IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 286

Suit No 2026 of 1994

Between

Apex Securities Sdn Bhd

… *Plaintiff*

And

Seavest Investment Pte Ltd
Chiang Wee Tiong

… *Defendant*

GROUNDS OF DECISION

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

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Apex Securities Sdn Bhd v Seavest Investment Pte Ltd and Another

[1995] SGHC 286

Suit No 2026 of 1994
Lai Siu Chiu J
30 November 1995

1 **Judgment:**

2 Coram: Lai Siu Chiu J.

3 **GROUNDS OF DECISION**

4 The background The plaintiffs who are members of the Kuala Lumpur Stock Exchange (KLSE) sued the defendants for the sum of M$275,188.51 (the claim) arising out of share transactions carried out for the first defendant on the instructions of the second defendant. The first defendant is a Singapore company while the second defendant resides in Hong Kong.

5 The plaintiffs were unsuccessful before the learned assistant registrar in their application for summary judgment; they appealed against her decision granting the defendants unconditional leave to defend the claim. The appeal came up for hearing before me whereupon I reversed the order below and gave final judgment to the plaintiffs for the claim together with interest and costs. The defendants have appealed against my decision.

6 The pleadings In the statement of claim, the plaintiffs alleged that in or about 1985 they were engaged by the first defendant to purchase and sell shares on the KLSE. The instructions for the transactions were given orally by the second defendant to the plaintiffs' managing director Chan Guan Seng (Chan); all transactions were confirmed and followed by contract notes issued by the plaintiffs which were forwarded to the second defendant in accordance with his instructions; particulars of the claim vide the plaintiffs' statement of account dated 25 March 1992 (the statement) exceeding six (6) folios were attached to the statement of claim. In acting on such instructions the plaintiffs averred they paid monies on the first defendant's behalf, incurred contra losses as well as commission and interest charges.

7 In the alternative, if the second defendant had no authority from the first defendant to give instructions to the plaintiffs for the purchase and sale of stocks and shares, the plaintiffs claimed against the second defendant for damages for breach of warranty of authority.

8 In the defence and counterclaim, the first defendant admitted engaging the plaintiffs through the second defendant from 1989 onwards, as its stockbroker for the purpose of trading in Malaysian and Hong Kong shares on the KLSE and Hong Kong Stock Exchange (HKSE) respectively but denied that the transactions were confirmed and followed by contract notes issued and forwarded to the second defendant. The first defendant admitted that the plaintiffs paid monies for and on its behalf but contended that the statement was incorrect and denied that there were outstanding monies due and owing to the plaintiffs.

9 With regard to the Hong Kong shares the first defendant averred that the plaintiffs engaged Cresvale HK Ltd (Cresvale) to trade on the HKSE. In the

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transactions between the plaintiffs and Cresvale, the plaintiffs maintained a current account (the current account) with Cresvale where purchases and sales were debited and credited respectively. Hong Kong shares purchased were kept by Cresvale and would only be withdrawn for delivery when sold. The sale proceeds were then credited to the current account. Conversely purchases were debited to the current account.

10 The first defendant contended that shares in two Hong Kong companies Rivera and Tomson purchased on its behalf were in fact sold but the sale proceeds were not credited to the current account and not reflected in the statement which therefore was incorrect. The first defendant further alleged that it had orally agreed with the plaintiffs that the first defendant would pay Cresvale on the plaintiffs' behalf on occasions when the first defendant had surplus Hong Kong funds. The statement did not reflect certain transactions in particular four (4) which had been settled directly with Cresvale by the first defendant. The defendants counterclaimed against the plaintiffs for an account of what was due to the first defendant in respect of sale proceeds received by the plaintiffs for the first defendant.

11 In the reply the plaintiffs inter alia contended that the Rivera and Tomson shares were retained by Cresvale in which the first defendant or the second defendant or their agent had access or control, those shares were sold by the first defendant or by their agent and the sale proceeds were utilised by the first defendant. The plaintiffs denied the oral agreement alleged and if indeed the first defendant had paid Cresvale direct as alleged, the payments were made without the plaintiffs' knowledge. Further the trading lists between the plaintiffs and Cresvale did not show the outstanding sums due from the first defendant to the plaintiffs. As for the counterclaim the plaintiffs maintained they were not liable for any alleged sum paid by the first defendant directly to Cresvale in

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respect of transactions which the plaintiffs were not instructed by the first defendant to execute.

12 The affidavits Both parties filed a number of affidavits for the O 14 proceedings. A director of the first defendant Low Kam Yoke confirmed that the second defendant was appointed the company's investment manager and was authorised to give instructions to the plaintiffs. Therefore there was no question of the second defendant not having the first defendant's authority to trade on the company's behalf as pleaded in para 6 of the statement of claim. The second defendant filed an affidavit where he said:

13 1. the plaintiffs were engaged as the first defendant's brokers to trade in Malaysian shares in 1985 and to trade in Hong Kong shares in 1989;

14 2. in transactions between the Cresvale and the plaintiffs, Cresvale would not release to any third party any shares or money held by them without the written consent or instructions of the plaintiffs. Cresvale would also confirm by telex to the plaintiffs once they received funds to the credit of the current account. Neither he nor the first defendant had access or control to the current account;

15 3. the plaintiffs had sold the Rivera and Tomson shares but had not credited the sale proceeds to the first defendant in the statement or if not sold, then the shares were still with the plaintiffs or with Cresvale;

16 4. the plaintiffs' particulars of claim did not reflect the following direct payments (4) made to Cresvale (see CWT-1) by the first defendant:

Date		Cheque Nos.		Amount

18.8.89		OUB 312139		HK$176,058.75
06.9.89		OUB 312148		41,752.58
15.1.90		OUB 428858		49,800.98
31.1.90		OUB 430454		475,161.11
				HK$742,773.42

17 there were telexes from Cresvale to the plaintiffs to confirm the purchase of Tomson shares and that payments had been received from the first defendant;

18 5. the master trading list of Cresvale for the period 1989 - Feb 1990 (CWT-2) showed that there were no monies due and owing from the plaintiffs to Cresvale at all. Similarly there should be no outstanding sums due from the first defendant to the plaintiffs. However there may be monies due from the plaintiffs to the first defendant as sale proceeds of shares but not credited to the first defendant in the statement;

19 6. in 1992 he spoke to Chan on the discrepancy in the plaintiffs' statement of account between the plaintiffs and the first defendant and it was agreed that Cresvale's assistance would be sought in compiling the list of transactions to reconcile the statement of accounts. He received in March 1993 Cresvale's trading list. When he spoke to Chan on subsequent occasions on other matters, Chan did not raise the subject of the outstanding monies and he assumed Chan was in the process of reconciling the accounts. Chan did not revert to him on the discrepancies although he was supposed to, and the plaintiffs suddenly served their writ on the defendants;

20 7. it is clear that the statement does not reflect the true state of accounts in respect of the transactions between the plaintiffs and the first defendant with

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obvious discrepancies which did not tally with the first defendant's records; a trial is required to resolve the discrepancy. Counsel for the plaintiffs Mr Sum (Sum) filed an affidavit on their behalf to reply to the second defendant's affidavit. As he would have no personal knowledge of the matters in dispute, I need not dwell on his affidavit save that it exhibited exchange of letters between the plaintiffs' solicitors and Cresvale (see SCM-1 and SCM-2) confirming that the second defendant was employed by Cresvale as equity sales manager between 6 June 1988 and 20 July 1991. I believe it will be more useful to look at Chan's second affidavit (filed after the hearing below), he being the person who took instructions from the second defendant and dealt with the first defendant's account. In his second affidavit Chan deposed to the following:

21 1. the first defendant cannot deny that the second defendant's oral instructions to the plaintiffs were confirmed by the plaintiffs' contract notes for Rivera and Tomson shares which he produced (see CGS-2);

22 2. the plaintiffs received an audit confirmation statement (CGS- 3) from the first defendant's auditors acknowledging that as at 31 March 1991 the first defendant owed the plaintiffs S$90,209.65 which formed part of the claim. However the plaintiffs have not received payment of this admitted sum;

23 3. the second defendant's contention (based on Cresvale's trade list) that no monies were owing by the plaintiffs to Cresvale in incorrect because CWT-2 showed that more shares were sold by Cresvale to than it bought from, the plaintiffs. On balance therefore, there are outstanding sums owing to Cresvale by the plaintiffs arising from orders executed for and on behalf of the plaintiffs' clients including the first defendant;

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24 4. with regard to the Rivera shares, CWT-2 showed that between 11 May 1989 - 23 May 1991 the plaintiffs purchased 14,164,000 shares from Cresvale but only sold 10,978,000 to them. Therefore there was a difference of 3,186,000 shares resulting in a debit against the plaintiffs' account with Cresvale. Similarly between the period 3 August 1989 - 29 August 1991 the plaintiffs also purchased 13,163,000 Tomson shares from Cresvale thereby creating a debit in their account with the latter. Chan produced an analysis (CGS-4) of the Rivera and Tomson shares based on Cresvale's trade list;

25 5. a stock reconciliation list prepared by Cresvale (CGS-5) for 1989 for the Rivera shares showed that all Rivera shares were delivered to either the second defendant or to OCBC (Hong Kong) Limited (the Bank). The plaintiffs do not hold any of these shares for the first defendant and the assertion that the defendants had no access or control to the plaintiffs' account with Cresvale is also untrue;

26 6. it is also untrue that the first defendant had received statements from the plaintiffs for the period November 1994 - January 1995 showing no outstanding sums due to the plaintiffs. The claim was merely written off internally by the plaintiffs' accountants for accounting purposes as no payment had been made for a long time but the sum remains outstanding from the first defendant;

27 7. the (plaintiffs') statement is a complete record of all transactions executed on the instructions of the first defendant. In instances where Cresvale bought or sold Rivera and Tomson shares on the direct instructions of the defendants, such transactions will not be reflected in the statement. Such direct dealings were possible because of the peculiar situation of the second defendant being the equity sales manager of Cresvale as well as the investment manager

of the first defendant. However the plaintiffs are not obliged to and did not, include in the statement, the first defendant's direct purchase of Hong Kong shares from Cresvale.

28 The second defendant filed a reply to Chan's second affidavit in which he:

29 (i) explained that the first defendant's audit confirmation was purely for purposes of verification and it was not a request for payment. In any case it was not confirmed by the plaintiffs. Since then the first defendant realized that the statement does not reflect the true position between the parties as there are missing entries and documents which the first defendant retrieved from Cresvale;

30 (ii) cited as an example of the discrepancy in the statement 50,000 Rivera shares purchased on 1 September 1989 under contract note no.11328813 for which the first defendant paid Cresvale direct on 7 September 1989 and which was credited to the plaintiffs in the current account but which was not reflected in the statement;

31 (iii) pointed out that the alleged 'debit' balances reflected in CWT- 2 may not have been paid by the plaintiffs to Cresvale but they were paid by the first defendant and other third parties and should but were not deducted from the claim;

32 (iv) produced the first defendant's comparative table (CWT-3) between the statement and the current account on a counter by counter basis which showed certain discrepancies. It is not true, as alleged by Chan, that the Rivera shares delivered to the Bank were purchased on behalf of the first defendant as

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they do not tally with the quantity purchased by the plaintiffs; the current account showed 3,212,000 Rivera shares were purchased but 2,250,000 were delivered to the second defendant leaving 962,000 unaccounted for. It cannot also be assumed that all the shares delivered to the Bank belonged to the defendant;

33 (v) said it is untrue that he or the first defendant had access or control to the plaintiffs' account with Cresvale; all instructions for delivery of the shares to the Bank were given by Chan himself to Cresvale as reflected in three telexes (CWT-4) from the plaintiffs to Cresvale. Instructions and payments received were also confirmed by telex from Cresvale to the plaintiffs, with no objections raised. Cresvale never had a direct relationship with the first defendant;

34 (vi) pointed out that in a letter dated 30 May 1995 (CWT-5) from Cresvale to the plaintiffs' solicitors, the former said he was employed as their equity sales manager but was never their director. Cresvale also confirmed that on occasions payment had been made direct to them for the account of the first defendant but these were not reflected in the (plaintiffs') statement. However there were no purchases of shares direct from Cresvale by the first defendant;

35 (vii) in 1990 the first defendant paid a total sum of HK$7,692,956.94 to the plaintiffs' account with Cresvale and payments by third parties amounted to another HK$5,443,529.31; no payment was made by the plaintiffs to Cresvale in 1990. The 1990 statement showed that the plaintiffs received a nett sum of HK$2,888,353.22 from Cresvale but it was not credited to the first defendant's account;

36 (viii) the defendants have without success requested from the plaintiffs stock reconciliation and cash reconciliation statements. The plaintiffs have refused to render a full account to the defendants.

37 The decision The only question for the court to determine was whether the defendants' contention that the (plaintiffs') statement was incorrect had any basis on the documentation produced so as to entitle them to proceed to trial. I did not think they had raised such a triable issue fo the reasons which I will now set out, at which same time I will, where appropriate refer to counsel's submissions.

38 It should first be borne in mind that the claim, according to the statement, related to share transactions which took place between the period 1 April 1989 and 25 March 1991 and involved a large number of shares listed on the KLSE. Apart from Rivera and Tomson, the only other Hong Kong share which the first defendant traded in was Bond Corporation. Further, as pointed out in Sum's affidavit, the claim related to a running account between the first defendant and the plaintiffs in respect of all share transactions, not only to Rivera and Tomson shares. The defendants did not raise any complaints as regards the Malaysian shares or as regards the only other Hong Kong counter, Bond Corporation.

39 Another pertinent observation I would make as regards the Rivera and Tomson shares is that the defendants' complaint referred to alleged discrepancies between the (plaintiffs') statement and (Cresvale's) statements for 1989-90. According to the statement, the first purchases of Rivera and Tomson shares were made by the plaintiffs for the first defendant on 14 June and 9 August, 1989 respectively. A third relevant observation highlighted by counsel for the plaintiffs was the fact that the defendants have not claimed a defence of set-off, only a counterclaim for an account. Counsel for the plaintiffs also drew

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to my attention that his firm's first letter of demand to the first defendant (according to Sum's affidavit) was dated 19 November 1991 and not recently as the second defendant alleged.

40 Counsel for the plaintiffs was able to match the purchase contracts for the two Hong Kong shares with the payments credited by Cresvale in the current account. As an example he referred to the first defendant's first purchase on 14 June 1989 of 300,000 Rivera shares costing $60,647.50 (HK$168,544.88); Cresvale's cash reconciliation statement (CGS-6) showed that the plaintiffs paid to Cresvale HK$168,544.88 on 26 June 1989. For that reason by the date (28 June 1989) of the first defendant's second purchase of Rivera shares, CGS-6 showed nothing was owed for that share as the plaintiffs had paid up to Cresvale. In relation to the four (4) cheques totalling HK$742,773.42 counsel again drew my attention to Cresvale's cash reconciliation statement for 1989-90 (CGS-6) which showed that Cresvale made the following credit entries in favour of the plaintiffs for the sums in question, paid by the defendants:

Dates	Amounts
16.8.89	HK$176,058.75
07.9.89	42,752.58
15.1.90	49,800.98
31.1.90	475,161.11
Total:	HK$742,773.42

41 There was therefore no basis for the defendants' complaint that the plaintiffs did not give credit to the defendants for their direct payments to Cresvale. Logically if Cresvale credited the (plaintiffs') current account with payments made by the defendants, whether made with or without the plaintiffs' knowledge, the claim by Cresvale against the plaintiffs would also be correspondingly reduced and in turn the plaintiffs' claim against the defendants. On the other hand, if the second defendant sitting in Cresvale's office authorised

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transactions on the first defendant's behalf, why should the plaintiffs be concerned and why should those sales or purchases feature in the statement? What discrepancy is there? It bear mentioning also that Cresvale's 30 May 1995 letter in CWT-5 to the plaintiffs' solicitors stated (in para 3) that the cash reconciliation statement pertained to all transactions between the plaintiffs and Cresvale and were not limited to transactions carried out on the first defendant's behalf. Therefore the defendants cannot total all the purchases and sales of Rivera and Tomson shares in CGS-6 as having been transacted on the first defendant's behalf.

42 As for the defendants' other complaint that not all the Rivera shares were delivered to the Bank, counsel for the plaintiffs referred to the stock reconciliation statement of Cresvale for 1989 (CGS-5) which showed that all the Rivera shares were either delivered to the Bank or to the second defendant because the reconciliation exercise showed a nil balance.

43 Counsel for the defendants countered her opponent's last argument with the comment that there was no evidence that all the Rivera shares delivered to the Bank were for the first defendant's account and there was no evidence as to where the Tomson shares had been delivered. In regard to her first comment I noted from CGS-5 that the plaintiffs' solicitors in acknowledging receipt of the two statements by their letter dated 7 July 1995 informed Cresvale that the stock as well as the cash reconciliation statements would be used for this suit against the defendants. Presumably, if the stock reconciliation statement was not exclusive to the first defendants, Cresvale would have advised the plaintiffs and the court would have been informed. As for counsel's second comment, I noted from the second defendant's affidavits that his complaint related only to Rivera and not to, Tomson shares; I was not prepared to accept an assertion of fact from counsel which was not in any affidavit filed by the defendants.

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44 Counsel for the defendants also submitted that another reason why this matter cannot be dealt with at an O 14 stage was because Chan and the second defendant should be cross-examined on their affidavits, citing Lynde v Waithman (1895) 2 QB 100 and Ward v Plumbley (1890) 6 TLR 198.

45 In Lynde v Waithman the defendant mortgaged his property to the plaintiff in consideration of a loan from the latter. The defendant failed to pay the interest as well as the principal sums of the loan. Before commencing an action to recover the mortgage debt and interest, the plaintiff appointed a receiver to collect rent from the mortgaged property. After filing his writ the plaintiff applied for summary judgment. It was held that while the mere fact a receiver had been appointed did not prevent the application of O 14, as there appeared to be a question as to what on the true state of the account as between the mortgagor and mortgagee was due to the latter, leave to defend must be given.

46 In Ward v Plumbley the plaintiff applied for summary judgment to recover about 170 alleged to be due on accounts arising out of stock transactions. The question was whether the defendant should have leave to defend the action, which had been allowed by the judge in Chambers only on condition that he brought the money into court by way of security. The defendant appealed which appeal was allowed.

47 I rejected the submission and decided in favour of the plaintiffs because of the defendants' own document CWT-3 by which, according to the second defendant, the defendants re-organised the plaintiffs' statement of account on a counter by counter basis to show a clearer picture (para 5 of his second affidavit); I added up all the credi and debit items in CWT-3 and the difference was a debit balance of $275,189.34. Indeed that was the figure the plaintiffs

should claim from the first defendants instead of $275,188.51. At the risk of repetition, it must be remembered that the plaintiffs' claim relates to a running account. According to CWT-3 the trading in Rivera shares resulted in a credit balance of $783,707.44 while that for Tomson resulted in a credit balance of $452,197.27. These being the only transactions in dispute they should properly be the subject of a counterclaim if the defendants felt the two amounts were incorrect stating their basis but that should not preclude the plaintiffs from obtaining judgment on the claim.

48 For the above reasons I made the following orders which are now under appeal:

49 1. final judgment for the plaintiffs in the sum of M$275,188.51;

50 2. costs of the appeal to be taxed and paid to the plaintiffs by the first defendants;

51 3. the first defendant to be at liberty to proceed with the counterclaim against the plaintiffs;

52 4. the first defendant to be at liberty to amend the defence and counterclaim to be filed and served within 14 days from the date of my order;

53 5. the plaintiffs to be at liberty to file and serve their amended reply and defence to the counterclaim within 21 days of service of the amended defence and counterclaim.

54 Lai Siu Chiu
Judge

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55 30 November 1995.

Lai Siu Chiu J

Harry Wee and Sum Chong Mun (Braddell Brothers) for the plaintiffs
Carrie Ho (JC Ho & Kang) for the defendants

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