consequently, it results that respondent Juheng Chen not only made false representations to the prejudice of the applicant company when he falsely presented himself as its partner instead of its property negotiator, but also misappropriated amounts due by way of commission to applicant company, when he applied to his benefit and retained for himself the payment of commissions on the above-mentioned contracts of

sale, which contracts were concluded without applicant company having been duly informed and with the scope of eluding its rights to payment of commission due on the said contracts.

12. That although the respondent was called upon by means of a legal letter dated 4th September 2014 (copy attached herewith, exhibited and marked as Doc. E) to pass onto applicant company the amounts received by him illegally, as aforesaid, he failed to do so.

13. That respondent Juheng Chen is married to respondent Yunjung Ling and they have been living in Malta for several years.

14. That these facts are personally known to applicant.

The Claims

Respondents are therefore requested to state why this Court should not, save for any declaration that may be necessary or appropriate:-

- 1. Declare and decide that applicant company is entitled to payment of commission on the contracts of sale of property concluded between Lanitis Developments Limited and Jian Ye and Haiying Li, Lanitis Developments Limited and Weiguo Peng and Dongmei Li, Lanitis Developments Limited and Lan Mu, and Lanitis Developments Limited and Liang Xue and Wenjian Wu;*
- 2. Declare and decide that the respondent Juheng Chen as property negotiator and translator for and on behalf of applicant company, made false representations to the prejudice of applicant company, when he*

presented himself to third parties as the applicant's partner, and that he misappropriated commission due to same applicant company on sale of property subject of the contracts concluded between Lanitis Developments Limited and Jian Ye and Haiying Li, La-nitis Developments Limited and Weiguo Peng and Dongmei Li, Lanitis Developments Limited and Lan Mu, and Lanitis Developments Limited and Liang Xue and Wenjian Wu;

3. *Declare that as a result of these actions by respondent, applicant company suffered damages;*
4. *Liquidate the damages suffered by applicant company as a result of respondents' actions*
5. *Order respondents to pay unto applicant company that sum liquidated by way of damages.*

With costs, including costs of the precautionary Garnishee Order Number ____/ 2014, and legal interest from the date of the respective contracts of sale to date of effective payment. Against respondents whose oath is hereby being made reference to.”

Seen the sworn reply of defendant where it was premised that:-

1. *That the wife of Respondent Chen (surname) Juheng (name) is not Yunjung Ling but Ying (surname) Yujun (name) holder of Chinese Passport Number G 20038626 and Maltese identity card number 35281(A);*
2. *That the claims of the Claimant Company are unfounded both in fact and at law;*
3. *That the Respondents agree with that stated in paragraphs numbered 1 – 4 of the Claimant Company's Sworn Application, save that the arrangement only regulated the case where*

Respondent Chen would have acted in the interest of the Claimant Company and not where Respondent Chen acted independently, and this in view of the fact that the agreement between Respondent Chen and the Claimant Company was entered into on a non-exclusive basis;

4. *That the Respondents cannot confirm that stated in paragraph 5 of the Claimant Company's Sworn Application for the reason that they were not parties to the alleged agreement, if such an agreement exists, and in any case that agreement has not been exhibited by the Claimant Company;*
5. *That Respondents categorically deny that Dai Lingyun introduced Chinese clients to Respondent Chen in his capacity "as translator and property negotiator of the Agency in Cyprus" as alleged. In fact Dai Lingyun specifically requested that the Claimant Company/Claimant Company's Agency be not involved in this transaction since Dai Lingyun had fallen out with Claimant Company's Agency following a dispute regarding the payment of a service fee allegedly due to the said Agency by a certain Mr Yang who had been introduced to the Claimant's Agency by Mr Dai.*
6. *That Respondent Chen was not contractually bound by any exclusive arrangement with the Claimant Company so much so that Article 1 of the agreement dated 20th March 2012 (Dok A attached with the Claimant Company's Sworn Application), which agreement was drafted by Claimant Company and signed by both Claimant Company and Respondent Chen, specifically states that the parties "are co-operating on a non-exclusive basis within the territory". Consequently the Respondents were at liberty to enter into an agreement with Dai Lingyun and/or any other third party. Claimant Company had no previous connection whatsoever with the clients introduced to Respondent Chen by Dai Lingyun referred to in paragraph 9 of the Claimant Company's Sworn Application;*
7. *That Claimant Company did not enjoy any exclusivity in respect of sale of properties in the Aphrodite Hills Development and consequently Respondent Chen and Lanitis Development Limited were free to enter into an agreement as they did (Dok CH 1);*

8. *That the allegation in paragraph 8 of the Claimant Company's Sworn Application that "the Chinese clients who were introduced by Dai Lingyun were introduced to the Agency through Respondent Chen (as the official translator and property negotiator of the Agency in Cyprus as per Agreement Doc C specifically because Respondent Chen had informed Dai Lingyun that he was the Agency's partner and that every contact with the Agency regarding sale of property in Cyprus had to be made through him)" is totally unfounded in fact and at law;*
9. *That Dai Lingyun was aware of the procedures adopted by Claimant Company's Agency as he had already experience of such procedures both when he had acquired the property and permanent residence for himself as well as when he had introduced to the Claimant Company's Agency his friend Mr Yang referred to above. Therefore the said Dai Lingyun was well aware of the distinction between Respondent Chen acting on his own account and acting as negotiator on behalf of Claimant Company's Agency, hence Dai Lingyun's insistence on not involving Claimant Company's Agency in respect of the deals referred to in paragraph 9 in the Claimant Company's Sworn Application.*
10. *That the allegation in paragraph 9 of the Claimant Company's Sworn Application that Respondent Chen "falsely" presented himself as the partner of the Claimant Company's Agency is unfounded as Respondent Chen never claimed to have been a partner of the said Agency. This would have been totally unnecessary as (i) the mentioned clients had no connection or knowledge of the existence of the Claimant Company's Agency and (ii) the developers of the Aphrodite Hills Development, Lanitis Development Limited, had entered into an agreement directly with Respondent Chen independently of the Claimant Company's Agency. Therefore such an alleged "false" presentation would have served no purpose.*
11. *That no commission is due to the Claimant Company in respect of the sales entered into between Lanitis Development Limited and the clients mentioned in paragraph 9 of the Claimant Company's Sworn Application. That commission was in fact payable to Respondent Chen in virtue of an agreement entered into between*

Lanitis Development Limited and Respondent Chen and dated 22nd July 2013 (Doc CH 1) whereas the said commission was to be shared with Dai Lingyun in virtue of a verbal agreement entered into between the said Dai Lingyun and the Respondent Chen.

12. *Consequently the Claimant Company has no legal right to claim any commission for property deals with which it was not in any way involved since it did not know the clients; it did not introduce the clients to the developers/sellers; it had no right of exclusivity on any transactions that Respondent Chen could have entered into; and it had no exclusivity over the relative properties sold.*

Seen the decree whereby this Court ordered that all proceedings be heard and conducted in the English language.¹

Seen the interlocutory decrees handed down in the interim of these proceedings.²

Seen all the records of the case.

Seen the note of submissions.

Heard all oral submissions.

Considers

1.i That the issue underlying and promoting the claimant's case arises from three private agreements entered between claimant and defendant regarding the commission to be received on the successful negotiations of properties in the island of Cyprus, for the purpose of this case, within the permanent residency program. Thus the first agreement entered on the 20th March 2012³ between

¹ Folio 31

² Folio 491, 632, 689A and 704.

³ Folio 8 Dok A

claimant company and the defendant was that of a property agent agreement whereby the defendant, the resident agent, was entrusted to introduce clients to acquire property within the territory of Malta, Latvia and Cyprus to the lead Agent being the plaintiff company.

This agreement was on a non-exclusive basis.

The commission agreed was that of 50% to each party once a sale was concluded successfully following the introduction afore stated.

ii. Another agreement was subsequently drawn up dated 1st July, 2012⁴. This centred around the commission refund if a sale fell through due to lack of a permanent Residency Permit being obtained.

iii. An email dated 19th July 2012⁵ wherein the commission rate now offered to the defendant was at a flat rate of 18% on each sale of property to clients that the defendant company would refer to the agent and this only in relation to clients from direct sources excluding clients that come from plaintiff's company's partners in China.

This email also mentioned translation fees when defendant visited Latvia or Cyprus.

2. The claimant company also exhibited an agreement it entered into with Lanitis Development Limited whereby the mentioned Cypriot company appointed the claimant company as an agent in respect of the marketing of villas and apartments in the complex of Aphrodite Hills, Project, Paphos, Cyprus. This is dated 12th October 2011. ⁶

In the said document it is clearly stated that the company, Lanitis was appointing the claimant “*...as one of its agents*”⁷ for the sale of the aforementioned property.

Two more addenda exhibited⁸ indicate an altered agreement of the commission plaintiff company was to perceive from Lanitis Development on a successful sale.

⁴ Folio 13 Dok B

⁵ Dok C folio 14

⁶ Dok. C Folio 15

⁷ Ibid.

⁸ Folio 16 tergo and folio 17

3. On his part defendant exhibited an agreement also entered with the Lanitis development aforementioned. This is dated 22nd July, 2013.⁹ In the same the company Lanitis Development also appoints the defendant **as one of its agents** to market and sell the properties held by the said company in the location of Aphrodite Hills, Pathos, Cyprus. The commission due to the defendant was therein established.

An addendum to the said agreement was also exhibited regarding the commission to be paid and its modalities.¹⁰

Before the court passes to assess the evidence produced it needs to be premised that succinctly the contestation raised by plaintiff company is to the effect that, all commissions defendant received when with or through Mr Dai he effected four sales of properties in the Aphrodite Hills project, those commissions received were due to it, on the premise that, Mr Dai had on several occasions discussed with plaintiff company that he would proceed to introduce a number of his friends to plaintiff with the intent of property acquisition in Aphrodite Hills project , the plaintiff company acting as the agent. A verbal commission agreement was also discussed between Dai and plaintiff for this purpose. An agreement that is however not one that the mentioned parties agree to , regarding to the commission amount due.

4. Evidence produced by the plaintiff

i. Affidavit of Clarence Busuttil¹¹.

Thus in view of the above claim, Clarence Busuttil evidenced that once employed by plaintiff company he was introduced by his brother Trafford to the defendant, the later as a translator aiding plaintiff company. He also got acquainted to Mr Dai and his wife and their daughter Cindy. Dai and his wife subsequently entered into a preliminary agreement for the acquisition of two properties in the Aphrodite Development through the assistance of plaintiff company.

In Cyprus he was informed by his brother Trafford that Mr.Dai intended to bring forward a group of his friends to also purchase property in the mentioned development. Thus, plaintiff company reached a commission agreement with Dai if these deals materialised.

⁹ Folio 39 Dok CH1

¹⁰ Folio 41.

¹¹ Folio 51

After this he confirms the said agreement with Dai by Dai himself when at dinner with the latter. Thus Dai also discussed with them a meeting he had had with his friends in this regard and how to minimise the education costs to be incurred by their friends in this Cyprus residence project.

He also evidenced that since his working relationship with a certain Gingko Wang¹² deteriorated, at about this time defendant had gone to Beijing, where witness resided and told the same that he was in a partnership with his brother Trafford and their brother Graham. Mr Busuttil said that defendant also spoke of his designation as Chief Representative of the plaintiff company. This was a point that Trafford himself rebutted when so told by his brother Clarence Busuttil. Witness also evidenced that because Gingko Wang was slacking in her work, plaintiff company decided to involve defendant in the discussions regarding Dai and his friends.

He also testified that though Dai had in fact forwarded two of his friends intended property purchasers, who had contacted Lucia (Lin Bin), herself an employee of plaintiff company, this in June 2013, they were subsequently informed that the same client/friends preferred the Grecian residency program to Cypriot one.

He also testified that during one of his brother Trafford's trip to China, in 5th March 2014, in his presence his brother received a phone call from Wang Gingko, informing that Mr Dai was requesting a meeting since Cheng Juheng owed him a lot of money.

The meeting in fact did occur, Clarence Busuttil being present thereto evidenced that Dai informed them that defendant, *their alleged partner*, owed him a lot of money for the commissions resulting from the sale of properties in July 2013 in the Aphrodite Hills, from which defendant earned €192,000¹³ in commissions. The indicated partner was purportedly the defendant.

Dai further explained that he had contacted defendant with the intent to introduce his friends to Trafford, in return for the promised commission, but defendant had informed him that he was representing Trafford in all business matters because Trafford was supposedly heavily involved with a Portuguese residency program and living in Lisbon.

Dai also showed them an email confirming that Cheng had received the amount of €192, 457.13.

¹² An employee of plaintiff company.

¹³ circa

Dai was asked to prepare a sworn statement of facts.

ii. In her affidavit **Gingko Wang**¹⁴ evidenced that she met Dai and his wife whilst working for the plaintiff company in April 2012 in the Beijing International Property Expo. They decided to use Property Line services to acquire property in Cyprus. The witness was engaged through plaintiff company to assist them in the acquisition of visa applications for Cyprus.

Since Dai had ended up acquiring properties in Cyprus, she recalls being invited to dinner to their house in Beijing, in which occasion Dai had shown his intention to introduce some of his friends to Property Line so that they would also venture into the Cypriot residency program and acquire property through plaintiff company.

She also evidenced that she got to know defendant around this time and he introduced himself as Trafford's partner and that his designation as '*Chief Executive*', supposedly of plaintiff company.

Later on in March, 5th 2014, when she was acting as freelance translator for plaintiff company, since she was not able to be in full time employment as required, she received a phone call from Dai saying he wanted to meet up with Trafford since Cheng owed him money for clients he, Dai, had sent to Cyprus. She informed Trafford of this affair.

Dai prepared an affidavit of the occurrence which the witness proceeded to translate.

iii. Affidavit by Lin Bin (Lucia).¹⁵

This witness is in the employment of the plaintiff company.

She evidenced that when she met defendant he introduced himself as Trafford's partner as also the Chief Executive.

She also said that the relationship between Gingko and Clarence Busuttill deteriorated thus Ginkgo was relieved by her duties by Trafford.

She also confirmed that months later, on the 22nd July 2013, she had received a call from Mrs Mu (Dai's wife) informing her that she intended to travel to Cyprus

¹⁴ Folio 56

¹⁵ Folio 59

with some friends who required assistance in purchasing property and for visa applications. **Then she testifies that she informed Clarence Busuttil of this five days before, on the 17th of July.**¹⁶

However it later transpired that these ‘friends’ preferred to pursue the Grecian residency program.

iv. Sworn declaration Graham Busuttil.¹⁷

Mr Busuttil evidenced that though with his co-director and co-shareholder brother in Property Line Trafford, he had discussed employing defendant to manage the company’s affairs in China, this idea was dropped because of defendant’s wage request. Instead plaintiff company entered into a commission agreement with defendant, dated 20th March, 2012, on a 50-50% basis for all clients that Cheng would refer to the plaintiff company and who would successfully acquire properties in Malta, Latvia and Cyprus.

Plaintiff company also used Defendant’s services as a translator and seeing his work commitment and work potential, a renegotiation of commission percentages from property sales for clients that Property Line sourced directly, was agreed on.¹⁸

Graham Busuttil evidenced that through his arrangement and also using defendant as a translator, the company managed to conclude three transactions utilising defendant as a property negotiator.

He confirmed that Dai and his wife, signed a purchase agreement of two properties in the Aphrodite Hills complex in July 2012. The purchase agreement was signed with Lanitis Development, for which defendant and Trafford travelled to Cyprus., this on the basis of the agreement plaintiff company had concluded with the Lanitis Development.¹⁹

He was also shown an email by his brother Trafford alleging that defendant was asking for monies as he describes it ‘*under the table*’ departing from the agreement the plaintiff company had with Lanitis development. He also testified that confronted Juheng denied this allegation. Still witness attests that regardless of these allegations, they had no choice but to introduce defendant to the Portuguese residency program.

¹⁶ Folio 59

¹⁷ Folio 61

¹⁸ Referred to supra.

¹⁹ Op.cit.

Graham Busuttill also recalls an incident when defendant had visited him at the St. Julian's office and proposed to the witness to inflate the rent amount of an apartment in that the rent difference would be pocketed by defendant. A proposal witness refused and even referred to his brother Trafford.

He stated that defendant was never their partner in Property Line, although Dai had informed them, that he had referred potential clients to Property Line through Juheng since the later had informed him to communicate solely with him directly since Trafford was busy with the Portuguese residency program.

v. Sworn declaration of Irina Nekludova.²⁰

She evidenced that once on a business trip with Trafford in China in 2014, the latter received a phone call informing him that Dai sought a meeting with him. This was set up for 6th March 2014.

In this encounter, for which she was present as a translator, Dai informed Trafford that he owed him money as commission for the sale of property in Aphrodite Hills to the tune of two million euros. Dai insisted that Trafford's partner had earned a commission of €192,000. The partner indicated was according to Dai, the defendant.

Dai explained that he had contacted Juheng to introduce clients to Trafford but was advised by defendant that since he was representing Trafford in all business matters, he was to communicate solely with him. Also that Trafford was busy with the Portuguese residency program and living in Lisbon. With regards to Dai's commission for this referral. Defendant had assured Dai that he would have sort the issue with Trafford himself. Thus, Dai proceeded to pass the interested clients to Juheng who was to handle their affairs and property purchase in Cyprus on Trafford's behalf.

Mr Dai also showed them an email confirming the payment of the stated commission sum to defendant.

²⁰ Folio 63

vi. Dai's declaration.²¹

Dai confirmed he met Clarence Busuttill and the defendant in Cyprus in the first week of July when he intended to purchase property in the Aphrodite Hills project. He purchased this property through the agents Property Line International.

He evidenced that he had become friends with Trafford through this negotiation and thus Trafford had offered him a commission if he introduced his friends to the Aphrodite project.

Once he had convinced his friends to purchase property as previously mentioned, he proceeded to contact the defendant who informed him that he was partnered with Trafford on the Cyprus Project, also that Dai was not to contact neither Ginkgo nor Lucia. The defendant, according to witness Dai, had informed him that Trafford had entrusted him to handle all Chinese clients referred by Dai in relation to the Aphrodite Hills Project. Dai also evidenced that Juheng promised him that he would speak to Trafford so that Dai would receive 50% commission for his referrals, *(therefore renegotiating the previous agreement Dai and Trafford had presumably agreed to.)*²² .

Dai insisted that he had no reason to doubt defendant when told by the latter he was Trafford's partner.

Dai mentioned that the clients involved were *Yian Yi, Mrs Hiang Li, Mr Reinu Peng and Mrs Dong Mei, Ms Lan Mu, Mr Liang Xu And Mrs Wang Wu.* ²³; all mentioned purchased property in the aforementioned project.

Dai insists that the commission was paid to the defendant to the amount of €192,000.

He continued that once he did not receive the commission from the defendant, he proceeded to contact Trafford through Ginkgo, this in 2014, asking for his part of the commission.

Seeing that he had not received the commission from Cheng, he also proceeded to pressure Lucas, a high ranking officer within Lanitis Development to intervene

²¹ Folio 65. The Declaration is not sworn therefore the court will make reference to his evidence in chief viva voce, a folio 242 in the sitting of the 5th October, 2015, wherein he confirmed under solemn declaration the contents of his previous exhibited mentioned declaration.

²² Court's comments for better understanding

²³ **All names subject to transcribers understanding.**

in this matter. He was informed that amounts due as commission were in the lawyers' possession, Michael Mantis, due to the matter in issue.

Dai informed the court that the amount of €80,000 was withheld till the matter in contestation was resolved. He also attested that this amount would be transferred to him once he released a receipt beforehand (*it seems*), which witness refused as premature.

vii. Trafford Busuttil.²⁴

Mr Busuttil is the managing director of the plaintiff company, in his words operating the international real estate agency Property Line with offices in China, Portugal, Latvia, as also promoting properties in Cyprus.

He evidenced that he was introduced to defendant by a certain Chinese lady, a Maltese resident, unbeknown to him till a year later, that in fact she was in fact defendant's wife. The first contact with defendant was with the intention of translation services. Discussions between them evolved to source Chinese clients interested in buying property in Malta against a 20% commission.

In 2011 the plaintiff company had a number of Chinese clients interested in acquiring property abroad, in the European market, thus the company started promoting property in Latvia and Cyprus.

When a proposed employment with plaintiff company failed²⁵, Cheng was instead offered a commission agreement on successful property transactions concluded with Property Line by clients referred to plaintiff by defendant. The first commission was on a 50/50 basis.²⁶

They progressed to another agreement wherein Cheng was now offered 15% commission acting as a property negotiator *cum* translator in Cyprus for Chinese clients sourced by plaintiff company.

Based on this agreement parties concluded successfully three transactions

At a Beijing property exhibition witness and defendant met Dai and his wife, Mrs Yang Xue. They subsequently travelled to Cyprus where the mentioned Chinese nationals acquired properties in the Aphrodite Project.

²⁴ Folio 67

²⁵ Due to wage requests

²⁶ Ibid. 67

It was during this visit to Cyprus that Dai and witness agreed that should the former refer clients to plaintiff company, he would receive €10,000 flat rate commission for each referral.

He also referred to an exhibited email, Dok TF1²⁷ dated 16th August, 2012, he received from defendant, regarding an interested purchaser in the Aphrodite Hills, as referred to them by Mrs Xue, that is Dai's wife.

He also evidenced that a few months later he was questioned by his brother Clarence, if defendant was his business partner. Witness negated this.

He confirmed that in 2012 he relieved Wang Ginko of her duties retaining her as a translator on hourly rates.

Though he was again informed by Dai that the latter had friends who were interested in acquiring properties in Cyprus and therefore in the Cypriot residency program, this after November 2012, and that he would refer same to Property Line, later he was informed by Cheng that these proposed clients preferred due to their children's education, to travel to Greece instead.

Lucia, (Lin Bin) also informed his brother later that two of Dai's friends who had sought the plaintiff's company assistance for visa application, had travelled to Greece instead.

He also evidenced an instance where it was brought to his attention by a certain Andreas Ioannou of Alpha Panaretti, that defendant was asking for monies beyond the agreement with the Developers . In this respect he presented an email marked as Dok TF2²⁸.

He also stated that he had discussed this issue with his brother Graham, his partner in the plaintiff company, and they agreed not to introduce defendant to the Portuguese residency program.

It was on one of his visits to China that he was informed by Ginko that Dai requested a meeting with him It transpired that Dai alleged that Property Line owed him commission monies relative to sales of property in the Aphrodite Hill Project to the amount of two million Euros, for which according to Dai, Cheng had received the sum of €192,000.

Dai pointed out to him that Cheng had introduced himself as partner to the witness and instructed Dai that in the property negotiations he was to deal only with him

²⁷ Folio 72, dated 16/08/2012.

²⁸ Folio 73 as a court's note it is to be noted that no mention of defendant is really made in this email but reference is to a *'partner'*

since Trafford was supposedly busy with the Portuguese program, also since Trafford was for that purpose residing in Lisbon. Dai informed the witness that he was reassured by defendant that he would settle Dai's commission on the proposed sales with Trafford.

Dai subsequently gave the witness the list of the purchasers who acquired property Mr. Jian Ye & Ms Haiying, Ms Lan Mu, Mr Weiguo Peng and Ms Dongmei Li, and Mr Liang Xue and Wenjian Wu.

He added that a letter was subsequently sent to defendant requesting payment of the said received commission. They, witness and his brother Graham actually met defendant in St Julian's Malta. A meeting that lasted only five minutes and in the words of the witness himself was actually terminated by his brother Graham. Confronted with the information acquired with regards to the sale of the properties and the commission, Cheng refused an amicable solution.

Witness also exhibited an email marked dok TF3²⁹ dated 15th October, 2012 listing Dai's friends' names; Jia, Yang, Liu. The two therein mentioned seemed to have concerns with school fees.

Later on Trafford Busutil took the stand and exhibited various documents in support of plaintiff's claim.³⁰

He explained that the plaintiff company, In-Sight Limited was the owner of a trademark called Property Line.

He testified, and this in addition to his evidence already referred to, that plaintiff company had two agreements with defendant. The first one was a referral fee of 20%, later revised to 50% of the gross commission for each client referred to plaintiff company if a successful sale ensued.

The second scenario was a second agreement wherein the commission of 18% was agreed.

He confirmed that a number of transactions were concluded, and Cheng received the relative commission due.

²⁹ Folio 74

³⁰ Folio et seq. 110

In relation to the properties purchased by Dai and his wife he attested that these transactions were conducted directly with Aphrodite Hills developers.

He also confirmed that plaintiff company still held commission funds owed to Cheng which remained unclaimed.

He explained that when he met Dai, due to his lack of the Chinese language, all potential clients' contacts sourced by Dai were passed directly to Cheng. These he insisted were all Property Line clients. In this regard he exhibited Insert 7³¹, purportedly list of clients referred by Dai for defendant's perusal and follow-up. He also pointed out that Cheng also went by the English name of Alvin.

He also confirmed his agreement with Dai of ten thousand euros commission for every successful property transaction of clients referred by Dai.

Trafford also referred to Document A3,*recte* TB3³² an email passed to him by Dai **wherein it is supposed to result**³³ that indicated properties were bought in the Aphrodite project. This email sent from Michael Mantis **to a certain unknown Mr Kitrou**³⁴, is meant to confirm that Cheng had received commission of €192,457.13 thereon. He testified that this email was sent to Dai himself. Trafford explained Dai gave him this email as proof of his monetary commission claim.

He also referred to insert 11³⁵ purportedly being a declaration by a purchaser Li Haiying. and the contract of sale of the related property bought by Li Haiying, **a photocopy**³⁶, with the Lanitis developers

He admitted under oath that the afore exhibited contract copy was the only one of its kind that he had knowledge of. He spoke about three other contracts, but he had no knowledge of the date of publication of latter contracts.

5. Cross examinations of witnesses advanced by plaintiff.

i. Gingko Wang³⁷

³¹ Folio 138

³² folio 154

³³ **Emphasis of the Court.**

³⁴ Ibid.

³⁵ Folio 145

³⁶ Emphasis of the Court.

³⁷ Folio 82 et. seq.

In cross examination Ginkgo Wang evidenced that though she was no longer in the employment of Property Line, she still provided translation services for the company.

She described that Cheng, defendant, introduced himself both as a partner as well as a Chief Executive officer. Though she could not confirm if Cheng addressed himself so in emails sent. That being said she also confirmed that the only person she ever received instructions from concerning Property Line was always Mr Trafford Busuttil.

Of importance in her cross examination is that Ginkgo could not confirm if the list of possible clients mentioned in her affidavit were the same clients that Dai had referred to when he contacted her on the 5th of March, 2014. In other words she could not confirm if these were the same individuals that Mr. Dai wanted to introduce to Property Line.³⁸ Particular reference was made to Dok KB3³⁹ referring to the names already cited *supra*, being an email she forwarded to Trafford and Clarence of names referred to her as Dai's friends but she could not confirm if these were Property line's clients.

She also reiterated that on the 5th March, 2014 was the first time she ever heard of Dai's claim that Cheng owed him money, here in her capacity as a translator to plaintiff company.

She related that according to Dai, or rather what Dai seemed to belief and understand, Mr Cheng and Mr. Busuttil, for her Trafford, were '*related*'; intending business wise, and this was the reason why Dai turned to Trafford to obtain the monies he had not been paid from Cheng.

She also confirmed emails exhibited as Dok. KB4, KB5 and KB6⁴⁰. She evidence that these were related to clients and monies owed as commission to Mr. Dai. These emails were sent or received by her in connection with Michael Mantis. She confirmed that at this stage even Dai was using her translator services, now no longer employed by plaintiff company. She also confirmed that she was receiving instructions from Dai himself in communicating with lawyer Michael Mantis in relation to the commission due to Dai. She also evidenced that it was

³⁸ Folio 86

³⁹ Folio 99

⁴⁰ Folio 101-108

Dai who introduced her to the Lanitis Group and that since 2014 she had been representing the latter mentioned group in the Beijing office.

Regarding the other emails exhibited, namely wherein she exchanges emails with Michael Mantis, in relation to monies due to Dai by Cheng, she confirmed that she was writing these on Dai's behalf and instructions. Furthermore though these emails are dated 2014, and she was present in the same year for the meeting between Trafford and Dai in Beijing, wherein Dai requested the commission money payment from Trafford, she confirmed that no mention was made to Trafford that discussions were already undergoing with Michael Mantis for the same payments.

ii Dai cross examination.⁴¹

He confirmed that he met Trafford when he was buying property in Cyprus, also that the same Trafford helped him with the related procedures. He confirmed that Trafford entrusted Mr Cheng to assist him step by step in his purchase. It was Gingko who however made their Cypriot Visa arrangements through Property Line.

He also evidenced that he had later used Gingko's service as a translator.

He confirmed that about July 2012 he entered into an oral agreement with Trafford that he would refer clients, his friends, to Property line, with the intent of property purchase in Cyprus within the permanent residency program, for which he would receive a commission. This was later specified to be on a 50% basis.

He refuted that there was an agreement with Trafford, as evidenced by the latter himself, that the commission was to the extent of **only** ten thousand euros for each successful sale. He strongly denied this last-mentioned agreement on the premise that it was too small an amount to be considered as a commission.

He testified that he referred four clients within the ambit of their agreement, he mentioned Mr Jia, Mr. Liu, Mr. Yang.

He went on to confirm a name from the list that of Yang Wei Do.⁴² He confirmed he referred this client to Cheng. He however added that Yang ended up not buying any property.

⁴¹ Folio 251

⁴² Folio 260

He also stated that when he was buying his property in Cyprus, he was displeased with the length of time it took to get the residency permit. He complained in this regard about a lady lawyer whom Trafford helped him to engage.

He denied any suggested arguments he might have had with Trafford due to payments that had to be effected in relation to expenses relating to a certain Yang WeiDong who had travelled with them to Cyprus.

Asked if he knew a certain Zung Wen, engaged by Cheng to see to the visa applications of the four prospective clients, Dai denied any knowledge thereof.

Asked if he had knowledge of the scope of the current case he answered: *'Because it is the commission that I agreed with Trafford and Trafford's company that if there is a sale I will get the commission.'*⁴³ He again denied that the agreed commission amounted to only €10,000 for each successful sale.

He denied any agreements with Cheng, though he admitted that any agreements so reached had to go through Cheng due to the fact that the witness did not speak any English.

He confirmed he had previously asked for the disputed commission from Michael Mantis but he continued that he was asked to sign a receipt for the sum of €80,000 prior to actually receiving the monies. A fact he refuted.

He explained that he resorted to the developer for the commission since this originated therefrom and he received nothing thereof.

He confirmed that he had told the developer that he had to pay the commission to Trafford for the four referred clients so that he would be paid his part by Trafford.

He also confirmed that during his meeting with Trafford, he did not tell Trafford about the €80,000 offer from Michael Mantis, this on the premise that he did not speak the English language.

iii. Cross examination Trafford Busuttli.⁴⁴

He confirmed that he had actually contacted the defendant in May 2011 to set up shop in China. His previous encounter with defendant ended on a negative note since plaintiff company had not met defendant's wage request. He confirmed

⁴³ Folio 267

⁴⁴ Folio 280.

discussion with defendant of a shareholder relationship as also a partnership in China.

During this period, he was using Cheng's services as a translator. He confirmed that these services might have been initially free of charge in view of the proposed collaboration but that he later started paying defendant hundred euros a day.

The witness agreed that the shareholding agreement with Cheng failed from his part and then proceeded to enter into an agreement with defendant establishing the 50% commission.

He insisted that once the Maltese residency program had been suspended, he wanted to source China to open another market front.

He confirmed that the first agreement entered with Cheng was on a non-exclusive basis, as was the second one in which the 18% commission was agreed.

He also evidenced that once the process was started, having sourced interested clients through appropriate exhibitions and other agencies, a list of the prospective clients would be sent to Cheng who had to contact each one and get the process going to get the required invitation letter from the Cypriot developers.

Trafford Busuttil also confirmed that a prospective client, referred by Dai, a certain Wei Dong had not paid what is called the Ground Handling Fee so much so that all these clients expense incurred by Property Line were eventually forked out by Mr Dai himself. Trafford also confirmed that an incident erupted at the airport because of this client's refusal to pay and Dai had intervened to settle the issue. Trafford insisted that all prospective clients going to Cyprus to view property were informed about the obligation to pay the handling fee.

He confirmed that he relieved Gingko of her employment because she did not see eye to eye with his brother Clarence with whom she was working in Beijing.

He did confirm the agreement entered with Dai that a successful referral of clients from his part would earn him €10,000 commission for each property purchased.

Asked to explain why he took so long to face Cheng with the commission issue, from March 2014 when he met Di and got hold of the knowledge to September 2014 when he confronted Dai, he replied that he needed further information from Dai and also that he travelled a lot.

Asked why he was requesting monies from Cheng when Dai had testified that a good part of the commission was still withheld with the developer, he answered that he was basing his claim on what Dr. Michael Mantis had said.

Asked why on the basis of the agreement plaintiff company had with Aphrodite Hills developers, that commission of all clients referred by the company would go directly to the company as had occurred in Dai's case, why in support of his present claim the developers had not paid directly plaintiff company, **Mr Busuttil answered that he was himself confused with this issue.**⁴⁵ He went on to rebut that Cheng entered into a commission agreement with Aphrodite Hills Project four days before two million worth of property was transferred.

He testified that he did not engage with the developer about this issue. He also was not aware that Dai had a separate commission agreement with the Aphrodite Project developer. Mr Busuttil was also not aware that when he met Dai with regards to the alleged commission owed to him, that Dai himself was also negotiating directly with the development's lawyers for the contested commission.

6. Cheng Juheng's affidavit.⁴⁶

He explained that he was the Chief representative of the Asia Art Funds in Malta and the EU.

He declared that it was his wife, then his girlfriend, who first met Trafford. He was later on introduced to him in mid-2010 as he had informed defendant's wife that he was looking for someone who could speak English and Chinese this with the intent of developing business in China. The suggestion of full time employment Cheng advanced to Trafford in this regard was refused by Trafford.⁴⁷

⁴⁵ Emphasis of the Court.

⁴⁶ Dok JC1 Folio 332

⁴⁷ Vide Dok 1 folio 342.

He states that he was later contacted by Trafford with the idea of setting up business in China. Trafford had indicated to him that he was promoting the Latvian and Cypriot markets and showed interest in collaborating together in setting up a company.⁴⁸

He evidenced that instead of the prospective suggested business proposal, instead, he received from Trafford the document exhibited as Dok 8⁴⁹. This was a cooperation based on **non-exclusivity**.

He said he continued referring clients, to Property line, regardless of the fact that this was not the company or business arrangement he was originally promised.

He continued that Trafford sent him over 200 names of people he was to contact, emanating from the Beijing property exhibition. One of the clients he made contact with was Mr Dai, who later introduced him to his wife Ms Xue.

Ginkgo Wang, in the plaintiff's company employment, took care of organizing the visas necessary for the trip to Cyprus for the property viewing.

Reacting to Ginkgo's evidence that he referred himself as '*Chief Representative*', he commented that this was his email signature in regards to his occupation with the Arts Fund, so much so that Trafford never commented to him on such a denomination.

He emphasised he worked independently of Property Line, having visited their office at best twice and never had any related business cards and never introduced himself as Trafford's partner.

He further testified that once Clarence was engaged and based in China, Trafford limited his field of operation to Europe.⁵⁰

He confirmed that Trafford changed his commission rate finally to a flat rate of 18%.⁵¹

He evidenced that Property Line used to request payment from clients of what was called a Ground Handling fee, averaging 1200 euros, these monies being retained by Property Line regardless of the success of property purchase. He thus recalled that on one trip to Cyprus an argument ensued between Trafford and Dai's friend, a certain Weidong.

⁴⁸ Vide Dok 5 folio 347 et seq.

⁴⁹ Folio 361, exhibited as a blank document: Dok A with plaintiff's application.

⁵⁰ Dok 10 folio 370

⁵¹ Dok C exhibited with sworn application.

He attested that together with Trafford he had met Dai and his wife, the later both with intent to purchase property in Cyprus. All visa arrangements were managed by Gingko Wang. He attested that during this stay in Cyprus, he assisted to an agreement between Dai and Trafford, wherein Trafford agreed to pay Dai the sum of ten thousand euros for every successful property sale to clients referred to Property Line by Dai.

He further evidenced, regarding the ground handling fee, that he recalled a situation where during a trip to Cyprus in which Dai was also present, Weidong a prospective client, was asked by Trafford to pay the handling fee. Weidong refused. An argument ensued between him and Trafford causing Dai to intervene. Later during a dinner Dai himself, reluctantly, paid the 1200 euros to Trafford . During the said dinner, always in Cheng's presence, the defendant evidenced that Dai and his wife complained about the length of time it was taking their residency application in Cyprus which was being handled by Gingko, a Property Line employee, to be successfully processed.

Cheng also complained he had to date not been paid any commission by plaintiff for the properties purchased by Dai in Cyprus. He also refuted that he had been informed by Trafford of a forfeited commission as evidenced by Trafford himself.

He also negated any suggestions made by Trafford of asking for any under handed commission money, stating that it was a certain Andreas Ionnou who had advanced this idea to him when a certain Mr Peng was entertaining buying a property in another development.

He evidenced that Dai and his wife invited him for lunch on the 1st of May, 2013, here Dai informed him of a number of his friends who were interested in purchasing property in Cyprus, requesting that these are handled by Cheng alone with the exclusion of Trafford on the premise that the later had displeased and dishonoured him with regards to his friend Mr Weidong and the Ground Handling fee issue. He further added that Dai was annoyed with Trafford regarding the length of time the PR⁵² application were taking.

Another issue raised by Dai, according to defendant, was that the former wanted a higher commission than that agreed with Trafford, therefore wanting to exclude Trafford from property purchase by his friends. Thus, Dai wanted Cheng to provide service to these clients personally not through Property Line.

It was Mrs Dai, Ms Xue who thus sent him the list of prospective purchasers and accordingly it was agreed between them that Property Lline staff should not be

⁵² Permanent residency

used for the intended negotiations.⁵³ Being a large group these people were handled by Cheng's secretary in Beijing.

Cheng said he proceeded to contact the sales executive of Lanitis Developments informing him of the intended trip to Cyprus with prospective purchasers in the Aphrodite Hills Project, informing him these were not Property Line clients in view of the agency agreement between Property Line and Lanitis. Thus Nicholas, the mentioned sales executive, sent him an agency agreement for the sale of the units in the said project. He thus testified and exhibited documentation to this effect,⁵⁴ attesting that Lanitis were well aware that these were clients being referred and handled solely by Dai and Cheng.

Referring to any clients considering property purchase in Cyprus but having second thoughts because of their children's education, he testified that this happened in regards to Mr YangWei Dong already referred to *supra*, and never in connection with the later clients he and Dai were handling on their own.

Apart from the arrangements with Lanitis regarding the clients forwarded to him by Dai, he testified that on the same trip he also arranged visits/viewing of another property development in Limassol.⁵⁵

In agreement with Dai these clients were not charged any handling fees.

The agency agreement between Cheng and Lanitis was signed⁵⁶ on the 22nd of July 2013, recognising him as an agent independent from Property Line.

He described the Cyprus trip as successful as four of the group successfully concluded property purchase in Cyprus from Lanitis Development.

Regarding the commission due, Cheng evidenced that he had discussed this with Loucas Kitrou (Lanitis) in the presence of Michael Mantis the lawyer. It was agreed that till the clients acquire the residency permit, the commission was as security to be deposited in escrow with Mantis. Dai however was not happy about this arrangement, insisting his commission be paid up immediately.⁵⁷

Thus later, on the 17th December, 2013, Loucas had called Cheng informing him that Dai had been to his office requesting the commission payment directly to his personal account. Cheng was informed that this issue had occurred twice. He thus

⁵³ Dok 17a and 17b (informal translation) folio 391 et.seq.

⁵⁴ Dok 18 and 19 folio 406 et seq

⁵⁵ Dok 20 folio 410

⁵⁶ Dok 21 folio 413

⁵⁷ Dok 22a and b (an informal translation) folio 416.

instructed Michael Mantis to discuss the issue of the commission directly with Mr Dai.

He further testified that it was through this Court case that he acquired knowledge that Dai and Gingko had met Trafford and of Dai's commission claim from Property Line, this regardless of the fact that Dai was still negotiating with Mantis, for the same commission.

He also testified that he had met Trafford and Graham because of their claim regarding the commission, merits of this case and was also threatened by Graham if he did not pay up.

Furthermore he testified that two of the clients who had purchased the properties in Cyprus, had phoned him up informing him that Mr. Dai was bad mouthing him.

7. Cross examination Cheng Juheng.⁵⁸

In his first cross examination Mr Cheng answered that he was working with Trafford and pushing the property sales in Cyprus, being giving a list of 200 names by the former to phone and pursue, always on the premise and hope that Trafford would live up to their previous understanding of opening a company together in Hong Kong.

He testified that it is because of this partnership promise that he had kept to his commitment to Trafford whereas the latter did not.

He also insisted that the agreement between him and Property Line was no longer valid because it, the company, had defaulted from paying him the commissions due.

He insisted that he put all his efforts to assist Mr Dai to acquire the properties in Cyprus, intervening even with the developer when the deals seemed unsure, because he was to share in the profits, the commission, with Trafford.

He also confirmed that he was present when Trafford and Dai negotiated the ten thousand euro commission above mentioned.

⁵⁸ Folio 440 et.seq.

He confirmed that he had never been to Cyprus before he was introduced thereto by Property line, the same with regards to the Aphrodite Hills Project and the Alexandra Heights. He evidenced that he had effected around seven property sales in that territory. However he couldn't recall the amount of commission earned.

Now he confirmed that with regards to Dai's property acquisition he had received half of the commission due to him.

Shown a business card⁵⁹, which reads in English, his email address and that of Property Line, Mr Cheng refused to touch the same and furthermore stated that he had never seen such cards.

Later on Cheng repeatedly confirmed that for the sale of four properties in the Aphrodite hills Project he was to receive 12% commission, later however he agreed that it was revised to 15%, and that he received the sum of €140,000, regardless of the commission still held at his lawyer, Mantis.

Asked repeatedly on the values of the property sold, Cheng was unable to provide such information. Challenged that the amounts of the three or four properties sold was to a higher amount than the commission received suggested, he denied such a fact. Cheng stood firm on the amounts of commission he received. Cheng explained that though one sale would have rendered him circa €105,000 euros, the rest of the properties sold were of a lessor value, therefore the total amount owed to him in commission was to the stated amount of €190,000 circa.

Cheng also confirmed that out of this commission he owed Dai the amount of €80,000, according to an agreement entered between them.

Asked why he did not proceed to recoup the balance of what he considers to be his commission, Cheng answered that because of current ensuing Court case, and problems with Mr. Dai, Lanitis had cut all communications.

Mr Cheng was continuously insistent that it was Mr.Dai, who on two occasions, insisted that Trafford should be left out of the dealings of property acquisition of his friends in Cyprus. So much so he insisted that in agreement with Dai's wife they were not to use any of Property Line's staff to process the referred clients. He also confirmed that he never informed Trafford about this exclusion.

⁵⁹ Exhibited as Dok CB1 a folio 468

Confronted that he did so yet still insisting he was a man of honour, the defendant answered that on being given a list of 200 potential clients by Trafford, he honoured his commitment and proceeded to contact them one by one, one of which was Mr Dai.

He also confirmed that he told Mr Dai that he did not have an exclusive agreement with Trafford, Property Line. Thus, Dai asked him to co operate with him even on the wine business. He confirmed he started cooperating with Dai roundabout April 2012 regarding the wine business, property and immigration programme

Being confronted how Mr Dai's commission was agreed to prior to the actual sale of the properties, the defendant answered that Dai wanted a higher commission than that offered and negotiated with Trafford, so on the sale of the four properties it would amount to eighty thousand euros, double the amount agreed with Trafford.

In a further cross examination, **the third**,⁶⁰ Mr Cheng was persistently asked to confirm the price of each property sold, he however insisted that he did not remember nor did he have knowledge thereof as he had no copies of the relative deeds. At the point of those sales his commission was 12%.

He did confirm that after the said sales he entered into another agreement with Lanitis for a 15% commission.

Asked who of the client-purchasers had actually obtained the permanent residence permit, Cheng was not in a position to answer clearly, at least not in respect of all the buyers indicated to him. He did confirm however that within the residency program the sale of the property was dependent on obtaining the permanent residency permit.

Confronted with Dok GBX⁶¹, an email sent by Cheng's lawyer to a certain Kitru, stating that Cheng had received the commission of €192,547.13, defendant was adamant in firstly denying any knowledge of the email and secondly of the veracity of its contents. Moreover that he became aware of this email only in these proceedings.

⁶⁰ Sitting dated 2nd May, 2018, though the plaintiff attempted to impeach the witness on point of credibility, it was pointed out that the current sitting was scheduled for a cross examination and thus claimant was ordered to conclude this line of questioning.

⁶¹ Folio 176

Cheng also confirmed he had contacted his lawyer and the developer to recoup the difference of the commission due. He said that the developers did not want to get involved in this case. He however reiterated that he had a commitment with Dai to pay him 80 thousand euros and couldn't understand why Dai had conjured lies to steal his money.

To be noted also that at this stage of the proceedings plaintiff attempted to present a USB containing a recording of a conversation between Trafford, Graham and defendant regarding the St Julian's encounter. For reasons the Court decreed upon, this so-called evidence was expunged from the records of the case.⁶²

On being referred the list of clients a folio 408 and 409 of the records of the case, defendant categorically insisted that these were his clients and none were referred to him by Trafford. On being so jibed by opposing party as to his selected memory, he further added that he remembered his clients' names but not those referred by others.

8 i. Affidavit Yujun Ying, English name Joyce⁶³

She was the one who introduced Cheng to Trafford when she got to know that the latter was looking for a person who could speak both English and Chinese. She later became defendant's wife.

It was a few months later after this, that she assisted them both in China to do some translation work, this between the 4th and the 11th November. Here she evidenced that she met Dai for the first time. He, Dai was travelling with Mr Yang Weidong.

She evidenced overhearing a discussion between Cheng and Trafford about client Mr Yang. Trafford was unhappy because Yang had no intention of paying the ground handling fee. So much so that Trafford and Yang had a big argument at the airport and Dai promised to settle the fee himself once Trafford went to Beijing.

She said she knew that Cheng had kept in touch with Mr Dai's wife because he had helped them with matters related to the residency permit in Cyprus. She further testified that she knew that Dai had offered Cheng to work together on

⁶² Decree 13TH March 2018 folio 632.

⁶³ Folio 432, Dok JC2

wine export and had asked Cheng to assist him to purchase property in Cyprus. It was Cheng who told her that Dai did not want to involve Trafford.

She assisted, during a breakfast meeting in the Intercontinental Hotel, a discussion between Dai, Ms Xue and Cheng regarding the commission. Dai inquired when his share would be released and was informed by Cheng that this would occur only when the residence permits were acquired, this as agreed with the developer. She heard Ms Xue remark that she hoped that the lawyer engaged by Cheng to deal with the permanent residency was more efficient than the one engaged by Trafford, since they had been rather upset with the delay concerning them in this issue.

She further testified that Ms Xue expected the developer to give Dai a higher commission than the one negotiated with Trafford and this on the premise that they, together with her husband Dai would have introduced more clients to Lanitis, four, whereas Trafford had managed only one. She attested that Dai and Cheng ended up disagreeing on the commission.

Regarding the commission she knew her husband had engaged a lawyer by the name of Michael Mantis.

ii. Cross examination Yunjin Lin (Joyce)⁶⁴

The same witness was later cross-examined. Asked if Trafford before engaging Cheng had knowledge of the relationship Cheng had with her, in that he was her boyfriend, she answered that he knew.

She was unable to answer how many contracts were concluded by her husband when he travelled with Cheng to Cyprus. For the same reason she was not aware how much monies were earned by Cheng. She explained that in the Chinese culture she would not be aware of her husband's earnings, saying that it was her husband's business and that she wasn't interested in these details or his work.

She reconfirmed the argument Trafford had because of the ground handling fee which Yang did not intend to pay.

She insisted she was never involved in any conversation between her husband Dai or his wife, she just assisted to the conversations.

⁶⁴ Folio 635A

She reiterated with regards the commission that she overheard the conversation as aforesaid but was never involved in any negotiations.

9.i Xue Yang affidavit.⁶⁵

She testified that together with her ex-husband Dai they participated in an overseas property exhibition in Beijing where they met Wang Zije, aka Gingko Wang at the Cyprus booth. She told them she would introduce them to Trafford. In fact, they met a few days later in Beijing, Gingko attending the meeting as a translator.

It was Trafford who introduced them to the Cyprus immigration, (*sic* residency) program, later they were contacted by Mr Cheng on behalf of Trafford, who proceeded to give them a detailed introduction to the Cypriot residency program, in which they were interested. Cheng informed them that Gingko working in Trafford's Chinese office would be taking care of their visa applications. Therefore, witness proceeded to contact the later.

She testified that they were the only people making the journey to Cyprus. Cheng accompanied them on the trip whilst Trafford met them at the airport. During this visit they signed a preliminary agreement to buy two apartments in the Aphrodite Hills project. She said that Trafford and Mr Cheng assisted them in the negotiations with the developer. Later they were met Clarence, and he accompanied them on their return to Beijing.

Later they contacted Cheng telling him that a friend, Yang Weidong was interested in property acquisition in Cyprus, he suggested they contact Gingko directly for applications. Her ex-husband, Trafford and Weidong travelled together to Cyprus in October 2012. She later got to know from her husband that he was dissatisfied with Trafford because he had asked Weidong for service fees, Dai felt Trafford had shamed him in front of his friends.

She also testified that they were dissatisfied with the service provided by Trafford for the permanent residence application, complaining the process was taking too long. She also complained that Trafford's staff had lost some related important documents.

⁶⁵ Folio 650

They complained to Trafford about both the mentioned incidents over dinner.

She further attested that it was Cheng who accompanied them to obtain their residence permit in Cyprus.

She also testified that they, she together with her husband, had informed Cheng of some of their friends who were interested in buying properties in Cyprus, hoping that Cheng would cooperate with them in this regard but to the exclusion of Trafford because they were dissatisfied with the unprofessional service provided by his employees and his attitude towards Weidong.

She said they knew that Trafford did not employ Cheng. Cheng on his part had also told them he did not have an exclusive agreement with Trafford. She testified that she herself gave the potential clients' list to Cheng, confirming and insisting that these were their clients not Trafford's.

She confirmed the list of clients forwarded to Cheng as those appearing on documents 19A and B⁶⁶ of the records of the case.

All arrangements for these clients to visit Cyprus were conducted by Cheng and his secretary Zhong Wen and the witness herself.

She further testified that when she passed the list to Cheng, he had called to ensure that these clients were being forwarded to him not to Trafford. She said that they, so together with her husband, did not want to cooperate with Trafford and his company.

She also referred to the WeChat exhibited as Dok 17A⁶⁷.

She further attested that her husband Dai had insisted with her to instruct Cheng to contact the Cypriot developers ensuring that they are informed that these were not Trafford's clients to avoid any misunderstandings.

For the purpose of assistance they were using Zong Wen, Cheng's secretary.

She confirmed that six families were introduced to Cheng,⁶⁸ four of which signed a preliminary agreement with the developer of Aphrodite Hills. These were Ye Jian and Li Haiying, one family, Peng Wei, Peng Shiyun, Li Dongmei a second family, Mu Lan another client and the last Wu Wenjian.

She further said that during an apposite dinner they informed their friends that Cheng, (not present) would be responsible for receiving everyone in Cyprus.

⁶⁶ Folio 408-409.

⁶⁷ Folio 392

⁶⁸ Dok 19A and 19B supra

Cheng's secretary was however present for this occasion, and she was introduced as the contact person for the future residence program.

She went on to declare that the Cyprus trip was divided into two, the first group was accompanied by her husband, the names appearing in Dok19A, whilst the second batch, names appearing in Dok19B, were accompanied by herself.

She also communicated with Cheng, because her husband was informed that Cheng had received the commission, Cheng denied this saying that the commission would not be paid up until the clients received their permanent residence in Cyprus, this pre-condition to acquire property in the territory.

He also informed her that the commission had been transferred to his lawyer Michael Mantis and it will be released once the permits were issued.

Regarding the fact that her ex-husband had approached Trafford for the commission, she further added that once she got to know of the court case she had reminded him of the WeChat and the exchanged emails between them and Cheng.

ii. Xue Yang cross examination.⁶⁹

Under a lengthy cross examination, the witness was asked if she had drawn up the affidavit herself seeing that she referred therein to court documents exhibited. She explained that the affidavit was in her own words but with the insistence and assistance of the lawyer reference was included of documents already exhibited in the court case. She in fact stated, as translated, that she wrote each sentence *from her own meaning*.⁷⁰

Xue denied that Cheng was present at the time she was drawing her affidavit insisting, as translated, that her testimony was from her real meaning.

She stated she divorced Dai in November 2018, an amicable divorce as she described, one reached through negotiations. Before the divorce she was involved with him in the business concerning seven families and the property business in Cyprus.

⁶⁹ Folio 659a

⁷⁰ Folio 659D

She insisted that only one potential client was introduced to Trafford, Weidong, the rest, seven of them, were handled by her, Dai and Cheng.

She insisted and corrected that Cheng had informed them that he did not belong to Trafford in contrast to the continuous question being posed that Cheng told her that he did not work for Trafford, saying that *'Mr Chen is not belonging to Trafford, is not working in same company'*⁷¹.

Confronted by the fact that Dai her ex husband recalled different facts, she answered that her version, her testimony, was true.

Shown the list of clients as in Dok 19A, she confirmed that those were the people she and her husband referred to Cheng.

She denied any knowledge of the situation that two of the clients were processed through Trafford, or rather Lin Bin, then employed with Trafford, Xue adamantly insisted that those clients were referred by her and her husband to Cheng under the understanding that Trafford was to be excluded.⁷² She refuted any knowledge that some of the clients referred had contacted Trafford with regards to other property developments. That being said, Xue adamantly denied that any of the people mentioned in the list, were referred through Trafford. She categorically testified that all the clients referred were dealt with by her and her ex husband Dai and that Trafford was totally excluded from these negotiations.

She insisted that in June 2013 Mr Dai did not want any contact with Trafford, he had emphasized that the six families were to be handled by them and Cheng. She insisted that they did not require or seek Trafford's service because in the case of their application the service given was poor, having lost important documents related to their permanent residence. She went so far as expressing their anger at the way the matter was handled by Trafford and his staff. She also confirmed that on receiving an email from Lin Bin whether there was a plan to take people to Cyprus, for which she answered in the negative, in the sense that this had nothing to do with Trafford.

Faced with a question that Peng and Mulan were going to Cyprus, she positively answered that that had nothing to do with Trafford. She explained that this

⁷¹ Folio 6591

⁷² It is to be noted that the affidavits of these people here referred to as having contacted Lin Bin have been expunged from the records of the case as per decree dated 7th May 2021.

happened because erroneously the new Lin from Cyprus had contacted the other Lin to inquire about the Cyprus trip.

Confronted by Dai's statement that Dai had passed the clients to Trafford, she insisted on the veracity her evidence. In fact she insisted that they never mentioned Trafford in the process of the Cyprus visit to any of their client/friends.

She spoke that the commission issue was their business because the commission belonged to them, sharing her part on a fifty-fifty basis with her ex-husband. Always regarding the commission her understanding is that it is being held by lawyer Michael Mantis till all clients referred obtain their residence permit.

10 Affidavit Zong Wen⁷³.

She explained that in mid-June 2013, she had received a call from defendant who asked her assistance to assist friends who wanted to apply for visas to visit Cyprus. She was a company secretary and had already had experience in this field since Cheng trusted her work. Defendant proceeded to give her the contacts of Dai and his wife, who in their turn communicated with her on behalf of the prospective clients. She added that each client signed an authorisation letter and she was instructed to take care of their visa applications. She exhibited Dok A⁷⁴ in this respect, *unfortunately in Chinese*. She continued that eight people applied and received their visa to visit Cyprus and left on the 22nd July and returned on the 5th August, 2013.

She recalled that Dai and Xue had invited all these clients together to introduce them to each other and get better acquainted pending the preparations for the Cyprus visit. She said that during this dinner Dai thanked the absent Cheng for arranging the visit for them. Dai also thanked the witness there present for her assistance.

She recalled also that four of these clients had, after the return from Cyprus, contacted her to assist with their PR documents. She helped also regarding the transfer of monies necessary for payments. She further attested that to date none of the clients referred to ever mentioned any Maltese property agency regarding their Cypriot PR application. She also attested that neither Dai nor Xue ever mentioned any foreign company.

⁷³ Folio 676 dok ZW1

⁷⁴ Folio 677 et seq.

The Claim

11 i. Having summarised the salient evidence produced, the Court considers that before any assessment of the facts, the Court must refer to Maltese jurisprudence relevant to this case.

The point in issue here truly and solely regards the credibility of the parties, balanced out with the level and nature of evidence advanced to prove or rebut the claim.

It is an established irrefutable principle that the level of proof necessary to sustain or rebut a claim in a civil law suit is one that reaches a level of probability.

It depends totally on the Court's assessment whether this level is reached by the parties when all facts, evidence oral and documentary are well examined and assessed.

In this regard the Court refers to the judgement in the names of **Raymond Cauchi noe. et. vs Michael Angelo Fenech**⁷⁵

“Fis-sentenza tagħha tal-24 ta` Marzu 2004 fil-kawza `Xuereb et vs Gauci et` il-Qorti ta` l-Appell Inferjuri qalet hekk dwar konflitt ta` provi fil-kamp civili –

“Huwa pacifiku f`materja ta` konflitt ta` versjonijiet illi l-Qorti kellha tkun gwidata minn zewg principji fl-evalwazzjoni tal-provi quddiemha :

1) Li tagħraf tisset minn dawn il-provi korroborazzjoni li tista` tikkonforta xi wahda miz-zewg verzjonijiet bhala li tkun aktar kredibbli u attendibbli minn ohra ; u

2) Fin-nuqqas, li tigi applikata l-massima “actore non probante reus absolvitur”. Ara a propozitu sentenza fl-ismijiet “Fogg Insurance Agencies Limited noe vs Maryanne Theuma”, Appell, Sede Inferjuri, 22 ta` Novembru, 2001.

Fi kliem iehor il-Qorti għandha tezamina jekk xi wahda miz-zewg verzjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, għandhiex teskludi lill-ohra, anke fuq il-bilanc ta-lprobabilitajiet u tal-preponderanza tal-provi, għax dawn, f`kawzi civili, huma generalment sufficjenti għall-konvinciment tal-gudikant (Kollez. Vol L p11 p440).”

⁷⁵ 15/12/2015 citazz 1170/86

(ara wkoll : “**Bugeja vs Meilak**” – PA/TM – 30 ta` Ottubru 2003 ; “**Kmandant tal-Forzi Armati ta` Malta vs Difesa**” – PA/PS – 28 ta` Mejju 2003 ; “**Farrugia vs Farrugia**” – PA/CC – 24 ta` Novembru 1966)

*Fis-sentenza ta` din il-Qorti (PA/PS) tat-28 ta` April 2003 fil-kawza “**Ciantar vs Curmi noe**” kien precizat hekk –*

“Huwa ben maghruf f`materja konsimili illi mhux kwalunkwe konflitt, kontradizzjonijiet jew inezattezzi fil-provi ghandhom ihallu lill-Qorti f`dak listat ta` perplessita` li minhabba fihom ma tkunx tista` tiddeciedi b`kuxjenza kwieta jew jkollha b`konsegwenza taqa` fuq ir-regola ta` in dubio pro reo ;

*Fil-kamp civili ghal dak li hu apprezzament tal-provi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispjegazzjonijiet furniti lilu imma jekk dawn l-istess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku ta` azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghall-konvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan ghad-differenza ta` dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli. (Vol. XXXVI P I p 319)” ara wkoll : “**Camilleri vs Borg**” – Appell Civili – 17 ta` Marzu 2003 ; “**Zammit vs Petrococchino**” – Appell Kummercjali – 25 ta` Frar 1952 ; “**Vassallo vs Pace**” – Appell Civili – 5 ta` Marzu 1986).*

*Fis-sentenza li tat fis-26 ta` Settembru 2013 fil-kawza “**Chef Choice Limited vs Raymond Galea et**” din il-Qorti (PA/JRM) qalet hekk :-*

“... Illi l-Qorti tqis li, għalkemm il-grad ta` prova fil-procediment civili m`huwiex wieħed tassattiv daqs dak mistenni fil-procediment kriminali, b`daqshekk ma jfissirx li l-provi mressqa jridu jkun anqas b`saħħithom. Il-prova mistennija fil-qasam tal-procediment civili ma tistax tkun sempliċi supposizzjoni, suspett jew konġettura, imma prova li tikkonvinċi lil min irid jagħmel ġudizzju. Iżda f`kazijiet mibnija fuq id-delitt jew il-kwazi-delitt, l-aktar meta jkun hemm imdaħħal xi egħmil tal-qerq tal-parti mħarrka huwa ammess li “f`kawza civili d-dolo jista` jiġi stabbilit anke permezz ta` presunzjonijiet u ndizji, purke` s`intendi jkun serji, precizi u konkordanti, b`tali mod li ma jħallu l-ebda dubju f`min hu msejjaħ biex jiġġudika” (ara - P.A. PS - Emanuel Ċiantar vs David Curmi et -konfermata mill-Qorti tal-Appell fid-19.6.2006).

Illi minbarra dan, il-parti attriċi għandha l-obbligu li tipprova kif imiss il-premessi għat-talbiet tagħha b`mod li, jekk tonqos li tagħmel dan, iwassal għall-ħelsien tal-parti mħarrka (ara - App. Inf. - JSP - 12.1.2001 - Hans J. Link et vs Raymond

Merċieca). Il-fatt li l-parti m'harrka tkun ressqet verżjoni li ma taqbilx ma` dik imressqa mill-parti attriċi ma jfissirx li l-parti attriċi tkun naqset minn dan l-obbligu, għaliex jekk kemm-il darba l-provi ċirkostanzjali, materjali jew fattwali jagħtu piż lil dik il-verżjoni tal-parti attriċi, l-Qorti tista` tagħżel li toqgħod fuqha u twarrab il-verżjoni tal-parti m'harrka. Min-naħa l-oħra, il-fatt li l-parti m'harrka ma tressaqx provi tajba jew ma tressaq provi xejn kontra l-pretensjonijiet tal-parti attriċi, ma jeħlisx lil din milli tipprova kif imiss l-allegazzjonijiet u l-pretensjonijiet tagħha (ara - App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil).

Illi huwa għalhekk li l-liġi torbot lill-parti f`kawża li tipprova dak li tallega (ara l-Art. 562 tal-Kap 12) u li tagħmel dan billi tressaq l-aħjar prova (Art. 559 tal-Kap 12).

... Iżda dak li jgħodd f`kawża m`huwiex l-għadd tax-xhieda mressqa għaliex "il-fatt li xhieda jkunu ġew prodotti minn parti partikolari f`kawża ... ċertament ma jfissirx li l-Qorti hija marbuta li temmen b`għajnejha magħluqa, jew li temmen aktar, dak kollu li dawn ix-xhieda jgħidu `favur` il-parti. Fuq kollox, ix-xhud ma jġix prodott biex jixhed `favur` parti jew `kontra` oħra, imma jiġi prodott biex jgħid il-verita`, il-verita` kollha, u xejn anqas minn dik il-verita`kollha" (ara - App. Ċiv. 19.6.2006 - Emanuel Ċiantar vs David Curmi et)

Illi l-Qorti tqis li, iżda, bħal ma jiġri f`każijiet bħal dawn, il-verżjonijiet tal-partijiet u ta` dawk li setgħu nvoluti magħhom ikunu tabilfors miżgħuda b`doża qawwiya ta` apprezzament suġġettiv ta` dak li jkun ġara. Il-Qorti tifhem li kull parti jkollha t-tendenza li tpingi lilha nnifisha bħala l-vittima u l-parti l-oħra bħala l-ħatja, u dan jgħodd ukoll għall-verżjonijiet li jagħtu dawk il-persuni l-oħrajn li jkunu b`xi mod involuti fl-episodju. Huwa d-dmir tal-Qorti li tgħarbel minn fost dawn il-verżjonijiet kollha u minn provi indipendenti li jistgħu jirriżultaw il-fatti essenzjali li jistgħu jgħinuha tasal biex issib x`kien li tassew ġara u kif imxew l-affarijiet ;

Illi l-Qorti tifhem li, fil-kamp ċivili, il-piż probatorju m`huwiex dak ta` provi lil hinn mid-dubju raġonevoli (ara App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil). Iżda fejn ikun hemm verżjonijiet li dijametrikament ma jaqblux, u li t-tnejn jistgħu jkunu plawsibbli, il-prinċipju għandu jkun li tkun favorita t-teżi tal-parti li kontra tagħha tkun saret l-allegazzjoni (ara - P.A. NC -28.4.2004 - Frank Giordmaina Medici et vs William Rizzo et). Ladarba min kellu l-obbligu li jipprova dak li jallega ma jseħħlux iwettaq dan, il-parti l-oħra m`għandhiex tbatli tali nuqqas u dan bi qbil mal-prinċipju li actore non probante reus absolvitur (ara P.A. LFS - 18.5.2009 - Col. Gustav Caruana noe et vs Air Supplies and Catering Co. Ltd.) Min-naħa l-oħra, mhux kull konflitt ta` prova jew kontradizzjoni għandha twassal lil Qorti biex ma tasalx għal deċiżjoni jew li jkollha ddu fuq il-prinċipju li

għadu kemm issemma. Dan għaliex, fil-qasam tal-azzjoni ċivili, l-kriterju li jwassal għall-konvinciment tal-gudikant għandu jkun li l-verżjoni tinstab li tkun waħda li l-Qorti tista` toqgħod fuqha u li tkun tirriżulta bis-saħħa ta` xi waħda mill-għodda proċedurali li l-liġi tippermetti fil-proċess probatorju (ara - App. Ċiv. 19.6.2006 - Emanuel Ċiantar vs David Curmi noe). Fit-twettiq ta` eżerċizzju bħal dak, il-Qorti hija marbuta biss li tagħti motivazzjoni kongruwa li tixhed ir-raġunijiet u l-kriterju tal-ħsieb li hija tkun haddmet biex tasal għall-fehmiet tagħha ta` gudizzju fuq il-kwestjoni mressqa quddiemha (ara - App. Inf. 9.1.2008 - Anthony Mifsud et vs Victor Calleja et).”

Fis-sentenza li tat il-Qorti tal-Appell (Sede Inferjuri) fit-12 ta` April 2007 fil-kawza “Joseph Tonna vs Philip Azzopardi” inghad hekk :-

“(i) Ibda biex ir-regola tradizzjonali tal-piz tal-provi timponi a kariku tal-parti li tallega fatt l-oneru li ggib il-prova ta` l-ezistenza tieghu. Tali oneru hu ugwalment spartit bejn il-kontendenti, sija fuq l-attur li jsostni l-fatti favorevoli li jikkostitwixxu l-bazi tad-dritt azzjonat minnu (actori incumbit probatio), sija fuq il-konvenut ghas-sostenn tal-fatt migjub minnu biex jikkontrasta l-pretiza tal-attur (reus in excipiendo fit actor) – Ara Vol. XLVI/i/5 ;

(ii) Fil-kors tal-kawza dan il-piz jista` joxxilla minn parti għall-ohra, ghax, kif jinghad, `jista jkun gie stabbilit fatt li juri prima facie li t-tezi ta` l-attur hija sostenuta` – Ara Vol. XXXVII/i/577 ;

(iii) Il-gudikant adit mill-meritu tal-kaz hu tenut jiddeciedi iuxta allegata et probata, u dan jimporta li d-decizjoni tieghu tigi estratta unikament mill-allegazzjoni tal-partijiet. Jigifieri, minn dawk ic-cirkustanzi tal-fatti dedotti għab-bazi tad-domanda jew ta` l-eccezzjoni u l-provi offerti mill-partijiet. Jikkonsegwi illi d-dixxiplina tal-piz tal-provi ssir bazi tar-regola legali tal-gudizzju `n kwantu timponi fuq il-gudikant l-konsiderazzjoni li l-fatt allegat mhuwiex veru ghax mhux ippruvat ;

(iv) Il-valutazzjoni tal-provi hu fondat fuq il-principju tal-konvinciment liberu tal-gudikant. Lilu hu moghti l-poter diskrezzjonali tal-apprezzament tar-rizultanzi probatorji w allura hu liberu li jibbaza l-konvinciment tieghu minn dawk il-provi li hu jidhirlu li huma l-aktar attendibbli w idoneji għall formazzjoni tal-konvinciment tieghu.”

In line with the above jurisprudential citations the Court finds that it simply cannot uphold plaintiff’s claim on an amount of inconsistencies arising from the evidence deduced.

12 i. Court notes that plaintiff complained or rather made it a point to inform the Court of its difficulty to produce documentary evidence in connection with deeds of sale of the four properties Dai and Cheng are to have received commission for, the very issue *de quo agitur*. So much so that plaintiff company presented a note in the records of the case enlisting the difficulties it was encountering to produce the proof necessary, including the alleged damage it incurred⁷⁶. Yet plaintiff company boasts of its expertise in the property market, its range of operation in Cyprus and China, amongst other territories, it even has an agency agreement with the Lanitis Developement with whom these sales were effected and in the course of time of these lengthy proceedings could not produce any proper documentary evidence of a sale transfer, which is duly registered in Cyprus. A quick look at the internet on Cypriot law results that there is quite an effective Land Registration System in operation in the country in issue.

The best the plaintiff company could do in all these years was to produce a photocopy of a deed of sale; **a photo copy!**. The court here refers to the document a folio 146, one that is meant to prove the sale of property therein indicated. Neither does the poorly presented declaration that precedes it, unsworn, of the alleged purchaser help plaintiff's claim.

Plaintiff, should have been better advised how to present its evidence if it is meant to be intended to be admissible at law. No photocopy of any deed of sale or declaration that is unsworn or any email not supported by proper evidence is deemed as such.

ii. On these lines plaintiff proceeded during the case to present unsupported evidence. Documents like the email given it by Mr. Dai purporting to prove payment of the commission, **the contents of which was never confirmed under oath**. The court here refers to Dok TB3⁷⁷. The court would have at least expected a sworn affidavit/declaration of the sender of this email, a person known to all parties it seems, Michael Mantis, who being a lawyer would have understood the importance of his cross examination in regard. It also resorted to referring to expugned evidence, this in relation to the USB and two declarations which were both removed from the records of the case. Yet even in the note of submissions plaintiff company ignores the related interlocutory decrees and proceeds to utilise the said documents as if they were still part of the records of the case and moreover admissible at law.

iii Plaintiff company also proceeded to present a business card, which in part is in an untranslated language, that shows two email addresses, that of defendant and that of Propety Line. Though defendant refuted any knowledge thereof, the

⁷⁶ Folio 49

⁷⁷ supra

Court cannot by any stretch of imagination find anything amiss with this, seeing that in fact Cheng was acting as a property negotiator for Property Line within the confines of the agreement with plaintiff company. Certainly this business card does nothing to support plaintiff's claim that defendant usurped any of its clients and related commissions.

iv. Plaintiff company also resorted to gratuitous conclusions to rebut Ms Xue's evidence in that since she is now divorced from Mr Dai, she chooses not to support his version of events⁷⁸. Plaintiff claims that her evidence, contradicting Dai's version, was the result of an acrimonious divorce, also vindictive, as said a gratuitous conclusion. Not only does Ms Xue herself dispute and negate this, but no such evidence was ever forwarded by plaintiff company to support this conjecture.

13 i. It is the opinion of the Court that this whole issue was brought about solely and totally by Mr. Dai and unfortunately plaintiff company with very little evidence to properly support its claim, played along with Mr Dai whose only regard and interest is to receive the commission, irrelevant from whom.

ii. Dai in fact has attempted three avenues to secure the payment; the defendant, the plaintiff company and Lanitis themselves. Albeit Dai is not even agreeing on the amount of commission owed to him. In fact plaintiff and defendant agree that Mr. Dai is owed €10,000 on each successful sale concluded. Dai refutes this and claims that his agreement with Trafford was to a higher commission.

Dai's further inconsistencies do nothing to support plaintiff's claim. Though assisted by a translator in the English language Lin Bin, as evidenced by the same, when he met Trafford to claim the commission, he conveniently forgot to mention to him that he was also attempting to retrieve the commission from the Lanitis developers. Asked in cross examination why he forgot to offer this detail to Trafford Busuttill, he answered that he did not speak the English language, therefore failed to offer this information, albeit in the presence of an engaged translator.

Contrary to Dai's recollection of events, the defendant, his wife and Dai's ex-wife give a different testimony of who referred the four clients to the Lanitis project. Their claim that it was in fact Dai and Ms Xue that referred the prospective buyers to Cheng, to the exclusion of Trafford is not only supported by the evidence of defendant's secretary Zong Wen, but from other circumstantial evidence that supports defendant's line of defence. Again Dai denies knowing Cheng's secretary when it seems she was the one who actually dealt with the

⁷⁸ Plaintiff's note of submissions.

premanent residence applications and prior visas of the referred clients. He seems to have forgotten that she was even a guests at this house together with his prospective buyers. Mr Dai also seems to have conveniently forgotten why he and his wife were displeased with Trafford because of the PR application and the ground handling fee claimed from his friend Yang Weidong. He denies any acrimonious situation arising between Trafford and Weidong, a fact that is actually confirmed by Trafford Busuttil himself.

Proof has been brought forward that Dai was unhappy with Trafford because of the way he handled his friend Weidong this in relation to the Ground Handling fees. Trafford admits to the collection and imposition of this fee to prospective buyers, at least those visting Cyprus. Dai though denying any such contradiction between him and Trafford, supports his wife's version of events that he was displeased with the length of time it took for Trafford's contacts, if not employees, to obtain the residence permit. Infact this was entrusted, as confirmed by Trafford Busuttil himself to Gingko, who however seemed to have slackened on the job and was relieved of her employment by Trafford, though plaintiff company points this to her lack of agreement with Clarence Busutill.

iii Plaintiff company also emphasises on the point that infact a number of the prospective buyers were infact intially processed by its employees. Again, faced with names that are either identical, interchangeable and not quite familiar in European culture, the plaintiff failed to establish that these were one and the same people that were eventually handled by Dai, his wife and defendant. Photocopies of identification documents remain just that, a photocopy. Futhermore it has resulted that as referred by Cheng himself to plaintiff company, some prospective purchasers lost interest in the Cypriot program having an issue with the education system or related costs. Trafford Busuttil himself and Lin Bin confirmed this. No proper proof to the contrary was in fact presented.

14. All this being said the Court cannot on the basis of probabilty come to the conclusion that plaintiff company successfully proved that it has any right to the commissions perceived from the four related sales. On the contrary on a question of proabilty the version handed by defendant holds more water.

As said, plaintiff's smoking gun is Dai's evidence, whilst Dai seems to be clinging to straws exploring every avenue to obtain his commission which defendant has in fact admitted owing him. Indeed defendant does not even contest that he has received the sum of €140,000, insiting that the balance is in escrow till all permits are in order. In truth nothing precluded defendant from contracting with Dai to push clients towards the property acquisition in the Aphrodite Hills Project, as long as these were not clients referred or sourced by

plaintiff. This regardless of the fact as evidenced by Trafford Busuttill himself that till he himself had introduced defendant to project, Juheng was extraneous thereto. Uncontested Defendant also testified that he had also arranged other property viewings in another developement in Limassol, plaintiff company advanced no mention, links or pretentions in this regard.

15. Oddly enough in Defendant's cross examination⁷⁹, plaintiff company went as far as to contest the amount of commission that Cheng received or was to receive from the sales in issue, going to show how little or no evidence it had to establish the amount except for an unsupported email.

Simply put plaintiff failed to convince the Court that the four sales concluded concerned clients it sourced and referred to defendant. Thus on the basis of the agreements it had with defendant it cannot claim any right of commission therefrom.

Concludes that on considering all the above premised finds that it cannot uphold all Plaintiff's claims and rejects all with costs.

Hon Madame Justice Miriam Hayman

**Victor Deguara
Dep Reg.**

⁷⁹ Referred to above.