# Ng Giap Hon v Westcomb Securities Pte Ltd and Others
# [2008] SGHC 101

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| **Case Number** | : Suit 193/2007 |
| **Decision Date** | : 26 June 2008 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Choo Han Teck J |
| **Counsel Name(s)** | : Ragbir Singh Bajwa (instructed) and Kelvin Lee Ming Hui (Lee Shergill Partnership) for the plaintiff; David Chan Ming Onn and Georgina Lum Baoling (Shook Lin & Bok) for the defendants |
| **Parties** | : Ng Giap Hon — Westcomb Securities Pte Ltd; Westcomb Financial Group Ltd; Westcomb Capital Pte Ltd; Choo Chee Kong; Tan Kah Koon |

*Contract*

*Tort*

26 June 2008 Judgment reserved.

Choo Han Teck J:

1 The plaintiff was a licensed remisier and was an agent of the first defendant, a stock broking company. The latter held a "Capital Market Services" licence issued by the Monetary Authority of Singapore. This licences the company to deal in securities and also provide custodial services for securities. The second defendant was the holding company of the first and third defendants. The third defendant was a company that provided advisory services in respect of corporate finance. It also held a Capital Market Services licence. The fourth defendant was the Chief Executive Officer of the second defendant. The fifth defendant was a director of the first defendant (from 21 June 2004). The plaintiff was an agent of the first defendant insofar as he had signed an agency agreement with it. That agreement, dated 3 May 2005 ("the agency agreement"), was the basis of the plaintiff's claim for damages for breach of contract in this action. His claim against the second to fifth defendants was based on the tort of conspiracy in wrongfully causing the first defendant to breach its contract with the plaintiff. The claim concerned two parties that the plaintiff claimed were his clients and the placement shares those two clients obtained. The plaintiff claimed that he was entitled to commission in respect of the placement shares issued to them. The clients in question were Julian Lionel Sandt ("Sandt"), an individual client, and Aktieninvestor.com Ag ("Aktien"), a German fund. Sandt was the Chief Executive Officer of Orchid Capital Limited ("Orchid Capital"). About 15 March 2006 Sandt, on behalf of a subsidiary of Orchid Capital, namely, Orchid Emarb Limited, opened a trading account with the first defendant through the plaintiff.. Aktien opened an account with the first defendant. The first defendant averred that this was not done through the plaintiff, a claim that the plaintiff disputed.

2 The subject matter of the plaintiff's claim was the commissions due in respect of the placement shares in Initial Public Offerings ("IPO") that were allocated to Sandt and Aktien. The IPOs concerned were chiefly, Natural Cool Holdings Ltd ("Natural Coo") and Sweiber Holdings Ltd ("Sweiber"). Sandt subscribed for 1,500,000 shares in Natural Cool at $0.20 a share, and 750,000 shares in Sweiber at $0.355 a share. The plaintiff claimed that he was entitled to commissions on those placements by virtue of the agency agreement. Clause 6 of the agreement that the plaintiff relied on provided as follows:

> The [first defendant] shall pay [the plaintiff] a commission of 40% of the commission charged by [the first defendant] to clients on transactions that are dealt by or through the [plaintiff] in the

name of the [first defendant] during the period twelve months from the date of the commencement of this Agreement. Thereafter, the commission rate will be adjusted to 50% of the commission charged by the [first defendant] to clients on transactions that are dealt by or through the [plaintiff] in the name of the [first defendant].

Aktien subscribed to Natural Cool and Sweiber shares through the second defendant. The plaintiff claimed that Aktien ought to have been his client because the account opening form was sent by him to Aktien but the fifth defendant intervened without the plaintiff's knowledge, and told Aktien to submit the account opening form through the second defendant.

3 The plaintiff claimed that he was the person to have formally asked Aktien to open a client account with him in the first defendant company. I find that that was probably so, but it was not a fact of significance for the reasons I will elaborate on shortly. I also accept that the account was eventually opened through the second defendant instead. The account was opened at the first defendant with the second defendant as the remisier and there was no evidence before me that Aktien would not have agreed to this. The fact that the second defendant became the agent in such circumstances alone does not give the plaintiff a cause of action in the tort of conspiracy in respect of the IPO shares. It may have entitled the plaintiff to commission in respect of securities that Aktien traded through the second defendant which, if not for the intervention of the second defendant, would have been done through the plaintiff. The plaintiff's claim for commission was in respect of the IPOs which were not deals done through the plaintiff or would have been done through the plaintiff. I accept the defendants' evidence that the IPO shares were not transacted through the plaintiff (the first defendant was the placement agent), and more importantly, no commission was charged by the first defendant on those shares. It was the first defendant's prerogative not to charge commission, and if it did not do so, the plaintiff would be unable to invoke clause 6 because under clause 6, the plaintiff's entitlement would be 40% (or 50% as the case may be) of the commission charged by the first defendant. I accept the defendants' evidence that the allocation of IPO shares was a matter of goodwill and that the trading company often allocates them to favoured clients waiving any commission.

4 Counsel for the plaintiff submitted that the court should imply a term of "good faith" into the contract. The claim based on implied terms fails because clause 18 of the agency agreement expressly provided that the agreement embodied the entire agreement between the parties. Furthermore, the application of "good faith" in the present case would also have failed on account of a lack of particularization in respect of what the duties entailed, and how they were breached. The plaintiff testified at great length as to how he came to know Sandt and Aktien. He recalled his conversations with Sandt (including the ones he had recorded on a tape-recorder without Sandt's knowledge) and the subsequent instance of his taking Sandt and one of the associates on a tour of the first defendant's office. The taped conversations were played out at trial and it was clear that the plaintiff was harassing Sandt into admitting that he had recommended Aktien to the plaintiff. Sandt testified and denied that he only knew the plaintiff and no one else in any of the defendant companies. He said he had known the fifth defendant for a longer period whereas he met the plaintiff at a bar when the plaintiff went up to introduce himself when Sandt was having a drink. In the taped conversations he was trying to placate an obviously upset and angry plaintiff, and hoping that the matter would not end up in court. In my view, even if Sandt and Aktien were clients of the plaintiff for the purposes of the trading of securities, there is no evidence to persuade me that the trading company was obliged to charge commission in respect of IPO shares. In the absence of this obligation to charge commission; no duty can be implied, and without a duty, the plaintiff has no cause to claim a breach. The plaintiff alleged that there was an implied term on account of "customary practice" that he be paid a commission of 1% of the value of the placement. There was no reliable evidence of such a practice.

5 The evidence at trial showed that the second, third, fourth and fifth defendants had no substantial connection with the plaintiff's claim save for the allegation that the fifth defendant had asked Aktien to open its trading account in the first defendant by sending the form through the second defendant. There was no evidence of any concerted plan of action by the defendants and the plaintiff's cause of action based on a conspiracy cannot be substantiated. The plaintiff's evidence-in-chief referred to some surreptitious actions on the part of the first defendant as a company but he failed to persuade me that the defendants had acted in furtherance of a coherent plan. I am of the view that the plaintiff's causes of action as pleaded had not been proved. In coming to my finding that the plaintiff had no cause of action and did not prove his claim, I need not rely on the evidence concerning Raymond Low. The defendants referred to documentary exchanges with the Stock Exchange of Singapore in which the second defendant claimed that it was this person from a company known as Trondheim Consulting who introduced Aktien to the second defendant. Raymond Low was not called as a witness by either side. Neither did I require the evidence concerning one Thomas Roggla who was the chairman of a supervisory board of Aktien, but had no direct involvement in Aktien's commercial decisions. Sandt testified that he only knew Roggla superficially, and had conveyed messages to Roggla on behalf of Raymond Low only because he was familiar with the German language. Finally, I am of the view that there was no necessity in this case for expert evidence to be called. Since the parties called an expert each, I need only say that between the two, I am more inclined to the evidence of Ng Eng Tiong ("Ng"), the expert for the defendants, than to Ho Kwok Hoong ("Ho") for the plaintiff because Ng's evidence appeared more closely in line with the law. Essentially, he agreed that the trading company cannot avoid paying commission, but commissions are contractual entitlements. Ho seemed to me unsure as to what basis he had for declaring that in respect of IPO placements, 1% was the minimum commission charged.

6 In the circumstances, in view of my finding that there was no breach of contract, the plaintiff's claim based on quantum meruit must also fail. Quantum meruit cannot be made as a back-up in the event that the court finds no breach of contract. A person is not entitled to be paid for work freely given unless the circumstances show that payment was envisaged even though the amount was not made clear; otherwise, as in this case, any work freely given is free. The plaintiff's claim on quantum meruit was poorly made out in pleading, evidence, and counsel's closing submission, and I should say no more lest more is said in this paragraph on it than had been in the course of the entire action.

7 For the reasons above, the plaintiff's claim is dismissed with costs to be taxed if not agreed.

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