IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 29

Appellate Division / Civil Appeal No 9 of 2024

Between

Rajesh Harichandra Budhrani

… *Appellant*

And

(1) INTL FCStone Pte Ltd
(2) Chandrawati Alie
(3) Song Oi Lan

… *Respondents*

In the matter of Suit No 295 of 2020

Between

Rajesh Harichandra Budhrani

… *Plaintiff*

And

(1) INTL FCStone Pte Ltd
(2) Chandrawati Alie
(3) Song Oi Lan

… *Defendants*

Counterclaim of the 1st Defendant

Between

INTL FCStone Pte Ltd

… *Plaintiff in counterclaim*

And

Rajesh Harichandra Budhrani

… *Defendant in counterclaim*

GROUNDS OF DECISION

[Contract — Breach]
[Contract — Contractual terms]
[Contract — Duress — Illegitimate pressure]
[Contract — Undue influence]
[Tort — Misrepresentation — Fraud and deceit]
[Tort — Misrepresentation — Negligent misrepresentation]

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v
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16 August 2024

24 September 2024

Philip Jeyaretnam J (delivering the grounds of decision of the court):

Introduction

1 When markets fall, investors must decide whether to buy, hold or sell. When their holdings have been financed by another, such as a broker-dealer, and stand as security for the amounts financed, then the agreement will typically provide for actions that the broker-dealer may take unilaterally to protect its interest and limit its exposure. Before taking unilateral steps, it may offer the investor time to manage his account so as to bring it back into balance. In this case, that was what happened, and the investor availed himself of this opportunity by giving instructions over the course of one day to sell off his holdings. However, after the event, the investor believed that he had been wrongly pressured, influenced or misled into doing so and claimed against the broker-dealer. He lost at first instance: see the decision of the Judge in *Rajesh Harichandra Budhrani v INTL FCStone Pte Ltd and others* [2024] SGHC 18

(the "Judgment"). We heard the appeal on 16 August 2024 and dismissed it. We now give our reasons.

2 The appellant, Mr Rajesh Harichandra Budhrani ("Mr Budhrani"), was an accredited investor. He had a margin trading account with the first respondent, INTL FCStone Pte Ltd ("FCStone"), a Singapore-incorporated company, for the trading of silver futures contracts on the Commodities Exchange, a division of the Chicago Mercantile Exchange. This was before FCStone changed its name on 17 July 2020 to "StoneX Financial Pte Ltd".

3 Having a margin trading account allowed Mr Budhrani not only to trade in silver futures via FCStone as his broker-dealer, but also to borrow from it when purchasing those silver futures contracts. Mr Budhrani had to furnish an amount of margin described as the "Initial Margin" in order to begin trading. FCStone charged interest and held the equity in the trading account as collateral for such loans. Equity here referred to the overall net value of the margin trading account. It would include both Mr Budhrani's deposited cash and the market value of his open positions in silver futures contracts. If the price rose, Mr Budhrani stood to gain from the leverage he enjoyed by borrowing from FCStone. If the price fell, Mr Budhrani would face the possibility that the equity in his account would not meet the contracted margin ratio (the "Maintenance Margin"). If that happened, FCStone was entitled to make a margin call requiring Mr Budhrani to top up his account or to close positions so as to meet the Initial Margin.

4 As the broker-dealer, FCStone had exposure on the silver futures contracts held by Mr Budhrani. For this reason, FCStone had power under the contract to sell Mr Budhrani's futures contracts and require him to pay any shortfall. It had a policy to exercise this power if the equity in the trading

account fell below 20 per cent of the Initial Margin. The significance of this power and the policy concerning its exercise is elaborated upon later at [26]–[33]. The contractual arrangements comprised a Bullion Margin Trading Agreement dated 20 November 2007 (the "Margin Trading Agreement") and a Client Agreement dated August 2016 (the "Client Agreement")[1] with UOB Bullion and Futures Limited (collectively, the "Agreements") that had been novated to FCStone on 7 October 2019. The Margin Trading Agreement in turn consisted of several documents, including a Customer Agreement.

5 The second and third respondents, Ms Chandrawati Alie ("Ms Alie") and Ms Song Oi Lan ("Ms Song") respectively, were the FCStone employees who communicated with and executed trade orders for Mr Budhrani. They reported to Mr Lee Lian Tuck ("Mr Lee"), who was the Head of Listed Derivatives (Asia): Judgment at [4].

6 When the trading day of 13 March 2020 began, Mr Budhrani held 88 silver futures contracts. Each contract dealt with 5,000 troy ounces of silver and was priced in US dollars and cents per troy ounce: Judgment at [8]–[9]. In the course of the day as prices fell Mr Budhrani was informed by Ms Alie over the phone that his account was in "margin deficit" by about US$63,000.[2] Mr Budhrani then sold 15 of his 88 silver futures contracts, bringing his total down to 73.[3]

7 On 14 March 2020, which was a Saturday, FCStone sent Mr Budhrani two e-mails (at 8.03am and at 3.36pm) attaching his daily statement for

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1 Record of Appeal ("ROA") Vol III(E1) at 150.

2 ROA Vol II(A) at 149, 159–161.

3 ROA Vol II(A) at 23, 150.

13 March 2020 (the "13 March Daily Statement").[4] The statement reflected towards the end of the tabulation that there was a margin call dated 13 March 2020 for the sum of US$398,527.60.

8 However, at the end of the 13 March Daily Statement, there was a disclaimer stating that:

> The information outlined above is provided for information purposes only and subject to changes, from time to time, at the discretion of the Company. You shall immediately notify the Company of any errors contained herein. This statement shall be deemed verified and conclusively binding on the expiry of the business days allowed in the Client Agreement between you and the Company …

9 In view of the weekend, there was no trading on the Commodities Exchange between 5.15am Singapore time on 14 March 2020 and 6am Singapore time on Monday 16 March 2020, which was thus the next trading day. On that day, FCStone sent Mr Budhrani an e-mail at 10.15am titled "… BUDHRANI RAJESH – Margin Call 13/03/2020 *DAY 1*", which read:[5]

> Your account has a margin call today for **USD $ 398,527.60**
>
> Please arrange to send margin call payments to **INTL FCSTONE PTE LTD**, as per our SSI provided.

10 Over the course of 16 March 2020, the price of silver fell further and fell far. As a result, Mr Budhrani had several conversations with Ms Alie and Ms Song over the phone during which he instructed them to sell his contracts. He sold seven of his contracts between 10.38am and 3.38pm, leaving him with 66 contracts (the "66 Contracts").[6] During this time, Mr Budhrani made certain

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4 ROA Vol III(D) at 13, 17, and 18.

5 ROA Vol III(D) at 29.

6 ROA Vol II(A) at 151–152.

arrangements for £200,000 to be transferred to his account by his lawyers in the UK.[7] However, as they came from third parties and not from him directly, they could not be accepted into his account because of FCStone's policy concerning the receipt of third party payments.[8] Thereafter, Mr Budhrani made other arrangements to transfer the sums of US$80,000 as well as (subsequently) $943,000 into his account by 17 or 18 March 2020.[9]

11 During the rest of 16 March 2020, Mr Budhrani gave instructions to sell the 66 Contracts in tranches. After Ms Alie informed Mr Budhrani on 16 March 2020 at approximately 10.30pm that the last of his contracts had been sold, she added that his account had a deficit of US$277,000.[10] Mr Budhrani refused to accept this, claiming that he was wrongly advised that he would have suffered a much lower loss if he agreed to liquidate his contracts.[11] Presumably in the light of these developments, Mr Budhrani did not transfer the sum of $943,000 into his account as originally intended.[12] The sum of US$80,000 was, however, received by FCStone on 17 March 2020.[13]

12 Mr Budhrani then commenced this claim against FCStone, Ms Alie and Ms Song (collectively, the "Respondents") on 31 March 2020. He raised multiple causes of action against the Respondents. First, he claimed that the Respondents had breached the Agreements.[14] To this end, he claimed that the

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7 ROA Vol III(A) at 24–25.

8 ROA Vol II(A) at 22.

9 Appellant's Case dated 29 April 2024 ("AC") at para 10.

10 ROA Vol III(B) at 175.

11 ROA Vol III(B) at 182.

12 ROA Vol III(A) at 61.

13 ROA Vol III(E1) at 26, 257; AC at para 43.

14 ROA Vol III(Q) at 64.

essence of the agreement between him and FCStone was an "execution service only contract", which meant that the Respondents were only allowed to take orders from Mr Budhrani and could not interfere in any way with his decisions.[15] Mr Budhrani also argued that the Respondents had breached a collateral contract and an oral contract to allow Mr Budhrani up until 18 March 2020 to settle the margin call.[16] Second, he submitted that of the 66 Contracts (Judgment at [15]–[18]):

(a) 20 contracts were sold as a result of the Respondents' undue influence, duress, misrepresentation and/or breach of their duty of care;

(b) 9 contracts were sold as a result of the Respondents' undue influence and/or duress over him; and

(c) 37 contracts were sold as a result of the Respondents' undue influence, duress and/or misrepresentation.

He also claimed that FCStone, as the employer of Ms Alie and Ms Song, was vicariously liable for the losses they had caused by way of acts or omissions carried out in the course of their employment.

13 The Respondents, on the other hand, maintained that they did not breach the Agreements. They claimed that no collateral or oral contract had been formed between the parties. In relation to the 66 Contracts, the Respondents denied subjecting Mr Budhrani to duress or undue influence. They also did not make any misrepresentations which had caused him to sell the 66 Contracts.

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15 ROA Vol II(A) at 18.

16 ROA Vol III(Q) at 67, 70.

The Respondents argued that they did not owe Mr Budhrani any duty of care concerning the accuracy of Ms Alie and Ms Song's representations.

14 FCStone also counterclaimed for loss and damages of US$198,222.60 and interest thereon, being the sum which Mr Budhrani owed FCStone following the liquidation of his contracts. To this end, FCStone relied on a daily statement dated 17 March 2020 (the "17 March Daily Statement"), which reflected a deficit of US$198,222.60 in Mr Budhrani's account.

Decision below

15 The Judge found in favour of the Respondents. The Judge held that the parties were bound by the Agreements and the Respondents were not precluded from relying on them: Judgment at [40]. He also held that the margin call was made on 14 March 2020 by way of the 13 March Daily Statement which was e-mailed to Mr Budhrani: Judgment at [47]–[50]. There was no oral agreement or collateral contract between the parties allowing Mr Budhrani until 18 March 2020 to settle the margin call. There was also no representation made by the Respondents in this respect which gave rise to an estoppel: Judgment at [66]. Any additional time accorded to Mr Budhrani for the provision of funds was a grace period and not binding on FCStone.

16 In relation to the sale of the 66 Contracts, the Judge held that while FCStone was obliged to provide Mr Budhrani only with execution-related services, they were not contractually *disentitled* from voluntarily offering more than that: Judgment at [77]. The Judge found that Mr Budhrani was in default as he had failed to arrange for the necessary funds to be transferred to his account by the close of business on 16 March 2020. This entitled FCStone to liquidate Mr Budhrani's contracts, pursuant to cll 1.17 and 1.25.12 of the Client

Agreement and cl 10 of the Customer Agreement: Judgment at [85]. FCStone was also entitled to do so pursuant to its policy reflected in cl 2.0.1 of its Client Risk Monitoring Procedures Manual, which stated that "[e]scalation actions [were] to be taken whenever the Margin Ratio of the client falls below … 20%": Judgment at [88].

17 The Judge also rejected Mr Budhrani's claims in duress and undue influence. This was because it was not Mr Budhrani's pleaded case that any contract with the Respondents would be voidable as a result of a finding of duress or undue influence. In relation to Mr Budhrani's claim in undue influence, the Respondents did not have the capacity to influence Mr Budhrani and did not exercise any influence over him: Judgment at [99]–[108]. In any event, any influence exercised over Mr Budhrani was not undue: Judgment at [109]. In relation to Mr Budhrani's claim in duress regarding 20 of the 66 Contracts, the Judge found that the Respondents did not subject Mr Budhrani to illegitimate pressure, much less pressure amounting to the compulsion of his will: Judgment at [111]. Finally, the Judge found that the Respondents did not make the representations as alleged by Mr Budhrani on the calls commencing at 5.22pm, 5.53pm, 6.33pm and 8.46pm on 16 March 2020.

18 The Judge held that the Respondents did not owe Mr Budhrani a duty of care to inform him of the true value of his losses, take reasonable care to satisfy themselves of the accuracy of their representations and act as reasonably competent brokers in making their representations: Judgment at [95]. In any event, if such a duty existed, this duty would not have been breached.

19 Finally, the Judge allowed FCStone's counterclaim for US$198,222.60. Clause 1.29.2 of the Client Agreement stated that each daily statement was deemed to be conclusive and binding against Mr Budhrani. Clause 11 of the

Customer Agreement provided that Mr Budhrani was liable for any debit balance, including interest, in the event of liquidation, as well as all costs of collection. The Judge found that Mr Budhrani did not object to the 17 March Daily Statement and was therefore liable to FCStone for the sum of US$198,222.60 and interest: Judgment at [161]. We add that any dispute by Mr Budhrani on the counterclaim was due to his claim against FCStone. In other words, if his claim was dismissed, there would no longer be a dispute in relation to the counterclaim.

Parties' cases on appeal

Appellant's case

20 On appeal, Mr Budhrani contended that the Respondents were not entitled to liquidate his positions. First, there was no event of default under cl 1.17.1(a) of the Client Agreement. This is because:

(a) the margin call was only made on 16 March 2020 by way of the e-mail which was sent by FCStone to Mr Budhrani at 10.15am;

(b) FCStone had communicated to Mr Budhrani that he had until 18 March 2020 to meet the call;[17]

(c) FCStone's communications with Mr Budhrani allowing him until 18 March 2020 to meet the margin call was an oral contract;[18] and

(d) even if the margin call was issued on 14 March 2020, Mr Budhrani was not in default by the close of business on 16 March

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17 AC at para 40.

18 AC at para 46.

2020 as the Client Agreement allowed him until 11.59pm to settle the margin call.[19]

21 Mr Budhrani also argued that cl 1.25.12 of the Client Agreement and cl 10 of the Customer Agreement did not give FCStone the right to liquidate (or threaten liquidation of) Mr Budhrani's positions. FCStone may only rely on these clauses if it took the view that its actions were necessary to protect its interests.[20] There has been no evidence that FCStone formed this view.

22 Mr Budhrani claimed that his decisions to close his positions were taken as a result of illegitimate pressure, namely the threat that if he did not do so, FCStone would take unilateral action in breach of contract.[21] Additionally or alternatively he argues that his "true will was … subverted by the making of several misrepresentations".[22] There were four misrepresentations – which were made over the calls at 5.22pm, 5.53pm, 6.33pm and 8.46pm on 16 March 2020 – that the sale of certain contracts would erase Mr Budhrani's negative equity or bring his equity to a positive figure without him needing to bring in any more funds.[23]

Respondents' case

23 FCStone contended that it was entitled to liquidate Mr Budhrani's positions because he was in default under cl 1.17.3 of the Client Agreement. FCStone submitted that it was entitled to take all necessary steps to protect its

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19 AC at para 54.

20 AC at para 62.

21 AC at paras 19, 84.

22 AC at para 109.

23 AC at para 110.

financial interests pursuant to cl 1.25.12 of the Client Agreement and cl 10 of the Customer Agreement.[24] The Respondents took the position that the margin call was issued on 14 March 2020 and that Mr Budhrani did not have any right to meet the margin call only by 18 March 2020. Specifically, there was no oral agreement and the Respondents were not estopped by any promises they had made.[25] Even if Mr Budhrani was only in default after 11.59pm on 16 March 2020, he had made it clear that he could not have settled the margin call by this time. He had therefore evinced a clear intention that he would not perform his obligation under the Client Agreement to meet the margin call.[26]

24 The Respondents also argued that Mr Budhrani's case of illegitimate pressure was untenable. Not only was this claim unpleaded, but duress and undue influence were also not standalone causes of action which he could rely on.[27] In any case, Mr Budhrani had failed to show that the elements of the tort of intimidation have been made out. There was no coercive threat for Mr Budhrani to do anything to his detriment as FCStone had the right to liquidate Mr Budhrani's positions.[28]

25 The Judge had also, in the Respondents' view, correctly dismissed Mr Budhrani's claim in misrepresentation as the Respondents did not make them.[29]

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24 Respondents' Case dated 27 May 2024 ("RC") at para 51.

25 RC at paras 68, 76.

26 RC at para 88.

27 RC at paras 92–93.

28 RC at para 97.

29 RC at para 104.

The contractual arrangements

26 At the heart of the contractual arrangements was a broad discretionary power for FCStone to take steps necessary to protect its financial interests without notice to Mr Budhrani or prior demand for margin, or before the time given for meeting any margin call had elapsed. This power was found in cll 1.6.1(b), 1.25.12 and 1.25.13 of the Client Agreement and cl 10 of the Customer Agreement. Clauses 1.6.1(b), 1.25.12 and 1.25.13 of the Client Agreement read:[30]

> 1.6.1 [FCStone] may, whenever [FCStone] considers it necessary for [FCStone]'s protection and interests, without prior notice to [Mr Budhrani] and at [Mr Budhrani]'s sole expense and risk, take such actions and/or steps in such manner as [FCStone] deems fit in relation to the Account(s) including, but not limited to:
>
> …
>
> (b) terminate any outstanding Transactions or other open positions in the Account(s), or close-out or otherwise liquidate the same in such manner and upon such terms as [FCStone] deems fit;
>
> …
>
> 1.25.12 Even if [FCStone] has notified [Mr Budhrani] and provided a specific date or time by which [Mr Budhrani] is required to meet a Margin Call, [FCStone] can still take necessary steps to protect its financial interests before such specified date, including exercising any of [FCStone]'s rights under Clauses 1.25 and 1.6, before the time given for meeting the Margin Call has elapsed.
>
> 1.25.13 [FCStone] may:
>
> …
>
> (c) take such other action or to exercise any of its rights under this Clause 1.25 or Clause 1.6,
>
> as it deems fit whenever it considers such action to be necessary for its protection, including in the event of, but not limited to the occurrence of any Default or Extraordinary Event,

30 ROA Vol III(A) at 131.

> all without demand for Margin or additional Margin, or notice to [Mr Budhrani].

Clause 10 of the Customer Agreement provided as follows:[31]

> You shall have the right, whenever in your sole discretion you consider it necessary for your protection because of margin requirements or otherwise, or in the event that an act of bankruptcy is committed by [Mr Budhrani] or when an attachment is levied against the account(s) of [Mr Budhrani] with you … to:
>
> > a) satisfy any obligation [Mr Budhrani] may have to you (either directly or by way of guarantee or suretyship) out of any property belonging to [Mr Budhrani] in your custody or control;
> >
> > b) sell or buy any or all securities, or commodities outstanding which may be long or short respectively in [Mr Budhrani]'s account(s) and
> >
> > c) cancel any outstanding orders in order to close the account or accounts of [Mr Budhrani]'s;
>
> all without demand for margin or additional margin, notice to [Mr Budhrani], [Mr Budhrani]'s heirs, executors, administrators, legatees, personal representatives or assigns of sale or purchase or other notice or advertisement and whether or not the ownership interest shall be solely [Mr Budhrani]'s or jointly with others.

27 Generally, when negotiating a contract to govern a long-term relationship, parties are free to agree on broad powers for one party to take steps unilaterally. They may specify substantive conditions that must occur before the exercise of such powers or impose procedural terms for the valid exercise of such powers. The existence and effect of any such substantive conditions or procedural terms is a matter of construction of the contract. In this case, the parties agreed only one condition for the exercise of the power, namely FCStone's formation of the view that the step in question was necessary to

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31 ROA Vol III(A) at 78.

protect its interests. Indeed, this was incorporated into one of the defined instances of default in cl 1.17(h) of the Client Agreement as follows:[32]

> A "Default" shall be deemed to occur if:
>
> …
>
> > (h) [FCStone] forms the view, acting in good faith, that it should take action in order to preserve its rights or interests under any Account or Transaction, or under its relationship with [Mr Budhrani] …

28 Thus, under the contractual arrangements, FCStone's power to take steps to protect its interests was not conditional on there first being a margin call, or on the time allowed to meet a margin call having elapsed. The language of the contract was clear and must be given effect to. Nonetheless, it is worth observing that it also reflected the nature of the activity undertaken pursuant to the relationship between the parties. That activity was the financing of trading in an asset where trading conditions might be volatile and the lender could face mounting exposure very quickly. Market conditions could deteriorate after a margin call was issued and prior to the time allowed to meet the margin call. This could necessitate urgent protective action by the lender.

29 Other contractual clauses in the Client Agreement reinforced this position, including:

(a) the provision by cl 1.25.10 that Mr Budhrani was expected to monitor his transactions and comply with all margin requirements; and

(b) the provision by cl 1.25.11 that a margin call could be made orally or in writing or in such other manner as deemed appropriate and

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32 ROA Vol III(E1) at 165.

that an unanswered call to his stipulated telephone number would constitute a deemed default.

30 The express obligation on Mr Budhrani to monitor his transactions and comply with all margin requirements reflected the importance of the investor not only being sophisticated but also taking responsibility for his positions in the market vis-à-vis the broker-dealer.

31 The exercise of discretionary powers conferred by contract on one party may have considerable impact on the position of the other party. The courts interpret such provisions carefully and evaluate the exercise of the power against the purpose for which it was conferred. In addition, depending on parties' intentions, the courts may on the facts of a particular case imply terms that control or fetter the exercise of the power. Examples include requirements of good faith, rationality or proper purposes: *Braganza v BP Shipping Ltd and another* [2015] 1 WLR 1661 at [21] and [30]. In this case, good faith was expressly required by cl 1.17(h) in relation to FCStone forming the view that actions were needed to protect its interests.

Issue to be determined

32 As it happened, FCStone did not actually exercise its contractual power to sell the silver futures contracts. This was because *Mr Budhrani* gave instructions for these sales to be carried out. However, he claimed that he only did so because of threats made, undue influence exerted or misrepresentations made by FCStone, or as a result of FCStone's breach of a duty of care or commission of a tort of intimidation. His legal arguments evolved in the course of the proceedings including on appeal, and the pleadings were not entirely satisfactory. Ultimately, we understood his argument to be that because his

instructions were only given as a result of FCStone's improper conduct toward him, those instructions should not bind him. Consequently, if FCStone was not entitled to sell the silver futures contracts without his instructions to do so, then there was a breach of contract on their part. In short, the sales should be treated as not being authorised by him. Thus, he would be entitled to damages flowing from a broker's unauthorised sale of its customer's assets.

33 There were difficulties in law with this argument. The better approach would be to consider whether the alleged improper conduct constituted a tort (such as deceit or intimidation – neither of which was pleaded) and if so determine what damage flowed from the commission of such a tort, that is to say from his being deceived or intimidated into giving instructions to sell the silver futures contracts. Leaving aside problems with the pleadings, Mr Budhrani would face the hurdle of showing that absent his instructions FCStone was not entitled to liquidate his positions.

34 Thus, analysing the parties' cases in the light of the contractual arrangements, the case boiled down to one issue, namely whether, if Mr Budhrani had not given instructions for the sale of his last 66 silver futures contracts, FCStone would have been entitled to liquidate those positions unilaterally.

35 If FCStone was so entitled, then it would be irrelevant even if FCStone had issued the alleged threats or made the alleged representations said to have pressured or influenced Mr Budhrani into giving instructions for the sale of his remaining silver futures contracts. This is because Mr Budhrani's instructions would not have been needed for those sales.

Analysis

36 Whether FCStone was entitled to liquidate Mr Budhrani's positions unilaterally could, in our view, be answered simply. Regardless of whether there had been a margin call via the daily statements sent to Mr Budhrani on 14 March 2020 or only on 16 March 2020, what happened on 16 March 2020 was that the price of the silver futures contracts continued to drop precipitously, such that the margin ratio fell below 20 per cent by 3.38pm on that day.[33] The significance of this is that cl 2.01 of FCStone's Client Risk Monitoring Procedures Manual[34] specified escalation actions to be taken whenever the margin ratio fell below stipulated trigger levels. Specifically, where the margin ratio fell below 20 per cent, the escalation process required issuance of "liquidation orders … Liquidation [would] not cease until clients recover[ed] to 100% [Initial Margin] level".

37 Neither the manual generally nor cl 2.01 specifically was incorporated into the contractual arrangements. There was no need for this to be done. The contractual arrangements provided that FCStone could take steps necessary to protect its position when it considered such steps to be necessary. The policy outlined in cl 2.01 of the manual was relevant to how and when FCStone would come to the view that it needed to take such steps. The manual provided operational guidance to FCStone's employees. Moreover, that an employee's taking of steps was based on such a policy would support the conclusion that that employee was acting in good faith.

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33 ROA Vol III(E1) at 33.

34 ROA Vol III(E1) at 95.

38 Indeed, it was not even necessary that this policy be made known to Mr Budhrani. Clause 1.25.12 of the Client Agreement specifically contemplated that Mr Budhrani might receive a margin call which he had a certain time to meet, but that, nonetheless, FCStone might need to take steps prior to the elapsing of that time in order to protect its own interests. The need to take such steps had arisen as of 16 March 3.38pm and FCStone had the power to take those steps unilaterally.

39 However, for completeness we note that Mr Budhrani was reminded of the policy concerning the 20 per cent trigger on various calls on 13 and 16 March 2020, as shown by the call transcripts. This means that, to the extent he was given time to meet margin requirements, this was expressly made subject to FCStone's power to take steps it considered necessary including if the 20 per cent trigger level was breached.

40 The final relevant point of fact was that there was evidence that FCStone duly formed the view that it had to act on the basis of the policy given the fall in the market on 16 March 2020. Mr Lee testified[35] that in the afternoon of 16 March 2020 he decided to allow Mr Budhrani to manage his positions to reduce his deficit but that if he failed to do so, Mr Lee would have issued instructions to proceed with a forced liquidation of Mr Budhrani's positions, given that the margin ratio had dropped below 20 per cent.

41 It followed from these facts that FCStone was entitled to forcibly liquidate Mr Budhrani's positions if he had not availed himself of the opportunity afforded to him to manage the process himself on and within

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[35] ROA Vol III(H) at 25 (Lee Lian Tuck's 2nd Supplementary AEIC dated 14 August 2023 at para 49).

16 March 2020, and would indeed have done so. Thus, it did not matter whether or not he was pressured or influenced to do so. For avoidance of doubt, we were in any case not persuaded that the Judge's findings of fact that there were no threats, influence or misrepresentations were against the weight of the evidence. In fact, the call transcripts indicate that all participants were operating under pressure, but that pressure came from the fall in the market and not from any improper conduct on the part of FCStone's employees.

42 Indeed, what Mr Budhrani has, at least after the event, characterised as improper pressure threatening the forcible sale of his remaining silver futures contracts was better understood differently. A better characterisation was that FCStone had concluded that, in the absence of fresh funds from Mr Budhrani being made available immediately, his positions had to be forcibly liquidated. However, prior to their doing so, they gave him the opportunity to close out his positions himself. This he duly did.

43 Given our analysis that FCStone's entitlement to liquidate Mr Budhrani's positions rested on their right to protect their interests when the margin ratio fell below 20 per cent by 3.38pm on 16 March 2020, nothing turned on whether there was a margin call on 14 March 2020 or only on 16 March 2020. It is nonetheless helpful to deal with one of Mr Budhrani's contentions concerning the status of the 13 March Daily Statement as a margin call. The Judge held that that daily statement constituted a margin call within the meaning of the contractual arrangements (Judgment at [47] to [50]), but in coming to this conclusion did not deal with the annotation on it in small print (set out at [8] above). Counsel for Mr Budhrani contended that this annotation that the statement was "for information purposes only" aligned the document with those considered in *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800. There, the Court of Appeal, disagreeing with the trial judge, held at [8] and [20]

that two letters were not margin calls in view of the description in that case that the letters were "for discussion purposes only" as well as other aspects of their contents. We observed that the status of the document depended firstly on the true construction of the relevant contractual provisions concerning what constituted a margin call, and secondly on construction of the document in question to determine if it matched that description. In this matter, cl 1.25.11 of the Client Agreement recorded Mr Budhrani's acknowledgment that a margin call could be made orally or in writing or in such other manner as FCStone deemed appropriate. However, this clause only took FCStone so far. If what was relied on as a margin call was a document sent by e-mail, then that document must still in substance be objectively understood to be a margin call. Here, the phrase "margin call" was used against a numerical figure indicating the amount being called. Moreover, Mr Budhrani was contractually obliged to monitor the transactions and meet margin requirements: cl 1.25.10 of the Client Agreement. Thus, in the circumstances of this case, we would have, if it were necessary to do so, held that the 13 March Daily Statement sent on 14 March 2020 constituted a margin call, notwithstanding the presence of the words "for information purposes only". On our reading of this annotation, it was directed to the point that there might be inaccuracies in the statement. We consider that receipt of the statement with the figure being called shown against the phrase "margin call" was sufficient communication to the customer of the need to meet that margin. This would have made it a margin call within the meaning of the contractual arrangements.

Conclusion

44 For these reasons, we dismissed the appeal in its entirety and awarded costs in favour of the Respondents on the indemnity basis (as mandated by the contractual arrangements) in the sum of $85,000 all-in.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Philip Jeyaretnam
Judge of the High Court

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Sim Jek Sok Disa and Jodi Siah Be Koen (Rajah & Tann Singapore LLP) for the respondents.