Lee Chang-Rung and others *v* Leonard Loo LLP and another
[2012] SGHC 174

Case Number : Suit No 259 of 2011

Decision Date : 29 August 2012

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Tan Hee Joek and Tan Hee Liang (Tan See Swan & Co) for plaintiffs; Chandra Mohan s/o Rethnam and Mabelle Tay Jia Hui (Rajah & Tann LLP) for defendants.

Parties : Lee Chang-Rung and others — Leonard Loo LLP and another

TORT – Negligence – Causation

CONTRACT – Breach

29 August 2012 Judgment reserved.

Tan Lee Meng J:

1 The first plaintiff, Mr Lee Chang-Rung ("LCR"), the second plaintiff, Mdm Lee Huey-Jen, the third plaintiff, Mr Lee Sung-Rong, and the fourth plaintiff, Mr Hu Yen-Cheng ("HYC"), are relatives who reside in Taiwan. The first defendant, Leonard Loo LLP, was a limited partnership of advocates and solicitors and the second defendant, Mr Loo Peng Chee Leonard ("Mr Loo"), was its managing partner. The defendants acted for the plaintiffs in Suit No 212 of 2009 ("Suit 212"), in which the plaintiffs made a claim against Standard Chartered Bank ("SCB") with respect to alleged misrepresentations on a structured product issued by Lehman Brothers. Suit 212 was struck out pursuant to an Unless Order requiring the plaintiffs to comply with a discovery order by a specified date. The plaintiffs, who alleged that the defendants had acted negligently and in breach of contract in the handling of Suit 212, sued the latter for, *inter alia*, damages for loss of a chance in succeeding in that suit.

Background

2 The plaintiffs are quite experienced investors but they claimed to be inexperienced investors who park their funds in fixed deposits. Between 2002 and May 2008, they invested in financial products at DBS Bank Ltd ("DBS"), American Express Bank ("AEB") and Standard Chartered Bank ("SCB"). Ms Daphne Lau ("Ms Lau") was their relationship manager at DBS who handled their investments before she left to join AEB as a relationship manager in September 2005. When AEB became a wholly owned subsidiary of SCB in February 2008, Ms Lau became the plaintiffs' relationship manager at SCB.

3 In May 2008, Ms Lau arranged for the plaintiffs to purchase from SCB a structured product (the "Lehman product"), which was issued and guaranteed by Lehman Brothers ("Lehman"). The plaintiffs, who lost US$700,000 as a result of the collapse of Lehman, sued SCB for the loss on the ground that Ms Lau had induced them to invest in the Lehman product by making false representations about the said product to them. SCB denied the allegation.

4 On 18 August 2009, SCB's solicitors, Drew & Napier ("D & N"), wrote to Leonard Loo LLP regarding the discovery of documents concerning the plaintiffs' investment experience (the

"investment documents"). This was not surprising as Ms Lau knew that the plaintiffs were experienced investors who had purchased various products such as foreign currencies, dual currency convertibles, hedge funds and structured products through their accounts with SCB. She was also aware of the plaintiffs' previous investments in DBS while she was their relationship manager at DBS.

5 On 21 August 2009, Leonard Loo LLP replied that SCB was "fishing for evidence". In view of this, SCB applied for specific discovery of the said documents by way of Summons No 5288 of 2009. On 23 October 2009, the Assistant Registrar ordered the plaintiffs to give discovery of all documents "relating to the investment experience of each of the Plaintiffs, including but not limited to all correspondence, application forms, term sheets, prospectuses, pricing statements, brochures, statements of accounts, confirmation notes and confirmation advice relating to all structured products purchased by each of the Plaintiffs during the period October 2002 to March 2008 from any bank or financial institution, whether situate in Singapore or elsewhere" (the "Order"). The deadline for complying with the Order was 13 November 2009.

6 The plaintiffs failed to furnish the required documents to SCB by 13 November 2009. On 30 November 2009, the Assistant Registrar granted an Unless Order (the "Unless Order"), which required the plaintiffs to comply with the Order by 7 December 2009, failing which Suit 212 would be struck out.

7 In an affidavit dated 7 December 2009, the plaintiffs confirmed that they were clients of DBS and disclosed that the 1st and 3rd plaintiffs had invested in Surf Deposit 02 Tranche A ("Surf Deposit 02") while the 2nd and 4th plaintiffs had invested in Surf Deposit 28 Tranche A ("Surf Deposit 28"). The plaintiffs added that they had not invested in structured products with any other bank or financial institution, whether in Singapore or elsewhere from October 2002 to March 2008. In their supplementary list of documents, the plaintiffs disclosed the following four documents (the "disclosed documents"):

(i) a Deposit Confirmation for the 1st and 3rd plaintiffs' investment in Surf Deposit 02;

(ii) a Statement of Accounts for October 2002;

(iii) a Final Term sheet for the Surf Deposit 02; and

(iv) a Credit Advice dated 7 July 2005 for the 5th payout amount for Surf Deposit 28.

8 In response to D & N's query, Leonard Loo LLP confirmed on 17 December 2009 that the disclosed documents were all the relevant documents in the plaintiffs' possession.

9 SCB's Ms Lau, who helped the plaintiffs purchase many other financial products at DBS, knew that the documents disclosed by them were incomplete. Following an application by SCB, on 3 February 2010, DBS was ordered by the Assistant Registrar to disclose documents relating to the plaintiffs' investment experience with DBS (the "DBS documents") by 24 February 2010.

10 On 24 February 2010 and 26 February 2010, DBS furnished the DBS documents to D & N. It was obvious from the disclosed documents that the plaintiffs had not disclosed many other documents relating to their investments in DBS. As such, on 4 March 2010, SCB took out Summons No 985 of 2010 to strike out the plaintiffs' action on the ground that the latter had not complied with the Order and Unless Order and had wilfully and deliberately withheld disclosure of documents which were likely to be in their possession. On 16 March 2010, Suit 212 was struck out.

11 After Suit 212 was struck out, the plaintiffs instructed JLC Advisors LLP ("JLC") to take over the conduct of Suit 212 from the defendants on 10 August 2010.

12 The plaintiffs' appeal against the striking out of their claim against SCB was dismissed by Tay Yong Kwang J ("Tay J"). On 4 March 2011, their appeal to the Court of Appeal against Tay J's decision was dismissed.

13 Claiming that the defendants had caused them to lose a chance of succeeding in their claim against SCB in Suit 212, the plaintiffs sued the latter for negligence and breach of contract in relation to the alleged lost chance as well as other matters.

Summary judgment already entered against the defendants for three parts of the Statement of Claim

14 The plaintiffs made a number of claims against the defendants for negligence and breach of contract in the present suit. These claims were pleaded under Parts A, B, C, and D of the Statement of Claim ("SOC").

15 Part A of the SOC concerned allegations of the defendants' negligence and breach of contract in the handling of the applications in Suit 212 by SCB regarding the furnishing of Further and Better Particulars of the SOC in that case.

16 Part B of the SOC dealt with the defendants' handling of SCB's application to strike out paragraph 9 of the SOC in Suit 212, the plaintiffs' appeal against the striking out of paragraph 9 ordered by the Assistant Registrar and the botching up of the amendments to paragraph 9.

17 Part C of the SOC related to the defendants' handling of the discovery application by SCB in Suit 212 and the striking out of that action.

18 In Part D of the SOC, the plaintiffs complained of miscellaneous breaches of contract and negligence on the part of the defendants in Suit 212.

19 Summary judgment has already been entered against the defendants with respect to their claims under Parts A, B, and D. In view of this, the trial only concerned Part C of the SOC, which relates primarily to the plaintiffs' claim for damages for loss of a chance of succeeding in their claim against SCB in Suit 212.

Defendants' submission of no case to answer

20 After the plaintiffs closed their case on Part C of the SOC, the defendants submitted that they had no case to answer. The effect of such a submission is well-known. In *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549, the Court of Appeal reiterated (at [37]) that a submission of "no case to answer" by a defendant succeeds if the plaintiff's evidence, at face value, does not establish a case in law; or (b) the evidence led by the plaintiff is so unsatisfactory or unreliable that his burden of proof has not been discharged.

21 In *Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart* [2012] 1 SLR 847, Woo Bih Li J summarised (at [34] to [35]) the position on a submission of no case to answer as follows:

> 34 As mentioned above, Dr Lui elected to make a submission of no case to answer and not to call any evidence at the close of the case for Smile. This was on 26 September 2011. The

principles governing the effect of such a submission are well-established and can be summarised as follows:

(a) The result of an election by Dr Lui to make a submission of no case to answer is that the court is left with only Smile's version of the story. If there is some *prima facie* evidence (*ie*, evidence which is not unsatisfactory and not unreliable) that supports the essential elements of Smile's claim, the court should accept such evidence: see *Bansal Hemant Govindprasad v Central Bank of India* [2003] 2 SLR(R) 33 ("*Govindprasad*") at [10], [11] and [16].

(b) Even if there is some *prima facie* evidence that supports the essential elements of Smile's claim (*ie*, if limb (a) has been satisfied), the court must still consider whether that claim has been established *in law*: see *Govindprasad* at [11].

35 I should elaborate that Dr Lui's election did not mean that I was obliged to accept every allegation by Smile. For example, if Dr Tan gave evidence on a disputed conversation between Dr Lui and himself, then in the absence of evidence from Dr Lui, I should accept Dr Tan's evidence unless his evidence was itself unsatisfactory or unreliable. The disputed conversation would be a matter within the personal knowledge of Dr Tan and Dr Lui. However, if Dr Tan gave evidence on an allegation pertaining to his own intention which was not disclosed to Dr Lui, then the absence of evidence from Dr Lui on this point was neutral since he would have had no personal knowledge of that intention. In a third example, if Dr Tan gave his personal opinion on what a provision in the Contract meant, the absence of any opinion by way of evidence from Dr Lui was again neutral. Dr Tan's opinion would not be an expert opinion. Dr Lui would still be entitled to advance his case on the interpretation of that provision through submissions from his counsel.

22 It is also worth noting that in *Relfo Ltd (in liquidation) v Bhimji Velji Jadva Varsani* [2008] 4 SLR(R) 657 ("*Relfo*"), Judith Prakash J explained (at [20]) that "a *prima facie* case is determined by assuming that the evidence led by the plaintiff is true, unless it is inherently incredible or out of all common sense or reason".

23 It follows that in the present case, the defendants' submission of no case to answer will succeed if the plaintiffs did not establish a *prima facie* case in law or if the evidence led by them was so unsatisfactory or unreliable that their burden of proof was not discharged. Needless to say, it does not help a plaintiff's case if he makes admissions that undermine the foundation of his own case against the defendant.

Law on negligence and breach of contract

24 The plaintiffs' claim for loss of a chance of succeeding in Suit 212 is based on negligence as well as breach of contract.

25 In relation to the plaintiffs' action in tort, it is noteworthy that in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, the Court of Appeal stated (at [21]) as follows:

> It is trite law that, in order to succeed in a claim under the tort of negligence, a claimant has to establish that (a) the defendant owes the claimant a duty of care; (b) the defendant has breached that duty of care by acting (or omitting to act) below the standard of care required of it; (c) the defendant's breach has caused the claimant damage; (d) the claimant's losses arising

from the defendant's breach are not too remote; and (e) such losses can be adequately proved and quantified ....

26 In the circumstances of the present case, where the defendants have submitted that they had no case to answer, the court will determine whether the plaintiffs had established a *prima facie* case that the breach, if any, was an effective cause of the striking out of Suit 212.

27 Similarly, in the case of the plaintiffs' claim in contract, the court must be satisfied that they established a *prima facie* case that the losses suffered were caused by the defendants' breach of contract. In *Asia Hotel Investments Ltd v Starwood Asia Pacific Management Pte Ltd and another* [2005] 1 SLR(R) 661, the Court of Appeal explained (at [144]):

> Breach of a contract *per se* does not give rise to damages. Loss must be shown to have arisen from the breach and in this case the loss of the chance …. must be shown to have been caused by the breach or, putting it another way, the loss must not be too remote. As the learned authors of *Anson's Law of Contract* (28th Ed, 2002), state at p 600:
>
> > In order to establish a right to damages the claimant must show that the breach of contract was a cause of the loss which has been sustained in the sense that the breach of contract is the 'effective' cause of the loss, as opposed to an event which merely gives the opportunity for the claimant to sustain the loss.

The plaintiffs' main witness

28 Before applying the law to the facts in this case, the credibility of the first plaintiff, LCR, who was the plaintiffs' main witness, must be considered. The most significant feature of the trial was his absolutely unreliable and unsatisfactory evidence, which when coupled with his rather surprising admissions, thoroughly undermined the plaintiffs' claim against the defendants.

29 LCR, a university graduate and a businessman who manages a sizeable business, prevaricated and contradicted himself on countless occasions. He gave far-fetched excuses for constantly changing his evidence. Among other things, he claimed that he gave totally conflicting evidence because he did not concentrate when answering earlier questions posed to him or had answered the questions negligently. He also said that his inconsistent answers were due to a slip of the tongue. For good measure, he also claimed that he could not answer probing questions or had contradicted himself because of nervousness. The more he testified, the more he undermined his own credibility as well as the dogged, and sometimes desperate, attempts of his counsel, Mr Tan Hee Joek, to shore up the plaintiffs' case.

30 A good example of how tedious it was to cross-examine LCR is his evidence on a letter of complaint that he sent to SCB about Ms Lau on 29 September 2008 (the "29 September letter"), which was in the following terms:

> I wrote this letter with immense disappointment in the professionalism of your staff. I have unknowingly become a victim of this unprofessional tragedy.
>
> ....
>
> Out of my USD1,800,000 portfolio with the bank, my banker advised me to invest USD700,000 into this single product and single issuer. 39% of my entire portfolio was invested into a single product, is this what portfolio allocation is all about. Such concentrated risk was advised by my

trusted banker!

….

[Ms Lau] never once mentioned to me that my LIBOR linked note was issued by Lehman Brothers! Hence I was never aware that I had any exposures to Lehman Brothers. *To my horror, I only found out that the investment was issued by Lehman when I looked thought my bank documents on 11th September 2008, two working days before Lehman's collapse.* ... [A] sense of betrayal engulfed me. How could my trusted banker stabbed (*sic*) me with the non-disclosure of issuer risk? Why was the issuer not mentioned even when there were signs that Lehman was having problems. Actions could have been taken if it was made known to me earlier. *This horrendous act murdered my trust in the bank and its employees.*

[emphasis added]

31 When asked whether he stood by the contents of the 29 September letter, LCR was very evasive as he testified as follows:

Q: You agreed with the contents [of the letter]?

A: I agreed to the contents *but this is not the truth.*

....

Q: Mr Lee, ... are the contents of this letter true ….?

A: I signed on this letter.

....

Q: Do you agree with the contents of this letter? Do you agree that the contents of this letter are true.

A: I agree to the contents.

Q: So, *according to you, the contents of this letter are true*?

....

A: *Yes, it's true*.

[emphasis added]

32 After claiming that the contents of the 29 September letter were true, LCR admitted that many false allegations were made against Ms Lau in the said letter. To begin with, he agreed that his allegation that Ms Lau had advised him to invest US$700,000 in the Lehman product was patently false. He also conceded that his allegation that "such concentrated risk was advised by my trusted banker" was not true.

33 LCR's assertion in the 29 September letter that he was not aware that he had purchased a Lehman product until two working days before Lehman collapsed was another barefaced lie. When he

was referred to the transcript of a taped telephone conversation with Ms Lau on 13 March 2008, which revealed that he knew that he was being offered a Lehman product, LCR admitted that Ms Lau had informed him that the product in question was a Lehman product and that the relevant documents forwarded to him by Ms Lau made it clear that Lehman was the issuer and guarantor of the product.

34 LCR tried to downplay the 29 September letter by saying that the blatant lies in the said letter were merely "serious mistakes" on his part. The defendants' counsel, Mr Chandra Mohan, rightly retorted that the false statements in his letter to SCB had nothing to do with his mistakes, after which LCR made the following damning admission:

> Q: [D]o you know that there were false statements in this letter when you sent it out?
>
> ....
>
> A: Yes
>
> Q: .... So my case is very simple. *You were prepared to lie and make false statements in an attempt to get back your $700,000. Am I correct, in this letter?*
>
> A: I admit my mistakes.
>
> Q: Yes or no?
>
> A: *Yes*.
>
> [emphasis added]

35 As the trial progressed, it became very clear that LCR was prepared to lie in court in his desperate attempt to recoup from the defendants the loss of US$700,000 suffered by the plaintiffs when they invested in the Lehman product.

Whether the plaintiffs suffered the loss of a real or substantial chance

36 The plaintiffs' primary claim in Part C of their SOC is that they lost a chance to succeed in Suit 212 because of the defendants' actions. At the outset, it must be stressed that it is not the loss of any chance that entitles a plaintiff to damages. In *Allied Maples Group Ltd v Simmons & Simmons (a firm)* [1995] 1 WLR 1602 ("*Allied Maples*"), where the loss suffered by a plaintiff as a result of the defendant's negligence was dependent on the hypothetical action of a third party, the English Court of Appeal held that in such a case, the plaintiff is entitled to damages if he can prove that there was a "real or substantial" chance and not merely a speculative chance of that action being taken. In *Bank of Commerce and Credit International SA (in liquidation) v Ali and Others (No 2)* [2002] 3 All ER 750 ("*BCCI v Ali"*), which concerned the loss of a chance of employment, the English Court of Appeal reiterated this principle and held that a claimant must prove on a balance of probabilities that he had lost a real or substantial chance rather than a speculative one.

37 Had Suit 212 not been struck off, a judge would have had to decide whether or not the plaintiffs' claim against SCB had any merit. As the defendants in the present proceedings submitted that they had no case to answer, the court must be satisfied that the plaintiffs had established a *prima facie* case that they had lost a real or substantial chance in succeeding in Suit 212 when that suit was struck out before the question of assessment of damages arises. This is clear from *Allied*

Maples, where Stuart-Smith LJ stated (at p 1614):

> [T]he plaintiff must prove *as a matter of causation* that he has a real and substantial chance as opposed to a speculative one. If he succeeds in doing so, the evaluation of the chance is part of the assessment of damage, the range lying somewhere between something that just qualifies as real or substantial on the one hand and near certainty on the other.
>
> [emphasis added]

38 Stuart-Smith LJ's view that a plaintiff must "prove as a matter of causation that he has lost a real or substantial chance" before the question of assessment of damages arises was endorsed by Robert Walker LJ in *BCCI v Ali* (at p 771).

39 Whether the plaintiffs had suffered a real and substantial loss of a chance in succeeding in Suit 212 depends on the strength of their case in that suit. The plaintiffs made no effort whatsoever to establish that they had a real and substantial chance of succeeding in Suit 212. Instead, they demolished their own case in the present proceedings when their main witness, LCR, astoundingly conceded that the plaintiffs' case in Suit 212 was founded on a blatant lie that Ms Lau had misrepresented the Lehman product to them. Equally astonishing was his admission that the plaintiffs had a "hopeless" case against SCB in Suit 212.

40 As mentioned, in Suit 212, the plaintiffs portrayed themselves as inexperienced investors who invested primarily in fixed deposits. This was obviously untrue. When the defendants' counsel, Mr Chandra Mohan, questioned LCR on his involvement in various sophisticated financial products on a regular basis, he admitted as follows:

> Q: Mr Lee, you seem to be doing about four or five different sets of accumulators per month. Would you agree that that is correct?
>
> A: According to these statements, yes, but I would like to explain.
>
> ....
>
> Q: *So you will be buying investment products five, six, seven times in a month?*
>
> A: *Depends on the market and the recommendation of the consultant.*
>
> [emphasis added]

41 The nub of the plaintiffs' case in Suit 212 was pleaded in paragraphs 3, 9 and 10 of the SOC in Suit 212 as follows:

> 3 On or about 13 March 2008, the Plaintiffs through their representative, the 1st Plaintiff, were wrongly orally advised by the [SCB's] Relationship Manager, Ms Daphne Lau ... to buy the [Lehman product] .... The Plaintiffs are conservative customers with the Defendant and placed most of the monies with the Defendant in the form of fixed deposits.
>
> ....
>
> 9 In order to induce the Plaintiffs to buy the Product, Ms Lau, on or about 13 March 2008, in a telephone conversation orally represented in English and/or Mandarin to the 1st Plaintiff,

which she intended to be communicated to the Plaintiffs the following

Particulars

(i) This is a safe investment

(ii) This is 100% principal protected.

(iii) The interest for the Product is at 7.8% (3 months LIBOR 0-7%)

(iv) There is no risk.

(v) There is a guaranteed return of the Plaintiffs' principal amount with a higher interest.

10 Acting on the faith and the truth of these representations as stated in paragraph 9 and in the belief that the same is true and so induced thereby, the Plaintiffs bought the Product and invested a total of US$700,000 on or about March 2008 therein.

42 For a start, the allegation in paragraph 3 of the SOC in Suit 212 that Ms Lau had wrongly advised the plaintiffs to invest US$700,000 in the Lehman product was totally false. As mentioned earlier when the 29 September letter was discussed, LCR admitted that it was not true that Ms Lau had advised him to invest US$700,000 in the Lehman product. In view of this, the plaintiffs' allegation in paragraph 8 of the SOC in Suit 212 that SCB had breached s 27 of the Financial Advisors Act (Cap 110, Rev Ed 2007) by recommending the Lehman product to them without having a reasonable basis for making the recommendation was absolutely untrue.

43 Similarly, the allegations against SCB in paragraphs 9 and 10 of the SOC in Suit 212 rested on a pack of lies. The transcript of the telephone conversation between LCR and Ms Lau on 13 March 2008 revealed that none of the misrepresentations alleged in paragraph 9 of the SOC had been made by her.

44 The first allegation in paragraph 9 of the SOC in Suit 212 was that Ms Lau had misrepresented to the plaintiffs that the Lehman product was a "safe" investment. LCR totally undermined this allegation when he testified as follows:

Q: Do you agree with me that Ms Lau *never told you that this is a safe investment*? ... Yes or No?

A: Yes.

Q: Okay. So in Court, this... allegation would have failed, you agree? Yes or No?

A: Yes.

[emphasis added]

45 LCR next conceded that the allegation in paragraph 9 of the SOC in Suit 212 that Ms Lau had misrepresented the position on principal protection, lack of risk and guaranteed returns was also false as he testified as follows:

Q: ... In the telephone conversation on the 13th of March 2008, [Ms Lau] *never told you that this is a 100% principal protected product*? Do you agree...?

A: Yes.

Q: .... In the telephone conversation on the 13th of March 2008, she *never told you that "there is no risk*". Do you agree?

A: Yes, I agree.

Q: In the telephone conversation on the 13th March 2008, she *never told you point (v) that "There is a guaranteed return of the Plaintiffs' principal amount with a higher interest".* Do you agree?

A: Yes.

[emphasis added]

46 Apart from conceding that none of the allegations of misrepresentation by Ms Lau in paragraph 9 of the SOC in Suit 212 were true, LCR also admitted that the allegation in paragraph 10 of the said SOC that the plaintiffs were induced by Ms Lau's misrepresentations to invest US$700,000 in the Lehman product was also untrue. For a case of misrepresentation to succeed, the misled party must have been induced by the misrepresentation in question to enter into the contract: see, for instance, *Horsfall v Thomas* (1862) 1 H & N 90. As LCR agreed with the defendants' counsel that the plaintiffs had made a false allegation that Ms Lau's misrepresentations had induced them to buy the Lehman product, it followed that the plaintiffs' case on misrepresentation in Suit 212 had no leg to stand on.

47 In view of LCR's startling admissions, it was not surprising that he testified during the first tranche of the trial that Suit 212 was a "hopeless" claim against SCB. The relevant part of the proceedings is as follows:

Q: So do you agree that your case against the SCB was a hopeless case on the basis of all these false statements that you put down here in your statement of claim? Do you agree or not?

A: *Yes, according to these documents, I have to agree.*

....

Q: *.... [Y]ou agreed with me that your case against SCB was hopeless ...*

A: *Yes, this is because of our negligence.*

[emphasis added]

48 When the second tranche of the trial commenced on 18 April 2012, LCR contradicted his earlier evidence regarding the hopelessness of his claim against SCB in Suit 212 and claimed that the chance of the plaintiffs' succeeding in Suit 212 was "not big". When asked to explain why he had confirmed in the first tranche of the trial that his case in Suit 212 was a hopeless case, LCR rambled on for a very long time without giving a proper explanation for his change of position.

49 Significantly, LCR testified that he had understood Mr Chandra Mohan's questions about the hopelessness of the plaintiffs' case against SCB in Suit 212 during the first tranche of the trial. He also confirmed that his earlier evidence on the hopelessness of his claim against SCB was "true". The relevant part of the proceedings is as follows:

> Q: Listen to me. You *understood* [*my questions* on the hopelessness of the plaintiffs' case in Suit 212] and your evidence today is that *your answers on that day were truthful*. Am I correct? "Yes" or "no"?
>
> A: *Yes*.
>
> ….
>
> Q: Right. According to the questions I asked you and the information I showed to you, you agree that your answers to Court on the second day were truthful. Am I correct? "Yes" or "no"?
>
> A: Yes.
>
> [emphasis added]

50 When questioned on why he had changed his mind when his earlier testimony that the plaintiffs' case in Suit 212 was hopeless was true, LCR testified that he had changed his evidence on the hopelessness of the claim in Suit 212 because he had important evidence that Mr Loo did not obtain for him. He did not elaborate on what he meant and the court was left absolutely in the dark as to what he was talking about.

51 In view of LCR's damning admissions in the present proceedings that the plaintiffs' allegations of misrepresentation and inducement in their SOC in Suit 212 were patently false, I agree with his earlier evidence that the plaintiffs' claim in Suit 212 was hopeless and doomed to fail. As the plaintiffs would, on their own evidence in the present case, have failed in their claim for damages from SCB in Suit 212, they did not establish a *prima facie* case that they had suffered the loss of a real or substantial chance of succeeding against SCB in Suit 212. In view of this, their claim for damages under Part C of the SOC in the present suit for the loss of a chance is dismissed.

52 For the sake of completeness, reference must be made to the position of the fourth defendant, Mr Hu Yen-Cheng ("HYC"), who had a separate cause of action against SCB in Suit 212 as he signed separate contracts with SCB. HYC said that LCR did not tell him about the latter's conversation with Ms Lau and when cross-examined, he admitted that he did not rely on Ms Lau's telephone conversation with LCR on 13 March 2008. That being the case, he had no chance of succeeding against SCB as the alleged misrepresentations by Ms Lau that were pleaded in Suit 212 were, on his own evidence, never made to him.

Whether the defendants' alleged negligence or alleged breach of contract caused Suit 212 to be struck out

53 Although the plaintiffs' case may be dismissed on the ground that they did not establish a *prima facie* case that they had a real or substantial chance of succeeding in Suit 212, I will, for the sake of completeness, consider whether their evidence, in the face of a submission of no case to answer by the defendants, established a *prima facie* case that the defendants had caused Suit 212 to be struck out.

54 Suit 212 was struck out for the sole reason that the plaintiffs failed to disclose the DBS documents. As such, the relevant question was whether or not there was *prima facie* evidence of a causal connection between the defendants' alleged negligence or breach of contract and the plaintiffs' failure to fully disclose their investment experience in DBS.

55 In their closing submissions, the plaintiffs asserted at paragraph 279 as follows:

> If not for the Defendants' negligent advice on the Plaintiffs' discovery obligations, the Plaintiffs would not have been exposed to the Discovery Order, followed by the Unless Order and finally the Striking Out Order. The appeals to Tay J and the Court of Appeal that followed the Striking Out Order were direct and foreseeable consequences of the Defendants' negligence and breach of retainer ....

56 Mr Loo's advice on the plaintiffs' discovery obligations was first set out in an email on 11 August 2009, in which he informed LCR that he was preparing for discovery and explained as follows what the discovery of documents entails:

> As a matter of update, we are now preparing the discovery stage of your civil suit against the Defendant. This involves the *full disclosure* of documents for this civil suit to the High Court by both the Plaintiff and the Defendants.
>
> [emphasis added]

57 The Chinese words in the said e-mail, as translated, were as follows:

> We are now helping you in the exchange of documents with the bank defendant. During civil proceedings, the plaintiff and the bank defendant must exchange documents so that the court has the documents relating to the civil proceedings.
>
> We would also be applying to the court to force the bank defendant to hand over documents that are favourable to your legal proceedings, especially your risk analysis document.

58 The plaintiffs contended that Mr Loo's advice on 11 August 2009 was insufficient to impress upon laymen unfamiliar with the process of discovery in the Singapore courts what their discovery obligations entailed. They also contended that they were not sure about their discovery obligations because in a telephone conversation on 11 November 2009, which was taped, Mr Loo stated as follows:

> [I]n the first place, you have to tell me how many products you have first. Then if you think that your documents you already don't have them, or when you move house you don't have them or when you move house you don't have already or whatever don't have, you *must be frank and honest to the court....*
>
> *If you don't provide, er, the court does not know, the other party doesn't know too, if I don't know also, then no one would know lah.*
>
> This has nothing to do with this case. But, if you --- you don't provide, suddenly they find out that you have invested in this place previously, they may be able to tell the court again to compel you, say, hey, this thing, you submit again ….
>
> *... [B]asically, you have to --- you have to decide how much you want to give him. That right of*

control is in your hands because basically the documents are with you, er, what you want to tell him, it's your own decision.

[emphasis added]

59 Mr Loo's statement that the defendants had to decide how much to disclose to the other party was clearly off the mark. However, that statement must be read in the context of the entire conversation, during which Mr Loo told LCR that he "must be frank and honest to the court" as well as the numerous occasions in which Mr Loo emailed and spoke to the plaintiffs on what they had to do in relation to disclosure of the DBS documents. Furthermore, Mr Loo had told the plaintiffs to be frank and honest in complying with court orders. LCR testified that he understood what being "frank and honest" to the court meant. The relevant part of the proceedings is as follows:

Q: [Mr Loo is] telling you [that] you must be frank and honest and tell the Court "I bought or I didn't buy". When he's telling you to be "frank and honest", what did you understand by this?

A: I have to tell things frankly.

Q: What does that mean?

....

A: I should provide things that I need to ... provide.

....

Q: .... What about the word "honest". What did you understand by this when Leonard Loo told you [that] you must be honest?

A: *Not to hide things.*

Q: Right. *So you agree with me that Leonard Loo had told you [that] you must not hide things and that you must provide to Court all the documents that are needed to be provided under the Court Order?* Do you agree? Yes or no?

A: Yes, I agree.

....

Q: Is he not telling you that if you have these documents, you must declare them and tell the Court?

A: Yes.

[emphasis added]

60 The plaintiffs asserted in their closing submissions at paragraph 46 that the defendants should have advised his clients to accede to SCB's request for discovery since it was an issue in Suit 212 whether or not they were experienced investors. In his telephone conversation with LCR on 11 November 2009, which was taped, Mr Loo did this as he said as follows:

In the reply pleadings [SCB] had mentioned that ... you are all very experienced investors. [SCB]

says because you are a very experienced investor, [it] wants you to prove your previous investment background …

….

61 Although the plaintiffs insisted that they were unsure of their discovery obligations, they were aware that they had to disclose all the DBS documents because SCB knew that they had invested in products akin to the Lehman product while Ms Lau was their relationship manager at DBS. That the plaintiffs knew that they had to furnish the records of their investments in DBS was conceded in paragraph 87 of the plaintiffs' closing submissions, which was as follows:

> [Mr Loo] negligently advised in the same telephone conference that the 1st plaintiff had to disclose [his] investments in structured products in DBS because SCB knew that the Plaintiffs had structured product investments with DBS.
>
> ….
>
> Again, such an advice is wrong and misleading since the duty to disclose does not depend on what the opponent knows what documents one has. What the opponent knows is an irrelevant consideration. Even if the opponent does not know what documents one has, one is duty bound to disclose all documents that are relevant and that are in [one's] power, possession or custody.

62 I agree that Mr Loo's advice that the DBS documents had to be disclosed because of Ms Lau's knowledge is off the mark and that the duty to disclose documents has nothing to do with what the other party knows. However, for the wrong reason, Mr Loo had made it plain that the DBS documents had to be disclosed by the plaintiffs. Despite this, the plaintiffs chose not to disclose all the documents relating to their investment experience in DBS to Mr Loo or to SCB.

63 In his e-mail to LCR on 3 November 2009, Mr Loo furnished a detailed list of what must be disclosed to SCB as follows:

> In such event, the Defendant has requested the following documents from the Plaintiff by 13 November 2009.
>
> *All documents relating to the investment experience* of each of the Plaintiffs in *structured products* including but not limited to all:-
>
> a) Correspondence;
>
> b) Application forms;
>
> c) Term sheets;
>
> d) Prospectuses;
>
> e) Pricing statements;
>
> f) Brochures;
>
> g) Statements of accounts;

h) Confirmation notes; and

i) Confirmation advice relating to all investment products.

These investments were purchased by each of the Plaintiffs during the period October 2002 to March 2008 from any bank or financial institution, in Singapore or in any other country.

As you are aware, structured products are investments similar to the 10Y NC3m Callable LIBOR Range Accrual Note such as LIBOR-linked notes which you [purchased] from DBS Bank. They can be linked to equities, currencies, commodities and credit swaps.

[emphasis added]

64 LCR admitted that he "basically understood" the 3 November 2009 email with the exception of the words "commodities and credit swaps". After sending this e-mail, Mr Loo telephoned LCR on 11 November 2009 and asked whether there was anything that the latter did not understand in the said e-mail. LCR did not seek any clarification of his discovery obligations. The relevant part of the transcript of the telephone conversation, in which Mr Loo asked LCR to be "frank and honest" with the court, was as follows:

LCR: Still need to go to the bank.... Moreover, now [Ms Lau] mentions *DBS* by name, ... *this --- consultant was the consultant who handled for me last time* ah.

Mr Loo: Ah, *correct, correct*.

... That's why, now --- you have to ... go and *consider carefully* did you ever invest in this type of similar products in Taiwan ... or in other places? If you are saying you have never invested before, we will tell him we have never invested before. ....But if the court asks us to prove our investment experience, *we have to let the court know*. This is the court who wants to know about this matter.

….

The main thing is that is to say ... you yourself must be *frank and honest and tell the court I bought or I didn't buy.*

[emphasis added]

65 LCR testified that he understood that Mr Loo had asked him in the telephone conversation on 11 November 2009 for a list of all structured products that the plaintiffs purchased between 2002 and 2008 and that the plaintiffs had failed to provide the said list to Mr Loo. The relevant part of the proceedings is as follows:

Q: [Y]ou knew that the Court required you to produce the documents by the 13th of November.... Whatever [Mr Loo] told you that it was not relevant, the Court has ordered you to produce these documents, right? On this day, after knowing that the Court required you to produce these documents, were you willing to provide these documents?

A: Yes, *I ... should have provided these*.

Q: You should have or you were willing to provide these documents.

A: I should have provided.

....

Q: So *you know* that you should have provided but you did not provide. Correct? Yes or no?

A: *Yes.*

[emphasis added]

66 LCR also testified that Mr Loo had advised him on the consequences of failing to comply with the Unless Order and he accepted that it was the plaintiffs' responsibility to furnish the documents required under the Order and Unless Order. More importantly, LCR admitted that he could have obtained the requisite documents from DBS to discharge his discovery obligations in relation to his investments with that bank. The relevant part of the proceedings is as follows:

Q: [I]f you had asked your [DBS relationship Manager] for a listing of all the products you had purchased in DBS Bank, would she have given it to you? Is there any reason for her not to give it to you?

A: Yes, if I want ... to ask for this, she will give me.

67 The fourth defendant, HYC, also admitted that he could have asked DBS for the relevant documents but he did not do so.

68 Evidently, LCR did not take his discovery obligations seriously despite having been advised by Mr Loo of the consequences of non-compliance with the Unless Order. The same may be said of HYC. The truth was that the plaintiffs were unwilling to disclose all the DBS documents. LCR admitted that he was "quite worried" that if his investment experience was revealed to the court, his case against SCB in Suit 212 would not be believed. This explained why his testimony was peppered with admissions that he was unwilling to reveal his entire investment experience. From the plaintiffs' own evidence, it was evident that their assertion that they did not know what to disclose in relation to the Order and Unless Order cannot be countenanced.

Plaintiffs thwarted Mr Loo's attempt to obtain the DBS documents from DBS

69 Apart from failing to furnish the DBS documents themselves, it was clear from the plaintiffs' own evidence that LCR frustrated Mr Loo's frantic attempts to obtain the DBS documents directly from DBS so as to comply with the Unless Order.

70 After SCB obtained the Unless Order, Mr Loo sent a letter dated 2 December 2009 to DBS, in which he explained that he represented the plaintiffs in Suit 212, enclosed a copy of the Unless Order, requested the bank to forward the DBS documents to him on the plaintiffs' behalf within three days and undertook to pay the photocopying charges for the requested documents.

71 Mr Loo emailed the plaintiffs on 3 December 2009 to inform them that he had written to DBS to request that the documents required to comply with the Unless Order be sent to him. The said email to the plaintiffs, which referred to the type of documents required, was as follows:

Kindly be informed that the Court has ordered the Plaintiffs to furnish *the following documents relating to their investment experience* of each of the Plaintiffs in structured products by 7 December 2009.

a) *Correspondence;*

b) *Application forms;*

c) *Term sheets;*

d) *Prospectuses;*

e) *Pricing statements;*

f) *Brochures;*

g) *Statements of Accounts;*

h) *Confirmation notes; and*

i) *Confirmation advice relating to all investment products purchased by each of the Plaintiffs during the period October 2002 to March 2008 from any bank or financial institution, whether situate in Singapore or elsewhere.*

Further, if the Plaintiffs and/or its Solicitors fail to comply *strictly* with the Order of Court, the Plaintiffs' Writ of Summons (Amendment No 2) and Statement of Claim (Amendment No 2) *be struck out and the action against the Defendant be dismissed with costs without further Order of Court.*

As you are aware, structured products are investments similar to the 10Y NC3m Callable LIBOR Range Accrual Note such as LIBOR-linked notes which you purchased from DBS Bank.

Further, we have [written] to the DBS Bank Ltd to request for all the documents. Accordingly, a copy of the letter dated 2 December 2009 is enclosed for your kind attention.

We confirm your instructions that the Plaintiffs only have such investments with DBS Bank Ltd.

[underlining in original, emphasis added]

72 Despite the urgency of the matter, LCR did not contact DBS to instruct his relationship manager to co-operate with Mr Loo. When his DBS relationship manager, Ms Louise, contacted him after Mr Loo spoke to her about the DBS documents, LCR had a golden opportunity to instruct her to hand over the DBS documents to enable the plaintiffs to comply with the Unless Order. LCR said that Ms Louise called him three times on 3 or 4 December 2008 and that she left him a message to return her call but his phone was switched off because he was busy entertaining a guest. He added that he returned Ms Louise's call during lunch time. Strangely, he did not instruct Ms Louise to hand over the DBS documents to Mr Loo to meet the deadline in the Unless Order. Shockingly, he even feigned ignorance as to what Mr Loo had wanted from DBS and testified as follows about what he told Ms Louise:

Q: Okay, so did you tell [Louise] not to provide this information?

A: *No. I only told [her] that I did not know.* Because at that time, I knew that I needed to sign and I said that I had no time to deal with this.

Q: So, Mr Lee, when this Louise is telling you that he got a letter from your own lawyers, right. Surely you wanted to find out what was this information that he requested ...?

A: Yes, my bank information.

Q: Yes, What bank information? *Did you ask what bank information?* Can't be the money you have in your bank account, right? What information was Mr Leonard Loo asking from Louise? Did you ask him? Yes or no, Mr Lee?

A: *No. He only said that he sent a letter to them. He only said that he requested for information but he did not say what information.*

[emphasis added]

73 I do not believe that LCR did not know what documents Mr Loo wanted from DBS as he knew all along that the DBS documents were required to comply with the Unless Order. It is crucial to note that LCR testified that if he had asked Ms Louise to hand over the DBS documents to Mr Loo at the material time, she would have done so. The relevant part of the proceedings is as follows:

Q: [S]o because you said ... you did not know about this, DBS did not give any information to Mr Leonard Loo, correct? Correct?

A: Yes.

....

Q: [O]n that day, *if you had asked Louise to provide details of all structured products you've been purchasing with DBS*, [she] *could have provided you this information.* Correct? Yes or no?

A: Yes.

[emphasis added]

74 Why LCR thought that entertaining his guests was more important than complying with the Unless Order cannot be fathomed. Subsequently, he added more excuses for his failure to instruct Ms Louise to hand over the DBS documents to Mr Loo. He even said that as he had been negligent, Mr Loo should have reminded him to comply with the Unless Order. Finally, in desperation, it was even asserted that Mr Loo should have warned them that he had a duty under Rules 56 and 58 of the Legal Profession (Professional Conduct) Rules to cease to act for them if LCR refused to disclose documents showing his investments in structured banks other than DBS. They added in paragraph 101 of their closing submissions that if the defendants "had given such a stern warning and advice, it would be very clear to [them] that their obligation to provide discovery was a serious obligation and not to be trifled with". In the face of an Unless Order, the effect of which had been explained to them, it is surprising that the plaintiffs ran such an argument.

75 Notably, when SCB applied to strike out the plaintiffs' claim in Suit 212 following the disclosure by DBS of the DBS documents, LCR continued to perpetuate the lie in his affidavit opposing the

application that the plaintiffs were of the view that they only invested in fixed deposits in DBS and that they thought that Surf Deposits were fixed deposits. This argument did not impress the Assistant Registrar, who struck out Suit 212. As mentioned, neither Tay J, who dismissed the appeal against the Assistant Registrar's decision, nor the Court of Appeal, which affirmed Tay J's decision, were sympathetic to the plaintiffs' case against the striking out of Suit 212 by the Assistant Registrar.

Conclusion on the effective cause of the loss

76 Suit 212 was struck out because of the plaintiffs' failure to produce the DBS documents. Whether or not Mr Loo had, as alleged by the plaintiffs, given them the impression that they could choose what documents to furnish to the other party, there was no doubt that the plaintiffs knew that such a choice did not extend to the DBS documents because SCB's Ms Lau had arranged for them to buy structured products from DBS on many occasions when she was their former relationship manager at that bank.

77 Contrary to what the plaintiffs asserted, Mr Loo's inadequate or wrong advice had nothing to do with the non-disclosure of the DBS documents. The emails sent by Mr Loo to LCR regarding the discovery of the DBS documents were unequivocal as to what had to be disclosed to SCB. LCR claimed that he could only find a couple of the DBS documents in the plaintiffs' possession. That may have been so but he conceded that he could have obtained the rest of the DBS documents from DBS. The same concession was made by HYC. Mr Loo did his part by writing to DBS for the DBS documents and he spoke to LCR's DBS relationship manager to try and get the said documents. Had LCR instructed Ms Louise to do so in his telephone conversation with her on 3 or 4 December 2008, the plaintiffs' claim in Suit 212 would not have been struck out. If he thought that entertaining his guest was more important than reading frantic emails from his lawyer or complying with an Unless Order, he must accept the consequences of his actions.

78 I find that the evidence led by the plaintiffs on the effective cause of the striking out of Suit 212 was so unsatisfactory and unreliable that I was not persuaded that there was a *prima facie* case that the defendants had caused their loss of a chance of success in Suit 212. That being the case, this is yet another reason for dismissing their claim for damages for loss of a chance of succeeding in Suit 212.

Plaintiffs' claim for a refund of legal fees and costs

79 In section C of the SOC, the plaintiffs also claimed from the defendants the legal fees and disbursements paid to the defendants in Suit 212. They also claimed from the defendants all the costs and disbursements paid to SCB.

80 As mentioned, summary judgment has already been entered against the defendants with respect to the allegations of negligence and breach of contract in Parts A, B and D of the SOC. The plaintiffs' claim for damages as well as a refund of legal fees, costs and disbursements incurred in relation to the matters pleaded in these three parts of the SOC will be assessed after this trial. Nothing stated in this section of the judgment concerns the assessment of damages under Parts A, B and D of the SOC.

81 As for the plaintiffs' claim under Part C of the SOC for a refund of costs and disbursements, in view of my finding that the plaintiffs were themselves responsible for the striking out of Suit 212, the question of a refund of costs and disbursements paid by them does not arise. However, Mr Loo is not entitled to charge the plaintiffs for attending hearings at which no one from his law firm was present. Finally, the defendants are not liable for the costs and disbursements paid by the plaintiffs to JLC for

handling the appeals before Tay J and the Court of Appeal, or for the costs and disbursements awarded to SCB in these two appeals.

Costs

82 I will hear the parties on costs.

Copyright © Government of Singapore.