IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 150

DC Suit No 4810 of 1995

Between

J L Chancellor Pte Ltd

… Plaintiff

And

Lee Keng Meng

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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J L Chancellor Pte Ltd v Lee Keng Meng

[1996] SGHC 150

DC Suit No 4810 of 1995
Lai Siu Chiu J
31 July 1996

Judgment:

GROUNDS OF DECISION

The background

1. The plaintiffs are an investment company which engages in foreign exchange trades for clients and the defendant was one of their customers. By an agreement dated 10 May 1994 (the agreement), the defendant appointed the plaintiffs to open a currency account for him for the purpose of buying and selling certain foreign currencies. By another agreement dated 6 May 1994 (the supplemental agreement), the parties agreed to vary certain provisions of the agreement (which date I believe should also have been 6 May 1994).

2. Arising out of trading on the defendant's behalf, the plaintiffs incurred losses amounting to (a balance of) US$23,326.45. The defendant failed to pay the same despite the plaintiffs' repeated requests with the result that the plaintiffs commenced these proceedings for its recovery.

3. After the defendant had entered an appearance to the suit, the plaintiffs applied for summary judgment (the application) supported by the standard affidavit filed by their marketing manager Too Joon Tim (Too), and succeeded. The defendant appealed against the judgment and his appeal came up for hearing before me. I affirmed the order of the court below and the defendant has now appealed against my decision.

The application

4. I shall first refer to the affidavits filed for the application. In response to Too's (first) affidavit, the defendant made the following allegations in his affidavit filed on 26 January 1996:

a. foreign exchange trading is a business that is done primarily by banking or bank related institutions -- the plaintiffs do not come within the category nor are they licensed by the relevant authorities to conduct such trades. There fore the alleged transactions carried out for his account are illegal and unenforceable;

b. prior to his entering into the two agreements with the plaintiffs, he thought the plaintiffs had a licence to trade because of their impressive set-up which looked just like a banking institution and which was situated in the Central Business District;

c. although he had his reservations, he was persuaded by Too to open an account -- Too assured him there was 'no problem' and that the business conducted was licensed and had the endorsement of the authorities;

d. initially he paid up for some of the alleged losses as, being a layman, he was unaware that the plaintiffs were not licensed;

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e. it was doubtful whether all the orders placed by the plaintiffs were actually made by him -- his solicitors asked the plaintiffs' solicitors in December 1995 for details of how the alleged debt arose as the transactions took place some time ago; his solicitors have not received a response. The plaintiffs should also be asked to produce at the trial their ledgers and documentation duly certified by professional auditors to prove there was a client/broker activity;

f. some orders allegedly transacted on his behalf were not executed promptly by the plaintiffs/their agents when time is of the essence in a fast moving market like foreign exchange. As a result the plaintiffs unfairly and negligently incurred losses on his behalf;

g. as the plaintiffs/their servants have not complied with instructions when executing orders on the exchange, this is tantamount to 'bucketing' which is an offence under the Futures Trading Act and which calls for investigation by the authorities;

h. the plaintiffs' controls and system of management are lax - - orders placed by clients are often taken by different persons at different times, mistakes are therefore highly probable, he was too trusting;

i. the plaintiffs had an unusual practice of allowing free and unlimited margins and permitted further trading even when losses were incurred unlike banks which would insist that the customer 'top up' the margins if they fell below a certain level. Instead of advising caution, the plaintiffs actively encouraged their clients to trade even further resulting in larger debts for the client. The plaintiffs then sold on his behalf, without his authority, causing him to incur losses.

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5. In reply to the defendant's affidavit, Too filed a second affidavit wherein he deposed that:

a. prior to 1 September 1995, there were no licensing requirements imposed by the Monetary Authority of Singapore (MAS) or any other competent authority and it was never represented to the defendant that the plaintiffs had a licence. When the defendant entered into transactions for the purchase and sale of foreign currencies at 'spot' rates with them, the plaintiffs were lawfully entitled to carry on such business and they did so with the full knowledge of the relevant authorities;

b. on 1 September 1995, MAS imposed a licensing requirement and a minimum paid-up capital of S$8m for companies which wanted to continue to trade in foreign currencies. As the plaintiffs' annual turnover and customer base could not justify a capital input of S$8m, the plaintiffs discontinued their foreign exchange business;

c. the defendant is not the lay person he professed to be -- he was/is the vice president of Smith Barney Shearson (S) Pte Ltd (Smith Barney) an investment institution which engages inter alia in foreign exchange trading similar to the plaintiffs' business. The defendant was therefore familiar with the foreign exchange market and the risks involved. This was also stated in a clause in the agreement;

d. the defendant made profits of US$16,500 on two previous transactions before 14 June 1994 and he withdrew the profit from his account. The defendant was well aware of the transactions carried out for him as statements were forwarded to his residence;

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e. on Friday 24 June 1994 the defendant held 11 lots of foreign currencies in open positions amounting to a floating profit and loss of US$91,011.81. A margin deposit of US$61,500 (US$1,500 per lot) was required in order for the defendant to maintain his open positions. A margin call was made on the defendant who paid US$77,914.11 to top up his margin. However the defendant's cheque for the amount was dishonoured on 28 June 1994. Accordingly the plaintiffs exercised their option under the agreement and liquidated the defendant's open positions which resulted in a loss of US$58,406.19 and the defendant's account was closed. Therefore it is untrue that the plaintiffs allowed the defendant to trade on unlimited margin;

f. the transactions leading to the losses were placed by the defendant personally as all clients of the plaintiffs were given a dealing code number similar to the personal identification number (PIN) used to operate bank teller machines. The dealing code number together with the account number had to be quoted by the defendant to the plaintiffs' dealing staff who would verify the same before transacting and recording the order placed by the defendant;

g. the defendant received client statements on a daily basis for all his open positions and, there was a notice on the statements that he should notify the plaintiffs within 3 days of receipt thereof if there were discrepancies. Any discrepancy reported to the plaintiffs would have been verified by reference to the telephone conversation recorded between the defendant and the dealer. Where no discrepancies were reported, the telephone conversations would be erased. A similar notice relating to statements is set out in cl 11 of the agreement;

h. the defendant never objected to the validity or accuracy of the orders placed by him until 1 years later after the plaintiffs initiated these proceedings;

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i. when requested to pay his losses, the defendant paid part of it (S$52,180) by instalments via cheques save that the second last cheque he tendered dated 31 August 1995 for S$20,000 was dishonoured;

j. 'bucketing' occurs when a dealer fails to execute a client's orders through proper channels and instead takes a position against the client. The plaintiffs prohibit 'bucketing' of any form and ensures that all orders placed by the defendant and other clients were transmitted to their Hong Kong principal Evershine International Investment Ltd (EII); confirmation of execution by EII is transmitted to the plaintiffs who would then print out the client's statement and forward the same to the defendant in accordance with cl 3F of the agreement. Consequently the orders placed by the defendant and other customers are not executed in Singapore but in Hong Kong;

k. in any event it is not possible for any individual trader of the plaintiffs to engage in bucketing because all payments made by the defendant were by way of cheques -- in order for an individual trader to benefit from bucketing, payments from the defendant would have to be in cash handed personally to the specific dealer. The defendant's allegation of bucketing is a vain attempt to raise triable issues and to discredit the plaintiffs.

The arguments (i) the defendant's arguments

6. Counsel for the defendant submitted that the plaintiffs have not proved that their business is lawful, apart from Too's contention. Sections 11 and 12 of the Futures Trading Act Cap 116 (the Act) which came into effect in 1986 sets out the licensing requirements for futures brokers and their representatives whilst s 14 of the Act sets out the circumstances when MAS will refuse to grant a licence. 'Bucketing' is an offence under s 52 of the Act.

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6A. The real reason why the plaintiffs ceased trading should be investigated since there are no private companies currently engaging in such business apart from banks and other financial institutions.

6B. The defendant disputes Too's allegations -- the plaintiffs allowed the defendant to engage freely in unlimited trade and the defendant was at a total disadvantage as he was not in a position to ascertain whether there were indeed losses as the plaintiffs claimed.

6C. Contrary to the plaintiffs' claim that their statements are conclusive, where payment has been made under a mistake of fact, it can be recovered by the payee (Borneo Motors (S) Pte Ltd v William Jacks & Co (S) Pte Ltd < 1992 > 2 SLR 881). The defendant was not aware, at the time he paid the plaintiffs, of their scam, otherwise he would not have paid.

6D. There is doubt whether all orders were executed as the plaintiffs have not produced evidence to prove that their Hong Kong principals did so; it is not unknown for false records to be created. The plaintiffs must also prove the losses they have suffered -- have they paid their principals for such losses? What is the exact relationship between the plaintiffs and EII?

(ii) the plaintiffs' arguments

7. Counsel for the plaintiffs essentially reiterated the facts set out in Too's second affidavit. He pointed out that on 16 March 1995 the Act was amended by the Futures Trading (Amendment) Act 1995 (the amendment) which widened the licensing requirements for futures trading advisers to include persons who carry on the business of leveraged foreign exchange trading. The amendment further provided for a minimum capital (to be prescribed by the MAS) for companies who wish to carry on the business of foreign exchange

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trading. Since the plaintiffs felt that their turnover did not justify a cash injection of $8m they ceased trading on 1 September 1995; before that date their operations were not illegal by virtue of s 10A of the amendment.

8. It is highly improbable that the plaintiffs would, as the defendant had alleged, represent that they had a licence from the relevant authorities when there is in fact no statutory requirement for such a licence.

9. The defendant's assertion that he is an unsuspecting lay person who was deceived into believing that the plaintiffs were authorised to operate a foreign exchange trading business is an attempt to raise a sham defence because the defendant was/is an investment banker himself who was in the foreign exchange division of his employer; he would have knowledge of the money market, the risks involved and the legality or otherwise of companies which carry on such trade. The defendant had signed an acknowledgment that he was aware of the risks involved in trading in spot foreign exchange.

10. The defendant had attempted to cast doubt on the bona fides of the transactions despite the plaintiffs having furnished documentary evidence to prove the execution of his orders and the losses resulting therefrom. The statements which were sent to the defendant were conclusive, under cl 11C of the agreement, if the defendant did not dispute them within 5 working days after their transmission to him (Bangkok Bank Ltd v Prosperity Shipping & Trading (Pte) Ltd < 1990 > 1 MLJ xxix; Halsbury's Laws Vol 17 p 22 28). The defendant had acknowledged his losses by making payment of S$52,180 by instalments, the concession of instalment payments was granted by the plaintiffs to avoid antagonism and legal proceedings at the time; there was no complaint by the defendant to the authorities about bucketing or at all. In any event bucketing would not have been possible due to the safeguards implemented by the

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plaintiffs when dealers executed orders for customers as described in Too's second affidavit.

11. The defendant's allegation that the plaintiffs allowed him unlimited trading cannot be sustained as the plaintiffs had made a margin call on the defendant in June 1994 which he failed to comply with when his cheque for US$77,914.11 was dishonoured and which was followed by the plaintiffs' closing of his account.

The decision

12. Based on the affidavits, I was of the view that the defendant had raised no triable issues which warranted the matter proceeding to trial. The main feature of the defendant's affidavit was, that he deposed very little to facts -- it was either pure conjecture or assumption on his part, without supporting documents. I shall deal with the main points raised by the defendant.

13. The defendant gave the impression in his affidavit that he was a lay person who had been taken advantage of by the plaintiffs. This was far from the truth as was pointed out by the plaintiffs and which I in turn pointed out to the defendant's counsel; the defendant did not disclose that he was/is an investment banker with Smith Barney an institution which carries on activities similar to the plaintiffs'. Therefore the defendant could not be as naive as he painted himself out to be let alone that the plaintiffs could have engaged in 'bucketing' without MAS or him finding it out. As the vice president of Smith Barney, the defendant was well placed to monitor the daily price movements of foreign currencies before he placed his orders with the plaintiffs and one would imagine that he was also in a position to verify the prices after his orders were executed.

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14. I would have been more inclined to believe the defendant's allegations had they been raised before the plaintiffs commenced these proceedings and, he had not paid the plaintiffs on the further margin they required to hold his open positions as well as on the outstanding debt after they had liquidated his open positions. The first action effectively rebuts the defendant's assertion that the plaintiffs encouraged him to trade freely without limits. When the defendant's cheque for the additional required margin of $77,914.11 was dishonoured, the plaintiffs immediately liquidated his open positions and closed his account.

If indeed he entertained doubts whether the plaintiffs executed his orders, the defendant would not have offered to pay the plaintiffs instalments (7) on the outstanding sum; his cheques for the instalments (covering a 13 month period from August 1994 to September 1995) were all honoured save for one cheque for S$20,000 which presumably exceeded the funds available in his account; such action is inconsistent with that of a person who did not accept the validity of the transactions (which statements were forwarded to him at regular intervals, and which the defendant was deemed to accept if he did not protest within a stipulated period).

15. Yet another reason which cast doubt on the veracity of the defendant's allegations was the fact that he had made a profit of US$16,500 on his trading account; he was quick to contend that his losses were due to misconduct on the part of the plaintiffs but he did not complain about his profit, indeed he did not mention it at all.

16. The defendant alleged that he had been advised to complain to the authorities about the plaintiffs' activities but there was no firm statement that he had complained. If indeed the plaintiffs' activities were illegal as the defendant claimed, he would have brought up the matter to the authorities from the start.

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In his position, the defendant was well placed to find out whether the plaintiffs needed a licence from the MAS for their trading in foreign currencies. The plaintiffs had explained that they did not need a licence at the material time and they ceased trading when the deadline to increase their paid up capital in accordance with MAS' guidelines expired. If the defendant made an assertion to the contrary, it was for him to substantiate his contention but he produced no evidence at all.

17. Considering the affidavits filed by the parties, I was of the view that the defendant raised allegations which did not constitute any plausible defence but which were a vain attempt to delay paying the plaintiffs what was rightfully due to them. Accordingly, I dismissed the defendant's appeal with costs.

Lai Siu Chiu

Judge
31 July 1996

Lai Siu Chiu J

Narinderjeet Singh (Jeanny Ng) for the plaintiffs
Kenneth Au-Yong (Ramdas & Wong) for the defendant

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