IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 132

Suit 2216/1990

Between

Lum Chang Securities Pte Ltd

… *Plaintiff*

And

Liam Beng Hian

… *Defendant*

GROUNDS OF DECISION

Financial and Securities Markets — Securities — Trading

Version No 1: 11 Sep 2026 (01:05 hrs)

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Lum Chang Securities Pte Ltd v Liam Beng Hian

[1993] SGHC 132

Suit 2216/1990
Lim Teong Qwee JC
17 June 1993

1 Cur Adv Vult

2 This is a claim by Lum Chang Securities Pte Ltd (`Lum Chang`), a stockbroking company, against its client Liam Beng Hian (`Liam`) for (a) what are commonly referred to as `contra losses` in respect of the sale and purchase of certain securities, and (b) $1,000.32 by way of damages `being the difference between the price of [QAF shares] purchased by [Lum Chang] at [Liam`s] request and the price at which the shares were sold by [Lum Chang] following [Liam`s] failure to pay for the same` which Lum Chang claimed to be entitled to recover under byelaw II cl 4.7(a) of the Byelaws of the Stock Exchange of Singapore Ltd (`SES`). Alternatively, Lum Chang claimed the price of the securities purchased by it at the request of Liam. Lum Chang also claimed interest. Liam admitted all the purchases but, as regards the claim for contra losses, he denied instructing Lum Chang to sell the securities it had purchased for him and, as regards the claim under byelaw II cl 4.7(a), he alleged a variation and denied that Lum Chang was entitled to sell out against him. Alternatively, he alleged waiver and estoppel. He also counterclaimed damages for libel in respect of a letter from Lum Chang to the SES reporting his account as a

delinquent account. Lum Chang denied any variation or any waiver or that estoppel operated against it and on the counterclaim, Lum Chang admitted the letter but denied that it was defamatory. Alternatively, it alleged justification and qualified privilege. At the conclusion of the trial I found for Lum Chang on the claim for contra losses and I dismissed the counterclaim. In respect of the QAF shares I dismissed the claim for the difference under byelaw II cl 4.7(a) but found in Lum Chang`s favour on its alternative claim for the price of the securities and gave judgment accordingly. Lum Chang now appeals against that part of the judgment in respect of the QAF shares.

3 **The facts**

4 Lum Chang is a member of the SES as a `member company` as defined in the rules made by the SES, and in 1990 Liam had an account with it as its client. In the form for opening such an account dated 22 January 1990 which is at AB-1, he gave particulars of his home address and the box below that titled `Mailing address (if different from above)` was left blank. He gave the name and address of his employer as Ministry of Defence, Tengah Air Base (Aeronautical) but it was not in dispute that at the material time he was no longer employed by the Ministry of Defence. He also gave his home telephone number. He signed the form in the section titled `Statement and declaration` and in para 1 he said: `I ... agree to abide by the prevailing byelaws and regulations governing transactions in stocks and shares.`

5 He also signed in the section titled `Authorization (applicable only if you wish your dealer/remisier to act on your behalf)` and here he said: `I hereby authorize Mr Yong Wai Poh (Patrick) to deliver or take delivery of my debit notes, credit notes, statements, scrips or cheques on my behalf.`

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6 On 18 September 1990 Liam bought 3,000 QAF shares for a total price of $1,787.87 including brokerage and expenses. Later the same day he bought a further 6,000 QAF shares for a total price of $3,600 including brokerage. The next day he bought a further 2,000 QAF shares for a total price of $1,212.59 including brokerage and expenses. He received all the three contract notes. The client`s copy of the debit note for the 3,000 QAF shares is reproduced below. The client`s copy of the debit note is identical in all respects with the contract note except that it is differently called.

> *Lum Chang Securities Pte Ltd*
>
> *Debit note*
>
> **
>
> *Bought by order and for account of*
>
> *Mr Liam Beng Hian*
>
> *64 South Bovona Vista Road*
>
> *#04-13 Vista Park*
>
> *Singapore 0511*
>
> *Client`s copy*
>
> *This is a computer generated contract and is deemed to have been signed.*
>
> *Subject to the rules and byelaws of the Stock Exchange of Singapore Ltd*
>
> If any of the information stated above is incorrect, please notify immediately and return the contract note for cancellation and claim of refund of stamp duty paid.
>
> ** If OTC coded, these securities are not listed on the official list of the Exchange and are not subject to the listing requirements and corporate disclosure policy of the Exchange.
>
> *Account No 33/6L/21558 Date 18 September 1990*
>
> *Contract No 248779/001 Due Date 25 September 1990*
>
> *Ready*
>
> *Trs No 13/18.09.90/7851 33*

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Security QAF LTD (1A49) 1000-Lot
Contract stamp paid
Price S$ .58500
Quantity 3 x 1000
Proceeds S$ 1,755.00
Brokerage 1 C 30.00
Contract stamp 2.00
Clearing fee .87
Total amount S$ 1,787.87
Remarks E & OE

7 The contract notes for the remaining shares are exactly the same except for the transaction number and details of the number of shares and total price and, in one case, the dates. The two contract notes for 3,000 shares and 6,000 shares both bear the date 18 September 1990 and show the due date as 25 September 1990. The date on the contract note for 2,000 shares is 19 September 1990 and the due date is 26 September 1990. Each contract note says `Bought by order and for account of [Liam] ... Subject to the rules and byelaws of [SES]`. `This is a computer generated contract and is deemed to have been signed` obviously has been erroneously printed in the wrong place. It should be either at the top or at the foot of the document. Each purchase was a `ready bargain` for `ready delivery`.

8 Byelaw II cl 4.4 provides:

> *... Ready bargains for ready delivery shall be due on the same day in the week following the date of transaction, and if that should fall on a holiday, then the next business day.*

9 The due date for delivery of the 3,000 and 6,000 shares was accordingly 25 September 1990 and that in respect of 2,000 shares was 26 September 1990. Both were market days and not holidays.

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10 On Wednesday, 26 September 1990 Patrick Yong was suspended and he could not go into the trading room of Lum Chang where he could be reached on the telephone during business hours and, according to the SES, he was not supposed to contact his clients. Patrick Yong was until then a remisier appointed under an agreement dated 2 August 1989 with Lum Chang to act as its agent to trade and deal in securities in the name of Lum Chang and at its trading room.

11 On Friday, 28 September 1990 Liam called Lum Chang`s general manager, Young Pak Nang on the telephone. He said he had tried to reach Patrick Yong for the last two days without any success and had now learned that Patrick Yong had been suspended. Liam wanted to know his positions. Young said he did not know and would find out and call back later. He asked for Liam`s telephone number and he was given the number of his mobile telephone. Lum Chang would now have Liam`s home address and telephone number and his mobile telephone number. Young said he found out that Liam had the three purchase contracts for QAF shares for which payment was due and he tried to call him a few times that day on his mobile telephone but kept receiving the recorded message that the number called was not available. He said he also asked the credit control supervisor to call but she did not testify. He did not try the home telephone because he said he was calling during working hours and did not expect Liam to be home. Liam said he had an answering machine attached to his home telephone and a message could have been left for him but there was no message. He said his mobile telephone was working properly and on 28 September 1990 he could receive calls normally.

12 On Saturday, 29 September 1990, which was not a market day, Lum Chang wrote to Liam. The letter is at AB-22/23 and the material part reads:

> *I attach the following documents for your action:*

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> *Document Statement date Amount due to us*
>
> *...*
>
> *Debit Note (No 248780/001) 25 September 1990 $3,600.00*
>
> *Debit Note (No 248779/001) 26 September 1990 $1,787.87*
>
> *Debit Note (No 249239/001) 26 September 1990 $1,212.59*
>
> *...*
>
> *For the three debit notes amounting to $6,600.46, please pay by Monday, 1 October 1990 at 12.30pm. Otherwise we shall proceed to force-sell against you, and charge you for any losses.*

13 The three debit notes are identical in all material respects with the three contract notes for the 6,000, 3,000 and 2,000 QAF shares respectively. The letter was sent by Local Urgent Mail addressed to Liam at the home address given by him but it was not received by him. He would not be expected to be at home when mail is delivered and letters sent by Local Urgent Mail would not be delivered unless the addressee or some member of the household is present at the address to receive it. Liam spent that weekend away from home. He said it was his usual practice. He left home on Saturday, 29 September 1990 in the morning and did not return until the night of Monday, 1 October 1990. The letter at AB-22/23 was undelivered and was returned to Lum Chang through the post.

14 On Monday, 1 October 1990 Young took a decision to sell the 11,000 QAF shares and issued the force-sell order at PB-22 which he signed at 2.05pm. He also wrote down Liam`s mobile telephone number on it. He instructed the credit control supervisor to make one last attempt to contact Liam on the mobile telephone and if she did not succeed by 2.30pm she was to send the force-sell order on to proceed with the sale. She did not testify and there is no evidence as to whether she tried to contact Liam but later that day all 11,000 QAF shares were sold. A contra statement at AB-26 showed that for 5,000 shares sold at $0.52 Liam was given a credit of $2,545.70, and another contra statement at

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AB-27 showed that for 6,000 shares sold also at $0.52 he was given a credit of $3,054.44. On 4 October 1990 Lum Chang wrote to Liam the letter at AB-28/29, the material part of which reads:

> *We wish to inform you that we have force-sold the following purchase contracts which were not paid as per SES byelaw II cl 4.7(a):*
>
> *Debit date Debit Note No Amount*
>
> *25 September 1990 248780/001 $3,600.00*
>
> *25 September 1990 248779/001 $1,787.87*
>
> *26 September 1990 249239/001 $1,212.59*
>
> *The above three contracts incurred a contra loss of $1,000.32. Enclose herewith the Statement No 41361 and 41365.*

15 The two statements are those at AB-26 and AB-27. Earlier on 2 October 1990 Liam called Young on the telephone. He asked for his positions and Young told him that Lum Chang had force-sold his QAF shares the previous day. According to Young he said, `How can you do that?` Liam was very angry as he said in his evidence. I should add that the letter at AB-28/29 also called for payment of the contra losses claimed in this action as well as some $8,400 for other contra losses, and Liam paid these other contra losses.

16 **The issues**

17 Lum Chang bought 11,000 QAF shares by order and for account of Liam subject to the rules and byelaws of the SES. In the ordinary way, Lum Chang as a buying broker will have bought the shares from a selling broker and the selling broker will have sold for the account of a selling client. Byelaw II cl 4.8(b) provides:

> *Delivery by clients to member companies*
>
> *Delivery shall be effected on any market day but not later than 12.30pm on the due date of the contract.*

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18 `Market day` is defined in the byelaws as the hours between 10am and 4pm from Mondays to Fridays or such other time as may be determined by the committee of the SES from time to time. The latest time and date for delivery by the selling client to the selling broker is 12.30pm on the due date. Byelaw II cl 4.9 provides:

> *Member companies must deliver certificates to SCCS by 6pm on the due dates of the contracts. Member companies are to ensure that all certificates delivered constitute good delivery under the rules and byelaws of the Exchange.*

19 Delivery from SCCS to member companies will be effected between 9am and 11am on the day following the due dates of the contracts.

20 The selling broker must deliver to Securities Clearing and Computer Services (Pte) Ltd (`SCCS`) by 6pm on the due date to enable SCCS to deliver to the buying broker between 9am and 11am the following day.

21 Byelaw II cl 3.1 provides:

> *If a member company, having sold securities, fails to deliver them to the SCCS by the due date, [SES] will buy-in against the selling member company without giving any notice.*

22 If the selling broker fails to deliver to SCCS by 6pm on the due date SES will buy-in against it. Under byelaw II cll 3.2 and 3.4(a), buying-in may proceed at 11.15am on the day following due date. If the selling broker is not in default the buying broker should take delivery from SCCS by 11am on the day following the due date. The buying broker will have paid for the securities on taking delivery.

23 Byelaw II cl 5.2(a) provides:

> *Buying clients must make payments after 3pm on the day following the due date of the contract. Unless payment has been*

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> *made in cash or delivery is made against the delivery order on a purchaser`s bankers, delivery of securities to the purchaser may be withheld at the member company`s discretion until the purchaser`s cheque in payment has been finally cleared and the proceeds fully in the possession of the member company. Payment shall be made promptly ...*

24 `After 3pm on the day following the due date` can mean on the market day following the due date but after 3pm. It can arguably also mean on the market day following the due date but after 3pm or on any later day. The difficulty about the latter construction is that it fixes no time ***within***

25 which to pay. If such time is not fixed payment cannot be made `promptly` as required by the concluding words in the provision quoted. If the expression is to bear this meaning, then I would expect it to bear the same meaning in cl 4.8(a) on the buying broker`s corresponding obligation to deliver. Byelaw II cl 4.8(a) provides:

> *Delivery by member companies to clients*
>
> *After 3pm on the market day following the due date of the contract or any market day thereafter.*

26 It will be seen that cl 4.8(a) concludes with `or any market day thereafter`. Here it clearly means `on the market day following the due date but after 3pm` otherwise it would not be necessary to have the concluding words in cl 4.8(a). Under cl 4.1 all bargains shall be delivered on a market day.

27 I think what cl 5.2(a) requires of the buying client is that he should pay promptly on the day following the due date but he need not pay before 3pm. Clause 4.8(a) requires the buying broker to deliver on the day following the due date but it need not do so before 3pm (even if the buying client paid earlier in the day or even before that day) and it can deliver on any later market day after the buying client`s cheque has been finally cleared and the proceeds fully in its

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possession. There was really no dispute on this construction. The questions before me were whether the buying broker had any power to sell out against its buying client in the event of failure on the part of the buying client to make payment on the day following the due date and if so what were the conditions, if any, to be satisfied before such power could be exercised. Liam did not pay for the 9,000 QAF shares on 26 September 1990 or for the 2,000 QAF shares on 27 September 1990. Down to the date of the trial he had not paid but he was ready and willing to do so. Lum Chang`s case is that under cl 4.7(a) it had power to sell out against Liam at any time after 12.30pm on the second market day following the due date (ie Thursday, 27 September 1990 in respect of 9,000 QAF shares and Friday 28 September 1990 in respect of 2,000 QAF shares) and to do so without giving him any notice. Liam`s case is that cl 4.7(a) has been varied and that the parties have agreed that Lum Chang (a) must give Liam a debit note in respect of each purchase, and (b) must allow Liam two working days after the date of the debit note to make payment for the shares `failing which [Lum Chang] would forced-sell (sic) the same on the third working day at 3pm`. This is denied by Lum Chang. The third market day after the date of the debit note in the case of the 3,000 and 6,000 shares was Friday, 21 September 1990 and in the case of the 2,000 shares Monday, 24 September 1990. The shares were sold after 2.30pm on 1 October 1990. Liam also relied on waiver and estoppel and further, that there was no contract that entitled Lum Chang to sell out against him under the byelaws of the SES.

28 **Byelaw II cl 4.7(a)**

29 Clause 4.7(a) provides:

> *Delivery to and payment by clients*
>
> *If a purchaser not being a member company, fails to pay the amount due on his purchase ... it shall not be necessary for the*

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> *member company* ***selling*** *such securities to such a purchasing client to tender the securities purchased, and the member company may after 12.30pm on the second market day following the due date resell the securities or any of the securities for which the purchaser has not made full cash payment after the due date. The member company may at any time thereafter sue such purchaser for the difference and all losses and expenses consequent upon such resale whether the resale is made immediately on such failure to pay or at any time thereafter. It shall not be necessary to give notice of such resale and all damages which the member company may sustain in this connection shall be recoverable from the purchaser as liquidated damages. (Emphasis added.)*

30 Liam failed to pay the amount due on his purchase. In such event it was not necessary for tender to be made by the ***member company selling*** such securities to him but Lum Chang was not selling any such securities to him.

31 Mr Yang conceded that Lum Chang was not a member company selling any QAF shares to Liam but he submitted that all other references to `member company` in cl 4.7(a) included a reference to Lum Chang buying for the account of Liam. I am unable to agree. A member company may buy for the account of a buying client. That is exactly what Lum Chang did for Liam. The contract notes clearly say so. A member company may also sell to its buying client. In this event the member company and the client act as principals and under s 49 of the Securities Industry Act (Cap 289) and byelaw VI cl 1 the contract note must expressly say so. Byelaw II cl 4.7(a) provides that if the buyer defaults in payment it is not necessary for the member company selling to tender the securities and it may after the stipulated time ***resell*** the securities. `Resell` is a word appropriate only where the member company has already sold the same securities. If the member company has bought for a buying client it will not be appropriate to say it can `resell`. Upon a true construction of cl 4.7(a), it does not apply to the 11,000 QAF shares bought by Lum Chang for the account of Liam. Mr Yang did not urge upon me that apart from cl 4.7(a) Lum Chang had

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any power to sell the QAF shares without giving Liam any notice and I would have been surprised if he had. Lum Chang acted as Liam`s buying broker. It bought 11,000 QAF shares. It paid for them. It was entitled to be indemnified. It was in possession of the documents representing the shares. Liam had not paid for these shares. Lum Chang had a general lien on these documents for Liam`s indebtedness not only in respect of these shares but also in respect of other transactions on the stock exchange carried out for him by Lum Chang. See ***Re London and Globe Finance Corporation***

32 .1 Lum Chang was entitled to hold these documents until payment of all moneys due to it on the stock exchange transactions but it was not entitled to sell the shares. The power to do so, if any, must be found elsewhere. No other provisions of the byelaws or the terms of employment of Lum Chang as Liam`s brokers have been referred to and Lum Chang has not sought to rely on any custom or usage of the stock exchange. I accordingly dismissed Lum Chang`s claim for the difference under byelaw II cl 4.7(a).

33 **The defence**

34 On Lum Chang`s claim for the difference Liam`s defence is:

> (1) By para 4: He admits buying 11,000 QAF shares and in accordance with the byelaws of the SES the time for taking delivery and payment is after 3pm on the day following the due date.
>
> (2) By para 5: He says the usual practice when Lum Chang is ready to deliver is for it to issue a debit note to him and he would be given another two working days after the date of the debit note to take delivery and make payment. If he fails to pay Lum Chang would `force-sell` the shares on the third working day after 3pm. Paragraph 5 then continues: `By reason thereof, byelaw II cl 4.7(a) has been varied, modified or altered by mutual agreement. Further or alternatively, the plaintiffs had

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> by reason of the habitual dealing as aforesaid, waived their rights to strict performance of the said byelaws and are estopped from suing on the strict performance. Further or alternatively, there was no contract between the plaintiffs and the defendant which entitled the plaintiffs to force-sell the shares according to the said byelaws.`

35 No objection was taken before or at the trial on the defence as pleaded and in response to my observations Miss Foo said that as to the `practice` referred to in para 5 the facts and circumstances relied on were:

> (1) The plaintiff by its remisier PY had always in the course of dealings with the defendant informed the defendant of delivery date of shares purchased.
>
> (2) The plaintiff by its remisier had always allowed the defendant up to 12 noon on the third market day following the date for delivery of scrips to make payment therefor.
>
> (3) In the course of dealings between the remisier of the company and the defendant, the plaintiff by its remisier had always notified the defendant of intended force-sale, if any, before proceeding with force-sale.
>
> *Authority of the remisier is contained in the written agreement dated 22 January 1990 AB-1 and opening agreement between the plaintiff and remisier dated 2 August 1989 PB-1/11.*

36 The agreement dated 22 January 1990 is the form for opening an account and the agreement dated 2 August 1989 is the agreement by which Patrick Yong was appointed a remisier to act as Lum Chang`s agent.

37 I have dismissed Lum Chang`s claim for the difference under byelaw II cl 4.7(a) but I will deal briefly with the defences raised.

38 Where a broker buys for a client SES prints the contract note in the night following the transaction and the next morning it is delivered to the broker. This is done in all transactions on the stock exchange. The contract note comes in a set of four. The top copy is called the contract note and comes already sealed in

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an envelope with the client`s name and address on it and it is mailed to the client by the broker. The three other copies are called debit notes. The first debit note is called the client`s copy. The second and third are called ledger and receipt copies. Young said, `In terms of usage second copy (ie first debit note) is sent to remisier when shares ready for client to pay and collect shares.` The second debit note goes to the deliveries department and the third debit note is filed with the copy of the receipt for the client`s payment together with the allocation slip which lists certificate numbers of share certificates delivered to the client. The contract note and the three debit notes are identical in every respect except for their description. Young said that the client`s copy of the debit note is `to signify to remisier that shares [are] now ready for client`s collection` and `remisier on receiving it would then notify client by phone to come to office to pay for shares`. There was no explanation as to why it was called a debit note if it contained the same information as the contract note or why it was called `client`s copy` if it is not for the client.

39 Liam said he would have to make payment for shares purchased `only when shares [are] ready for collection and remisier has informed me debit date or delivery date as I know it myself, ie as I understand to be`. He said he had no way to find out what the debit date was if the remisier did not inform him or give him a copy of the debit note.

40 Patrick Yong said that normally Liam had to pay when `scrips` arrived, ie when Lum Chang had the share certificates and transfer forms for the shares bought. Referring to a previous transaction in which Liam bought certain securities the debit note for which is at DB-76, Patrick Yong said he received this debit note. He said that the contract date was 3 August 1990 and the due date was 10 August 1990 as printed. Against the printed due date was a manuscript date `13/8`. This meant that the scrips arrived on 13 August 1990

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and the next day he would have called Liam to inform him. He said the cashier at Lum Chang`s office would ask for the debit note for details of payment because there could be a partial delivery and because there could be dividends or stamp duty to be accounted for. The short answer to this of course is that as regards partial delivery the client must still pay the full amount due as shown in the contract note and it is for the broker to enforce the buying in provisions of the byelaws against the selling broker. It should be noted that buying in may begin at 11.15am on the day following the due date and payment may be made after 3pm that day. As regards dividends and stamp duty these can be accounted for later. This would be so unless the terms of the contractual arrangement between Lum Chang and Liam have been varied. All three contract notes for the 11,000 QAF shares were received by Liam. There is no evidence that Patrick Yong received any of the debit notes.

41 Each time Lum Chang bought any securities by order and for the account of Liam there was a contract between them. In the case of the QAF shares it is not clear whether there was one contract for 11,000 shares comprised in three contract notes or three separate contracts but nothing turns on this. In either case the securities were bought subject to the byelaws of the SES. As noted above under byelaw II cl 5.2(a) payment had to be made on the day following the due date but after 3pm. This is admitted in the defence but it is pleaded that Liam had two working days after the date of the debit note to make payment. In respect of the 11,000 QAF shares the debit notes were all dated the same date as the contract notes. The contract notes for 6,000 and 3,000 shares were dated 18 September 1990 and that for 2,000 shares was dated 19 September 1990. Liam is saying in his defence that he had to pay for the 9,000 shares by 20 September 1990 and for the 2,000 shares by 21 September 1990 and if he failed to do so Lum Chang would `force-sell` the shares after 3pm on the day after.

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That would be 21 September 1990 and 24 September 1990, since 22 September 1990 was a Saturday. I am unable to see that this is any answer to the claim at all. The securities were sold by Lum Chang on 1 October 1990. Counsel for Liam made no submission on waiver and estoppel as clearly the evidence could not support either. In the event the only defence that succeeded was that Lum Chang was not entitled to sell out against Liam under the byelaws of the SES.

42 **Alternative claim for price**

43 Lum Chang`s alternative claim is for the price of the 11,000 shares. Together with brokerage and expenses the total amount payable by Liam is $6,600.46. This is not in dispute. On 2 October 1990 when Liam called Young he was told Lum Chang had sold the shares. In its letter of 4 October 1990 it claimed the difference. It had made it clear that it no longer considered itself bound nor was it willing to receive the total price together with brokerage and expenses and to deliver the securities it had purchased on Liam`s account. I accordingly gave judgment for Lum Chang for $6,600.46 without any interest and I ordered that upon payment of this sum Lum Chang should deliver 11,000 QAF shares together with all rights and privileges attaching thereto as at 18 September 1990 in respect of 9,000 shares and as at 19 September 1990 in respect of the remaining 2,000 shares. I also ordered that Liam pay three-quarters of Lum Chang`s costs of the claim.

44 Claim allowed in part

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Lim Teong Qwee JC

Yang Ing Loong and Marina Chin (Lee & Lee) for the plaintiff
Lawrence Chua and Foo Yuk Lin (Tang & Partners) for the defendant

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