IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 339

Suit 2084/1995, 2085/1995

Between

OCBC Securities Private Limited

… *Plaintiff*

And

Phang Yul Cher Yeow and Another Action

… *Defendant*

GROUNDS OF DECISION

Contract — Breach; Contract — Remedies — Damages; Contract — Remedies — Damages; Financial and Securities Markets — Securities — Trading

Version No 1: 29 Oct 2026 (23:45 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

OCBC Securities Private Limited v Phang Yul Cher Yeow and Another Action

[1997] SGHC 339

Suit 2084/1995, 2085/1995
Chan Seng Onn JC
15 December 1997

1 **Judgment:**

2 **CHAN SENG ONN JC**

3 The plaintiffs, OCBC Securities Private Limited (OSPL) formerly known as OCBC Securities Pte Ltd, are a stockbroking firm. Phang Miow Sin (PMS) and his son, Phang Yul Cher Yeow (PYCY), were both clients of the plaintiffs. When they failed to pay for the contra losses incurred as a result of share trading, the plaintiffs filed Suit No 2085/95 and Suit No 2084/95 against PMS and PYCY respectively.

4 2.Before the trial commenced, I called parties into chambers for a short Trial Management Conference (TMC) to sort out the various issues of fact and law and determine which issues could be agreed upon. This would help parties focus on the disputed issues at the trial. They would also have more time to do further research on the disputed areas of law. Hopefully, the trial would not be unnecessarily lengthened after the parties had been made aware of the relevant key issues at the commencement of the trial.

5 3.The defendants PMS and PYCY in their re-amended defences denied liability for the contra losses. However, it was ascertained during the TMC that the defendants were not going to dispute their liability but were proceeding only on the basis that the plaintiffs had not taken sufficient steps to mitigate the loss.

6 4.As there were common questions of law and fact, I granted the application from counsel for the plaintiffs for both suits to be consolidated. This application was not objected to by counsel for the defendants. The material facts are as follows.

7 5.PMS opened his trading account with OSPL in May 1988 whereas PYCY opened his later in March 1995. On 18 April 1995, PYCY signed a letter giving full authorization to PMS to enter all sale and purchase transactions on his behalf. The remisier in OSPL who handled the share transactions of PMS and PYCY was one Yap Eng Piow (remisier).

8 6.The operation of these accounts was subject to the standard terms and conditions of OSPL (the Conditions). Clause 4 of the Conditions stipulates:

> *The customer agrees to fulfil and perform all orders or contracts made for and on behalf of the customer by the company and undertakes at all times to indemnify and hold harmless the company, its agent and employees against all costs, expenses, loss, liabilities, claims, and demands arising out of anything lawfully done for and in relation to the Account. The customer further agrees that in any event the company shall be kept harmless from any loss as a result of the customer`s breach or failure to carry out its duties and obligations under such orders or contracts.*

9 7.Under cl 3 of the Conditions, the defendants had to pay OSPL interest at the rate of 31/2% above Oversea-Chinese Banking Corporation`s (OCBC)

Version No 1: 29 Oct 2026 (23:45 hrs)

prime lending rate on all moneys due and payable by them. As of 1 July 1994, the interest rate was revised downwards to 21/2% above the prime lending rate.

10 8.Clause 9 provides that the defendants were to examine all reports of execution of orders, statements of accounts and confirmations despatched to them, which shall be deemed to be conclusive as against the defendants and ratified by them if no objections in writing were received by OSPL within seven days of being forwarded the documents.

11 9.Statements of account and contract notes detailing the amount of contra losses and the dates and prices at which the shares were forced sold had been forwarded to the defendants. Quarterly statements were also sent to PMS.

12 10.After PMS had incurred substantial trading losses, OSPL sent him a letter of demand dated 12 May 1995 to make payment of S$954,731.89 together with interest of S$10,004.48.

13 11.In his reply, PMS asked for copies of the account statements. He did not raise any objections with regard to the contra losses and interest. There was no specific complaint that OSPL ought to have sold the purchased shares immediately on the next trading day following the due date for payment when they received no payment from him. PMS wanted only to know the details of the transactions. He wrote:

> *Surely and truly before one makes payments one would like to know the exact transactions.*
>
> *I am sure it is the policy of OCBC Securities to value and treasure the good clientele, particularly so when I have made so many attempts to speak to your Vice-President, Mr Yap Eng Piow pertaining to the settlement of these contra losses. I have never run away from the responsibility to settle these losses, but what I have asked from you is all my rights. Please therefore, let me*

> *have the detailed copies of all transactions together with your explanatory notes. Much as I hate to say, if you are in my position, without going through the detailed account would you settle these outstanding balances.*

14 12.OSPL duly furnished the statements of account to him on 23 May 1995 and PMS acknowledged receipt of them in his letter dated 26 May 1995. After seeing the accounts, he again never raised any complaint that there was delay in selling the unpaid shares. He never mentioned that he had given the remisier strict instructions to sell off unpaid shares on the next trading day following the due date for payment, which instructions had not been adhered to. He merely said that he instructed his people to audit the respective accounts thoroughly.

15 13.It was clear to me that PMS was more concerned with ascertaining the accuracy of the accounts and checking the computation of the contra losses.

16 14.PMS further responded as follows in his letter to OSPL:

> *In your interest as well as mine, it is important to establish the actual losses before I can propose a scheme of payment towards full settlement. In the meanwhile, please take note that Mr Yap Eng Piow is only allowed to sell off my 100,000 of CASH when the market price has reached RM5.30. As well as, the 100,000 of Innovest at Malaysian market price of RM1.30.*
>
> *I have been given to understand that the Malaysian market should firm up in the forth coming week and undoubtedly the above quoted prices should be within reach.*
>
> *Lastly, I like to reiterate that I am not running away from settling the contra losses.*

17 15.I have set out this portion of the letter in some detail to show the kind of man that PMS was. It does not appear to me that he was someone who would simply allow others to sell his shares at any price at any time. He gave firm and

clear instructions on the specific prices at which to sell his shares. This is what most careful investors I imagine would do.

18 16.When there was no response after having furnished the account statements, OSPL wrote PMS a reminder dated 2 October 1995 some four months later, to settle the outstanding contra losses which then stood at $535,617.57 plus interest, after set-offs from the proceeds of sale of 140,000 cash shares sold on 28 June 1995 and 100,000 Innovest shares sold between 25 July and 30 August 1995. It must be noted that there was still no specific objection that shares ought to have been sold on the next day following the due date, whether as instructed by him or otherwise as per the Kuala Lumpur Stock Exchange (KLSE) settlement system.

19 17.When no response was received, OSPL instructed M/s Allen & Gledhill to issue him a further demand which was dated 28 October 1995. PMS engaged solicitors, M/s Chor Pee & Co, to reply on his behalf. In that reply dated 1 November 1995, PMS did not dispute any liability for the contra losses and merely stated that he wanted to check the statement of accounts. Although PMS had earlier received copies of the statements of his trading account, additional copies including the relevant contract notes were forwarded to PMS`s solicitors on 3 January 1996.

20 18.With regards to the contra losses incurred by PYCY, OSPL sent him a letter of demand dated 28 September 1995 asking for payment of S$293,129.93 together with interest of $540.46. When payment was not forthcoming, M/s Allen & Gledhill acting for OSPL, issued a letter of demand on the 28 October 1995. PYCY refused to pay.

Version No 1: 29 Oct 2026 (23:45 hrs)

21 19.Apart from the letters from the plaintiffs and their solicitors, the credit manager of the plaintiffs, Mr Woon Kok Yan (PW2), had also personally contacted PMS on the telephone to chase for payment. PW2 said in his oral evidence:

> Q: You spoke with D1(PMS) for payment after writing letter chasing for payment? What was conversation about?
>
> A: My impression of conversation was that he never denied the contra loss. I asked him if he owes this amount of money. He did not deny it.
>
> Q: How did you ask him?
>
> A: When I spoke to D1(PMS), I read out the figure from the computer terminal, which is up to date showing the amount that he is owing the company. He said he would make arrangements to pay for it. I do make it a point to do that. To sell at T+8 (ie eight days after transaction date) market was never mentioned at all. This I am very clear.
>
> Q: You had more than one conversation with him?
>
> A: Yes. I can`t remember the other conversations. I can remember very clearly that he did not tell us that you ought to have sold at T + 8 and I read out figures to him, he did not deny them.

22 20.I have no reason to disbelieve PW2 on this part of his evidence. PMS was in 1995 the executive director of North Borneo Timber Bhd (see AB 123), a listed company. He had extensive share trading experience. In fact, he was extremely active in buying and selling of shares. He would have been familiar with the settlement rules for share trading. Had he given any instructions to his remisier which were not followed, he would most certainly have complained when OSPL demanded payments from him in writing or when the remisier asked him to settle the overdue accounts. PMS had ample opportunity to raise such a complaint. I am inexorably driven to conclude that no such instructions

Version No 1: 29 Oct 2026 (23:45 hrs)

to force sell on the very next trading date after due date could possibly have been given by him to his remisier or to OSPL.

23 21.In the defence in both suits, the defendants had pleaded that the remisier had breached the instruction from PMS that all purchases not paid for on the due date for payment must be sold off at the prevailing prices.

24 22.Counsel however could not put the defendants` version of the events to any of the plaintiffs` witnesses as both defendants had chosen not to testify. Counsel for the defendants was placed in a position where he could not really challenge any of the evidence of the plaintiffs` witnesses particularly when these witnesses testified to their personal dealings with PMS. Since no evidence was led by the defence on any failure on the part of the remiser to follow the alleged instructions from PMS to sell off the unpaid shares on T + 8, this part of the defence must necessarily fail.

25 23.The remainder of the defendants` case now rested on the contention that the plaintiffs ought to have mitigated by force selling the unpaid shares on the next trading day after due date ie the eighth day after the date of purchase (in short T + 8), in compliance with the KLSE settlement rules. Counsel in his opening statement admitted that the defendants were in breach of contract when they failed to pay for the shares by the due date. The only issue was one of the quantum of damages. The defendants relied mainly on the KLSE rules which counsel submitted made it obligatory for OSPL to sell the unpaid shares on T + 8. OSPL did not do so and therefore had failed to mitigate their loss. Damages ought to be calculated on the basis of the closing prices for the shares on T + 8 market days in respect of the Malaysian shares and T + 8 calendar days in respect of the `cash` shares bought through CLOB (Central Limit Order Book

Trading), and not by reference to the actual proceeds resulting from the eventual forced selling of the unpaid shares. If the plaintiffs had decided not to sell on the dates that they ought to under the respective SES or KLSE rules, then the consequences of the delayed selling had to be borne by them. The reason why both defendants took this position was understandable because the prices of those shares had generally fallen further since T + 8 and the defendants therefore adopted the position that OSPL had failed in its duty to mitigate its losses because they should have forced sold on T + 8.

26 24.During the cross-examination of Mr Woon Kok Yan (PW2), the credit manager of OSPL, counsel for the defendants focussed on the phrase `per KLSE terms` shown on the contract notes evidencing the purchase of those shares traded on the KLSE. The defendants relied on cl 2 of the Conditions which states, inter alia, that the trading account was subject to the rules, bye-laws and regulations of the Stock Exchange of Singapore Ltd (SES) (as may be supplemented by directions, circulars and/or notices from the same of any board or committees thereof) or such other exchange or market where the transactions are effected and shall be deemed to include such amendments and additions to any, some and/or all the preceding as shall be made from time to time. Thus, counsel argued that the KLSE Trading Framework Guide which provides a fixed settlement system for forced selling of unpaid shares would have been incorporated into the share purchase contracts by the phrase `per KLSE terms`.

27 25.PW2 explained that the SES`s computer system automatically generated the due dates on the contract notes for all shares including CLOB shares traded on the SES. But the system would not generate any due dates for shares not traded on the SES. Neither could the stockbroking firm insert the due date into the computer system at the `Due Date` section of the contract note,

according to PW2. Hence, the `Due Date` on the contract note had to be left blank. There was no other option but to key in `per KLSE terms` under the `Remarks` section of the contract note to indicate to the client that the due date for payment was T + 7 (ie seven market days after the transaction date) as per the KLSE rules for settlement. Since OSPL would have to pay the Malaysian broker on T + 7 for shares bought on the KLSE, they allowed their clients the same time frame of T + 7 within which to pay OSPL.

28 26.Under the KLSE rules, payment is due seven market days after the date of purchase whereas under the SES rules, it is seven calendar days. Since the KLSE rules allowed an extra day or so for payment, PW2 said OSPL extended to their clients the benefit of the longer period of time for payment. Hence, the due date was to be determined on the basis of seven market days as per the KLSE terms.

29 27.Other than this concession, the entire set of SES rules governed the transactions. The small print on the contract notes `subject to the rules and bye-laws of the Stock Exchange of Singapore Ltd` clearly indicated that the KLSE rules did not apply. The wording in some of the contract notes in the remarks section stating,

> *To settle in M$*
> *contra*
> *per KLSE terms*

30 must mean that the settlement or due date for payment in Malaysian ringgit would be as prescribed by the KLSE. The above phrase could not possibly be interpreted to have an extended effect incorporating the whole of the rules of the KLSE to govern every aspect of the contract, which would

include the rules pertaining to forced selling when there was no payment by the due date. Otherwise, it would render nugatory the words in small print `subject to the rules and bye-laws of the Stock Exchange of Singapore Ltd`.

31 28.This part of PW2`s evidence was not challenged and no contrary evidence was given to dispute what PW2 had testified to. I see no reason why I should not accept PW 2`s evidence on this issue.

32 29.The defendants called Mr Sang Hon Keong (DW1) to give evidence concerning the system of forced selling of unpaid shares by member firms of the KLSE. DW1 is a stockbroker and the senior vice president in CIMD Securities Sdn Bhd.

33 30.He referred to a KLSE Members` Circular No 713 of 1990 (p 3 of his affidavit) which reminded members to comply strictly with the following regulation pertaining to selling:

> 3 Member companies shall close-off purchase positions of clients who fail to pay for their purchases by 12.30pm on the seventh (7th) market day following the date of contract and shall on immediate delivery basis institute a selling-out by the eight (8th) market day the securities or any of the securities for which the clients have not made full payment by the said due date. The member companies may at any time thereafter sue such clients for the difference and all losses and expenses consequent upon such selling-out. It shall not be necessary for member companies to give notice of such selling-out and all damages which the member companies may sustain shall be recoverable from the clients as liquidated damages.

34 31.DW1 said that his company followed the KLSE settlement rules very strictly. If on T + 8, the shares were still not picked up, his company would sell the unpaid shares on the very day itself. Shares would be sold by giving to the

Version No 1: 29 Oct 2026 (23:45 hrs)

bidder on the board. His company would try to clear the forced sales by 12.30pm in the morning because some shares might be illiquid. If the remisier failed to clear the positions for forced selling by 12.30pm, credit control personnel would take over the selling after lunch. The reason why his company followed the settlement rules strictly was because of the severe penalties that might be imposed for any failure to comply with these rules. The KLSE imposes a penalty of RM1,000 per day per lot. As far as he knew, no such penalty has been imposed on his company. At this point, I might perhaps add that the Malaysian Federal Court in **Theresa Chong v Kin Khoon & Co** [1976] 2 MLJ 253 had held that a member of the stock exchange who contravened the rules or bye-laws would be liable to penalties provided in them, but they did not have the force of law to render illegal or void a contract between a member and a remisier or between a remisier and buyers of shares, for failure to comply with them.

35 32.Under cross-examination by counsel for the plaintiffs, DW1 was not able to say that there was no occasion that his company had given time to a customer to pay up. He did not know what the actual market practice was in Malaysia and whether there were occasions when member firms had given more time to valued customers to pay up. He agreed that he could not suggest that all stockbrokers in Kuala Lumpur had never extended time for payment. To many of the questions on this point, his answer was that he did not know.

36 33.DW1 confirmed that for forced sales, the normal 1% commission, stamp duty and all other transaction costs were charged to the client.

37 34.Counsel for the plaintiffs later tendered a letter (P2) from CIMB Securities showing that what DW1 said was not entirely accurate. CIMB in that letter had claimed interest from OSPL for late payments on some fairly large

Version No 1: 29 Oct 2026 (23:45 hrs)

trades. Clearly, there had been occasions that CIMB had not taken immediate steps to force sell when payments were not made by T + 8, otherwise there would have been no reason for CIMB to charge interest, which necessarily implied that payments were after their due dates.

38 35.I also note that there was a KLSE Members` Circular No R/R of 1994, which informed members that the Securities Commission had on 10 March 1994 released to the public the Minimum Standards of Business Conduct for Securities Transactions by Member Companies of The Kuala Lumpur Stock Exchange (Minimum Standards). This circular directed all member companies to comply with the Minimum Standards.

39 36.Paragraph 7 states that member companies shall ensure that they will close the purchase positions of their clients who fail to pay for their purchases by 12.30pm on the seventh (7th) market day after contract date by selling out on the eight (8th) market day.

40 37.It is significant that para 2 in the Minimum Standards acknowledges that:

> *some flexibility may be accorded to member companies within the FDDS (Fixed Delivery and Settlement System) scheme itself, as when payment for contracts done on ready basis shall be effected not later than the seventh market day following the contract date (T + 7) or when settlement on a `contra` basis may be made not later than the sixth market day after a purchase. Nevertheless, although some element of discretion is given to member companies, they have to apply their internal requirements and practices evenly and shall not impose additional or different conditions on clients without due and adequate prior notice.*

41 38.However, DW1 was not referred to the abovementioned paragraph in the Minimum Standards nor asked to give any evidence on the scope of this

`flexibility` and how member firms of the KLSE have applied this paragraph in their operations.

42 39.The affidavit of DW1 exhibited a `KLSE Trading Framework Guide` which sets out the fixed delivery and settlement system (FDSS). `T + 7` trading days is the last day for settlement of purchases made on `T + 0`th day by the buyer. Under the column `T + 8 day` trading days is stated `force selling of unpaid for scrips`. I note that it is called a trading framework guide.

43 40.The plaintiffs called Mr Kon Yuen Kong (PW1), a senior and tax partner with M/s Foo, Kon & Tan to testify that stockbroking firms did not strictly force sell on T + 8 but gave reasonable extension of time after T + 8 to their important customers. He however did say that the position was different in recent years and heavy fines were imposed on member firms by the stock exchange for any breach of the rules. Quantum of fines depended on the frequency of breaches. Any indulgence to a valued customer to pay up after T + 8 would be seen as a `business proposition` by the stockbroking firm and the amount of indulgence given would depend on their relationship. In spite of the possibility of being fined, sometimes the `business proposition` prevailed according to Mr Kon, when the client gave a lot of business to the stockbroking firm. He added however that the stringent controls were not imposed by SES for shares not traded on the SES but member firms generally abided by the same rules.

44 41.Counsel for the defendants did not challenge that Mr Kon was not capable of giving any expert opinion on the practices of the securities industry. Mr Kon is a certified public accountant and a fellow of the Institute of Chartered Accountants in England and Wales. In the 1980`s, he had been a member of the

board of examiners of the SES. In the curriculum vitae exhibited in his affidavit, Mr Kon stated his experience in the securities industry. I accept that he has sufficient expertise to give the expert opinion that he did.

45 42.I accept Mr Kon`s evidence that stockbroking firms do not blindly apply a guillotine procedure to force sell the shares purchased by a valued customer on T + 8 the moment no payment is received by the due date. As a `business proposition`, they may allow valued and important clients to pay later than the due date.

46 43.There is nothing in the Bye-Law II - `Trading and Settlement` - March 1995 (nor in the one amended on 2 September 1996) of the SES which states that the stockbroker must force-sell immediately when no payment is received by the due date.

47 44.Clause 4.7 (a) of the abovementioned Bye-Law II states interalia that:

> *the member company may after 12.30 pm on the second market day following the due date force-sell 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 sale whether the sale is made immediately on such failure to pay or at any time thereafter. It shall not be necessary to give notice of such sale and all damages which the member company may sustain in this connection shall be recoverable by the member company from the purchaser as liquidated damages.*

48 45.It must be noted that OSPL is a member of the SES and not a member of the KLSE. It is clear that OSPL operates under the rules of the SES and not that of the KLSE. The forced selling rules of the KLSE are therefore not applicable to the disputed transactions and are irrelevant.

Version No 1: 29 Oct 2026 (23:45 hrs)

49 46.Since the contract notes had indicated that the transactions were subject to the rules and Bye-Laws of the SES, cl 4.7(a) of the SES`s Bye-Law II would be applicable and would govern the share transactions in question. OSPL may at any time after 12.30pm on the second market day following the due date force sell the unpaid shares and sue him thereafter for the difference and all losses and expenses consequent upon such forced sales shall be recoverable from him.

50 47.The `remarks` indicating `To settle in M$ per KLSE terms` or simply `Per KLSE terms" clearly did not oust cl 4.7 (a) above. I find that those remarks used by OSPL were only meant to indicate what the payment due dates on the contract notes were to be. As the `Due Date` section on the contract notes had to be left blank because of the way that the SES computer system was designed to operate, OSPL had to specify the due date in this way. OSPL could not have intended those remarks to oust the application of the rest of the SES rules and bye-laws to the contracts. If such was intended, they would have ensured that their printed contract notes for these KLSE shares would not contain the words `subject to the rules and bye-laws of the Stock Exchange of Singapore Ltd`.

51 48. **Previous course of conduct of PMS**

52 The previous course of conduct of PMS was relevant as it would give an indication of what his conduct with respect to the disputed transactions was likely to be.

53 49.I accept that the records (P1) produced by PW2 covering the period from January 1993 to September 1994 showed that PMS had been paying up on the contra losses, though the sales of the shares were after T + 8. When there

were contra gains for sales after T + 8, the defendants had taken the benefit of those contra profits. I also accept that the second schedule annexed to the two affidavits of PW2 likewise showed payments on the contra losses for transactions in the accounts of both PMS and PYCY for the few months preceding the disputed contra losses.

54 50.This course of dealings between the parties revealed that many of those contra sales on unpaid positions were well after T + 8 and there was no evidence that the defendants had objected to them in any way. Copies of the accounts reflecting the delayed contra sales were regularly sent to the defendants and therefore, the defendants would have been aware of these transactions.

55 51.There is in my view no reason for the defendants to have decided to operate any differently for the disputed transactions and neither would there be any grounds for the plaintiffs to think that they should have treated these disputed transactions any differently from the previous transactions of the defendants and force sell invariably on T + 8 when no payments were received by the due dates.

56 52.With such a record of previous dealings and having regard to the fact that the defendants were important clients, the conduct of the plaintiffs in not proceeding unilaterally with immediate forced selling without the consent of the defendants after due date for payment had expired, is not something that I would have considered unreasonable.

57 53. **Did PMS ask for more time to pay**

Version No 1: 29 Oct 2026 (23:45 hrs)

58 A critical issue of fact which the court had to decide was whether PMS had asked for more time to pay on the disputed transactions.

59 54.There was evidence from PW2 that he had gone to see the remisier personally in his office instead of telephoning him concerning PMS`s overdue positions because PW2 considered the outstanding positions and contra losses in this case to be serious. He had also gone to see the remisier to ask him to chase PMS when he failed to pay the outstanding contra losses. When the remisier telephoned PMS, PW2 was present. PMS asked for time to effect payment, to see the market and wait for the right price. The relevant portions of PW2`s evidence during his cross-examination on this issue are as follows:

> Q: When Yap (remisier) telephoned Phang (PMS), he still had unsold shares?
>
> A: Yes.
>
> Q: You said he asked for time? Time to do what?
>
> A: Time to effect payment. Time to see market. He would lose too much money if he sells now. He gives many reasons why he should not sell now. He would wait for the right price. Wait for some financing to come through. That is the part I mentioned about having to effect payment.

60 55.The plaintiffs also called Mr Chua Yong Wee (PW3) to testify. PW3 was the assistant general manager with OSPL before he left sometime in the middle of August 1997. Part of his responsibilities was credit control and it was his duty to monitor remisiers with clients having overdue positions. The procedure within OSPL for dealing with clients` overdue positions at the time when he was its assistant general manager was as follows: a. If the client`s purchase was not paid for by about two days after the due date of the contract, the credit officer in the Credit Department would contact the remiser concerned

Version No 1: 29 Oct 2026 (23:45 hrs)

to ask whether any arrangements for payment had been made. If the client`s past track record was good and the payment arrangements proposed were satisfactory, the client would usually be given the additional time as requested for to pay.

61 b. If the client still had not paid after about five days, the matter would be referred to the credit manager, Mr Woon Kok Yan (PW2) for his decision.

62 c. Should the position remain outstanding for more than seven days, Mr Woon would refer the matter to him.

63 56.Prior to the disputed transactions, there were several occasions since 1993 when PMS requested for extension of time to pay for his share purchases. These requests were relayed through his remisier. Because PMS was a valued client, his requests were acceded to. PMS did eventually effect the necessary payments after the time extensions were given.

64 57.In PW3`s affidavit, he deposed that he had spoken with the remisier, Mr Yap Eng Piow, on several occasions to press for a resolution, whether by payment or a sale of the shares, pertaining to the disputed transactions. The remisier told him on these occasions that PMS had requested for more time to make payment. He frequently visited the remisier`s office to press the remisier concerning the disputed transactions. On several of these occasions while he was there, the remisier would speak with either PMS or his assistant about making payment. On some of these occasions, the remisier would place the call on speaker phone so that he could hear the conversation. PMS or his assistant would request for more time to make payment for these purchases. As before, those requests would usually be acceded to. Most of PMS`s previous share

Version No 1: 29 Oct 2026 (23:45 hrs)

transactions were sold by the remisier for PMS. As for the disputed transactions, he told the remisier to sell, preferably with PMS`s consent. In his oral evidence, the witness confirmed that he had pressed for payment for both the contra losses as well as for the shares due for payment. He reiterated during his re-examination that PMS asked them to give him some time to settle the contracts.

65 58.This witness is no longer working for OSPL. There is no reason for him not to tell the truth concerning whether PMS had in fact asked for more time to pay on the disputed transactions. Counsel for the defendants did not challenge his evidence except that PW3 was unable to identify exactly which of the disputed transactions PMS had asked for more time and which were the ones he did not. I do not expect PW3 to be able to remember in such detail as there were so many transactions involved. I believe the evidence of this witness in its entirety.

66 59.In his closing submissions, counsel for the defendants conceded that a person asked to pay moneys to a broker or his banker would naturally ask for more time or say that he would pay if there was a running account account. I agree entirely with counsel that it is indeed natural to do so and I am inclined to think that PMS did in fact react in that way and had asked for more time. Quite naturally, he asked for more time to pay so that the forced selling could be delayed to see if the share prices would recover above the prices on T + 8 so that he could reduce his contra losses.

67 60.I find that the plaintiffs have proved beyond a balance of probability that PMS had in fact asked for more time to pay up on his outstanding transactions.

Version No 1: 29 Oct 2026 (23:45 hrs)

68 61.It was not disputed that the defendants were valued and important clients of OSPL. The volume and value of share transactions by the defendants generated very substantial commission incomes for OSPL. Between January 1994 and August 1995, the net value of PMS`s transactions amounted to some $42m and brokerage in the order of $416,000 was earned by OSPL. I have no doubt whatsoever that OSPL regarded the defendants as their valued customers.

69 62.I find that OSPL had acceded to PMS`s requests to allow him more time to make arrangements to pay. It is entirely unmeritorious for PMS to turn round now with the hindsight of how the market had performed and blame OSPL for having acceded to his requests and say they should have sold on T + 8 according to the settlement rules of the KLSE to mitigate his loss. In all fairness, he must be estopped from doing so.

70 63.I am inclined to believe that OSPL had to force sell those outstanding transactions when the position became untenable and they could hold out no longer for PMS. Counsel for the plaintiffs in his closing submissions stated that most of the sales were only a few days outside T + 8. Generally, they were between 5 to 14 days. Only on four occasions were they exceeded.

71 64. **Submissions on the law**

72 Having dealt with the evidence and my findings with respect to them, I now turn to the submissions of counsel on the law.

73 65.Counsel for the defendants submitted that the defendants were not precluded from relying on their legal rights after having been apprised that they were not liable to pay the whole amount or part of the claim. The fact that they

did not know their legal rights initially or that they did not raise objections to the claim earlier would not disentitle them from relying on their legal rights.

74 66.I was not sure what `legal rights` counsel was referring to. Counsel had already conceded on liability and the only remaining issue was one of mitigation of damages ie had the plaintiffs mitigated the loss. Unless counsel meant to say that the defendants were entitled to their `legal rights` in the sense that the plaintiffs had to take reasonable steps to mitigate the loss then I can understand what counsel was really trying to say.

75 67.Counsel then went on to submit that any specific extension beyond T + 8 for payment on the share purchase contracts would constitute a variation of those contracts. If there had been a variation of the contract, then the terms of the transaction in each contract must be looked at to determine the due date for payment for the purpose of determining the date of breach of the contract. But where there was no variation and only an indulgence to pay later was given, the defaulting party was not precluded from relying on his legal rights. Counsel argued that there was no evidence that any particular contract was agreed by the parties to be deferred as to the completion date. Counsel contended that a person could only be estopped if there was actual variation of the contract. Variation of contract could not be based on some indulgence given after the breach had already taken place. According to his submission, there was no legal basis for any argument that the defendants, who did not object to the statements of accounts and who had made payments to the account, were estopped from arguing their legal rights. The plaintiffs could not simply sell whenever they choose to do so, with the defendants having to bear the entire loss.

76 68.Counsel referred me to the following passage in the Privy Council case of **AKAS Jamal v Moolla Dawood Sons & Co** [1916] 1 AC 175 at p 179:

> *The question therefore is the general question and may be stated thus: in a contract for sale the difference between the contract price and the market price at the date of the breach - with an obligation on the part of the seller to mitigate the damages by getting the best price he can at the date of the breach - or is the seller bound to reduce the damages, if he can, by subsequent sales at better prices? If he is, and if the purchaser is entitled to the benefit of subsequent sales, it must also be true that he must bear the burden of subsequent losses. The latter proposition is in their Lordships` opinion impossible, and the former is equally unsound. If the seller retains the shares after the breach, the speculation as to the way the market will subsequently go is the speculation of the seller, not of the buyer; the seller cannot recover from the buyer the loss below the market price at the date of the breach if the market falls, nor is he liable to the purchaser for the profit if the market rises.*
>
> *It is undoubted law that a plaintiff who sues for damage owes the duty of taking all reasonable steps to mitigate the loss consequent upon the breach and cannot claim as damages any sum which is due to his own neglect. But the loss to be ascertained is the loss at the date of the breach. If at that date the plaintiff could do something or did something which mitigated the damage, the defendant is entitled to the benefit of it.* ***Staniforth v Lyall*** *(1) is an illustration of this. But the fact that by reason of the loss of the contract which the defendant has failed to perform the plaintiff obtains the benefit of another contract which is of value to him does not entitle the defendant to the benefit of the latter contract:* ***Yates v Whyte*** *(1);* ***Bradburn v Great Western Railway*** *(2);* ***Jebsen v East and West India Dock Co****(3).*
>
> *The decision in* ***Rodocanachi v Milburn****(4), that market value at the date of the breach is the decisive element, was upheld in the House of Lords in* ***Williams Brothers v Agius*** *(5). The breach in* ***Rodocannachi v Milburn*** *(4) was a breach by the seller to deliver, but in their Lordships` opinion the proposition is equally true where the breach is committed by the buyer.*

77 69.Counsel next relied on the Court of Appeal decision in **City Securities Pte Ltd (in liquidation) v Associated Management Services Pte Ltd** [1996] 1 SLR 727 . There the Court of Appeal said:

> *It is settled law that upon a breach of contract, recoverable damages `should be such as may be fairly and reasonably be considered either arising naturally, ie according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable consequence of the breach`:* ***Hadley v Baxendale*** *[1854] 9 Exch 341 at p 354.*

78 The Court of Appeal later held:

> *In a contract for the sale of shares the measure of damages upon a breach by the purchaser is the difference between the contract price and the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date:* ***AKAS Jamal v Moola Dawood Sons & Co*** *[1916] 1 AC 175 at p 179.*

79 70.Relying on the above authorities, counsel for the defendants submitted that the decisive date to measure the damages was the date of the breach of the contract. The plaintiffs ought to have mitigated their loss by selling on T + 8. If they had sold on T +8, the plaintiffs would have mitigated the loss, which would have been much less than the amount now claimed. By holding on to the shares and selling them at a much later date, the plaintiffs must bear the resulting additional losses.

80 71.Counsel submitted that the losses in Suit No 2084/95 should be computed at $127,161.55 and that for Suit No 2085/95 at $262,103.09, based on the closing share prices on T + 8 for the respective disputed transactions using the Malaysian ringgit and Singapore dollar exchange rate of 0.57 for that period but without any commissions and other expenses of the forced sales thrown in.

81 72.According to counsel, the indulgence given in the past to the defendants to pay later than the due date had no relevance to the subsequent

Version No 1: 29 Oct 2026 (23:45 hrs)

contracts between the plaintiffs and the defendants and was not an answer to the defendants` right to have the losses on those later contracts mitigated by forced selling on their respective due dates based on T + 8.

82 73.Counsel in his closing submissions finally said he was prepared to accept that the defendants from time to time had asked OSPL for more time to pay up when he was told that there were overdue payments owing to them. But he maintained in his submission that there was no evidence that the defendants did ask for extension of time to pay in respect of each of the disputed transactions. Basically, the defendants were satisfied simply to put the plaintiffs to strict proof of that. Not having called the defendants to testify and having no instructions on this point, he could not assert that there was never any extension of time asked for by the defendants in respect of the disputed transactions. I have found as a fact that the defendants did ask for extension of time to pay after the due dates with regards to the disputed transactions. This proved fatal to the defendants` case.

83 74.The case at hand can clearly be distinguished from the facts in ***AKAS Jamal v Moolla Dawood*** . There the respondents bought and the appellant sold certain shares at various prices to be delivered and paid for on or before 30 December 1911. When the appellants tendered the shares on 30 December, the appellants asked for payment and notified the respondents that `failing compliance with the request by today our client will be forced to sell the said shares by public auction on or about the second proximo, responsible for all losses sustained thereby. The respondents then informed the appellants of their indebtedness to them for another transaction and sent cheques for the difference. On 2 January 1912, the appellants repudiated the claim to a set-off and said `We have now to give you notice that our client intends to resell these shares and to

institute a suit against you for the recovery of any loss which may result from that course.`

84 75.Clearly, the repudiation by the respondents had been accepted by the appellants. If the appellants chose to keep the shares and sold them much later between 28 February 1912 and August 1912, the appellants took the risk of the market and they would be entitled to keep the benefit of any rise in the price of the shares thereafter and they would have to bear the loss if the price dropped subsequently. On these facts, the court held that the relevant date for measuring damages was the date of the breach.

85 76.The facts in the present case are very different. The plaintiffs here had not yet terminated the contracts when they were pressing for performance by getting the defendants to pay up on the outstanding share purchases. Plainly, no termination had occurred on T + 8. Assessment of damages on T + 8 would clearly be inappropriate under these circumstances.

86 77.As for the case of ***City Securities v Associated Management Services Pte Ltd*** , City Securities sold 880,000 Malayan Tin Printing Co Ltd (MTP) shares at $3.75 per share to Associated Management Services (AMS). City Securities, who were selling as principal, did not have those shares yet. On the due date (31 January 1986) for AMS to pay for the shares and for City Securities to deliver the shares to AMS, the prevailing market price was only $2.60 per share. AMS failed to pay up. The Court of Appeal awarded damages on the basis of the difference between the contractual price of $3.75 per share and the prevailing market price of $2.60 per share as at the date of breach on 31 January 1986.

Version No 1: 29 Oct 2026 (23:45 hrs)

87 78.Clearly on the facts in that case, the contract was lost on the date of the breach and therefore, the normal prima facie measure of damages applied. It was not a case where AMS had asked for more time to pay and City Securities had agreed, in which case the contract was not yet lost . Further, City Securities also did not have shares to deliver to AMS but the Court of Appeal decided that it was not material whether City Securities intended to apply part of the MTP shares they purchased from Prima or to buy from the open market to fulfil their obligation to deliver the shares to AMS. The case therefore could be distinguished on the facts.

88 79. **The law relevant to the facts of this case**

89 When there is a breach justifying rescission, it is trite law that the innocent party can either accept the breach and terminate the contract or affirm the contract and insist on its continued performance. However, the damages recoverable from the injured party may be reduced if the innocent party failed to take reasonable steps to mitigate his loss. Counsel for the plaintiffs referred me to pp 757-761 of ***The Law of Contract*** by GH Treitel (9th Ed) for that general proposition.

90 80.Generally, the court in determining the quantum of damages will look first at what was the actual loss to the plaintiff and not the gain to the defendant. The reason is because damages are meant to compensate the plaintiff and put him in a position as far as possible in the same position as if the contract had been performed. Damages are not intended to confer a windfall on the injured party when he has in fact suffered no loss. (See pages 839, 842 and 846 of ***Treitel*** .)

91 81.However, loss which is too remote is not recoverable. The test is whether the loss was within the reasonable contemplation of the parties as has been formulated in ***Hadley v Baxendale*** in the following terms:

> *The damages should be such as may fairly and reasonably be considered either arising naturally, ie according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach.*

92 82.The next question is at what point of time should damages be assessed. The starting principle (as is illustrated by the cases **AKAS Jamal v Moolla Dawood Sons & Co** [1916] 1 AC 175 and ***City Securities Pte Ltd v Associated Management Services Pte Ltd*** is that damages are assessed by reference to the time of breach if the injured party is aware of the breach when it was committed and he is able at that time to take steps to mitigate the loss, for instance, by making a substitute contract immediately on discovery of the breach. If not, this principle may be departed from (pp 864 and 865 of ***Treitel***).

93 83.Counsel for the plaintiffs then referred me to p 867 of ***Trietel*** which reads:

> *Even where it is possible for the plaintiff to make a substitute contract on discovering the breach, it may not be reasonable to expect him to do so because at that time there is still a reasonable probability that the defendant will make good his default. In such cases damages are prima facie assessed by reference to the time when that probability ceased to exist. Thus if a seller of goods, after the delivery date has gone by, assures the buyer that he will deliver, but then declares his final inability to perform, the damages will be assessed by reference to the market at the date of that declaration. Again the injured party may continue to press for performance after the agreed time, but finally elect to terminate on account of the breach: in such a case damages are assessed by reference to the date of termination.*

94 84.In assessing the loss, the plaintiff would not be allowed to recover losses that he should have avoided. The plaintiff must take reasonable steps to minimise his loss. If he were to act unreasonably in trying to mitigate, any extra loss resulting is not recoverable. In that sense, he has a `duty` to mitigate. However, the plaintiff need not take steps which would involve him in complicated litigation, risk his commercial reputation or involve him in unreasonable expense (see **Khoo Than Sui v Chan Chiau Hee** [1976] 1 MLJ 25). On occasions, he may have to accept from the party in breach a performance which departs from the original contract, for instance, the buyer may be required to mitigate by accepting late delivery from the seller who could not deliver on time. (Pages 881-883 of ***Treitel*** .) Hence, the opportunity to mitigate may be in the form of an offer from the party in breach and if the plaintiff unreasonably refuses to accept that offer, he himself may be in breach of his `duty` to mitigate his loss. (Paragrah 26-054 of ***Chitty on Contracts*** (27th Ed).) Scrutton LJ in **Payzu Ltd v Saunders** [1919] 2 KB 581 at p 589 said that it is generally reasonable in commercial contracts to accept an offer from the party in default.

95 85.To reinforce the above propositions, counsel for the plaintiffs further referred me to para 26-029 of ***Chitty*** which reads:

> ***The relevant date for the assessment of damages****. The general rule is that damages for breach of contract should be assessed as at the date when the cause of action arose, viz the date of the breach (which rule usually applies where substitute performance is readily available in the market). `But this is not an absolute rule: if to follow it would give rise to injustice the court has the power to fix such other date as may be appropriate in the circumstances.` Thus, if, after a breach, the innocent party reasonably continues to treat the contract as in force, damages may be assessed as at the later date `when (otherwise than by his default) the contract is lost` viz when performance becomes impossible, or when the innocent party terminates the contract.*

Version No 1: 29 Oct 2026 (23:45 hrs)

96 86.The law is clear that the onus of proof is on the defendant to show that the plaintiff, as a reasonable man, should have taken certain steps to mitigate his loss. In so acting, the plaintiff must consider the defendant`s interest besides his own. But the standard of reasonableness required of him is not high because the plaintiff is not the wrongdoer. He is not `under any obligation to do anything other than in the ordinary course of business`. (Paragraph 26-051 of ***Chitty on Contracts*** ; paras 311 and 312 of ***McGregor on Damages*** (15th Ed); **Dunkirk Colliery Co v Lever** [1878] 9 Ch D 20.) If the defendant fails to show that the plaintiff ought reasonably to have taken certain steps to mitigate the loss, the normal measure of damages will apply. Whether the plaintiff had reasonably taken all steps to mitigate the loss is a question of fact and not law.

97 87.In **Banco de Portugal v Waterlow & Sons** [1932] AC 452 at p 506, Lord Macmillan said:

> *Where the sufferer from a breach of contract finds himself in consequence of that breach placed in a position of embarrassment the measures which he may be driven to adopt in order to extricate himself ought not to be weighed in nice scales at the instance of the party whose breach of contract has occasioned the difficulty. It is often easy after an emergency has passed to criticise the steps which have been taken to meet it, but such criticism does not come well from those who have themselves created the emergency. The law is satisfied if the party placed in a difficult situation by reason of the breach of a duty owed to him has acted reasonably in the adoption of remedial measures, and he will not be held disentitled to recover the cost of such measures merely because the party in breach can suggest that other measures less burdensome to him might have been taken.*

98 88.Plaintiffs` counsel also read the following passage at p 118 from ` ***Remedies for Breach of Contract - A Comparative Account by GH Treitel*** `:

> *Even where it is possible for the aggrieved party to make a substitute contract, it may not be reasonable to expect him to do so immediately when that possibility arises. This will be the*

> *position where there is a reasonable possibility that the contract may still be performed: eg because the party in breach has promised to cure his default but has then failed to do so; where the aggrieved party has continued after breach to press for performance but has later elected to terminate on account of the breach; or where the aggrieved party has actually taken legal proceedings for the specific enforcement of the contract but it later becomes clear that actual performance will not be rendered. Damages in all such cases are assessed by reference to the time when the possibility of securing performance has ceased to exist, or, in other words, `as at the date when the contract is lost.`*

99 89.In his judgment at p 400 in **Johnson v Agnew** [1980] AC 367, Lord Wilberforce said:

> *The general principle for assessment of damages is compensatory, ie, that the innocent party is to be placed, so far as money can do so, in the same position as if the contract had been performed. Where the contract is one of sale, this principle normally leads to assessment of damages as at the date of the breach - a principle recognised and embodied in s 51 of the Sale of Goods Act 1893. But this is not an absolute rule: if to follow it would give rise to injustice, the court has power to fix such other date as may be appropriate in the circumstances.*
>
> *In cases where a breach of a contract for sale has occurred, and the innocent party reasonably continues to try to have the contract completed, it would to me appear more logical and just rather than tie him to the date of the original breach, to assess damages as at the date when (otherwise than by his default) the contract is lost. Support for this approach is to be found in the cases. In* ***Ogle v Earl Vane*** *[1867] LR 2 QB 275; LR 3 QB 272 the date was fixed by reference to the time when the innocent party, acting reasonably, went into the market; in* ***Hickman v Haynes*** *[1875] LR 10 CP 598 at a reasonable time after the last request of the defendants (buyers) to withhold delivery. In* ***Radford v De Forberville*** *[1977] 1 WLR 1262, where the defendant had covenanted to build a wall, damages were held measurable as at the date of the hearing rather than at the date of the defendant`s breach, unless the plaintiff ought reasonably to have mitigated the breach at an earlier date.*

100 90.After referring to the case of ***Johnson v Agnew*** , Mr Andrew Park QC sitting as a deputy High Court judge in **Suleman v Shahsavari** [1988] 1 WLR 1181 said:

> *The rule now is that damages may - and perhaps even should - be assessed at the date when the plaintiff loses his purchase if that is a more just measure of compensation and the plaintiff has not unreasonably delayed his claim.*

101 In the case of **Barnett v Javeri & Co** [1916] 2 KB 390, Bailhache J ruled that:

> *The measure of damages would, in ordinary circumstances, have been the value of the goods to the buyer at the time when they ought to have arrived in this country. They ought to have arrived long before January 19, but the buyer waited at the sellers` request, the sellers constantly telling him that the goods would come. The buyer, therefore, is entitled to take the measure of his damages at the date, about January 19, when the sellers expressed their belief that they would be unable to fulful their contract.*

102 91.Counsel for the defendants said that he would not `quarrel` with the cases and the various textbook passages submitted by plaintiffs` counsel. I think counsel for the defendants rightly conceded in that regard. They illustrate the trite contractual principles and how those principles may be applied. I have taken the liberty of citing them quite extensively so far as they are relevant to the facts of the case at hand.

103 92. **My conclusion**

104 In applying the relevant law to the facts as found by me, I am of the view that when OSPL was granting extension of time, there was still a reasonable probability that the defendants would pay up. Particularly when the defendants had paid up previously, it was certainly reasonable for the defendants to accede to the defendants` requests for more time. OSPL was entitled to treat the contracts as subsisting and to continue to press the defendants for payment later. Prima facie the appropriate time to assess damages would not be on T + 8 but by reference to the time when that probability ceased to exist, which was the

Version No 1: 29 Oct 2026 (23:45 hrs)

time that OSPL took action to force sell the shares. That was the time when OSPL finally elected to terminate the contracts on account of the breach and to sell off the shares. Clearly, damages would have to be ascertained by reference to such date that OSPL terminated the contracts and sold the shares.

105 93.It would be an injustice if this court were to have no power to fix a date other than T + 8, which date I consider to be totally inappropriate in the circumstances of this case. Thus, if, after a breach, the innocent party ie OSPL reasonably continued to treat the contract as still being in force, the damages ought rightly to be assessed at the later date when it became clear to OSPL that no payments would be forthcoming and the contracts had to be terminated and the shares forced sold ie the contracts were lost.

106 94.It would not be fair for the defendants who had put the plaintiffs in their predicament in the first place to turn round to demand that the method used by the defendants to extricate themselves from the dilemma be `weighed in nice scales` and with the full benefit of hindsight of how the share prices had gone. I can do no better than to repeat the words of Lord Macmillan that it is often easy after an emergency had passed to criticise the steps which had been taken to meet it.

107 95.The main question I need to consider and answer is whether the party placed in that difficult position had acted reasonably when he took remedial measures in order to mitigate the loss. I have answered that in the affirmative. The fact that the defendants were able to suggest alternative courses of action which could have better mitigated the loss for them would in my view be insufficient to disentitle the plaintiffs from recovering their loss in this case. It would not be be logical nor just to tie OSPL to the date of the original breach

on T + 8. There are ample authorities to support the position that the court does not invariably have to assess damages as at the date of the breach. There can be other appropriate dates after the breach for such assessment.

108 96.The burden lies on the defendants to show that the plaintiffs ought reasonably to have taken steps in mitigation to sell on T + 8. That burden has not been discharged at all. On the other hand, the plaintiffs` burden to show that they had acted reasonably, which is a light one, has been amply discharged by them.

109 97.As I have found as a fact that OSPL had not acted unreasonably in mitigation of the loss, they are entitled to claim from the defendants the full amount of the actual losses. They are entitled to include their expenses (ie commissions and brokerage and other fees) associated with the forced sales. I see no merit in the defendants` counsel submission that these expenses should be omitted from the computation of the loss.

110 98.Even if I am wrong in my finding of fact that there were requests from PMS to grant him more time to pay up on the outstanding transactions, I hold that the defendants are estopped from arguing that the plaintiffs ought to have sold immediately on T + 8. Plainly, the previous numerous dealings and course of conduct showed that when the plaintiffs did not force sell on T + 8, the defendants never complained but paid up subsequently, though they knew of the settlement rules. Lord Denning MR in **Amalgamated Investment and Property Co Ltd v Texas Commerce International Bank Ltd** [1982] 1 QB 84 at p 122 said:

> *When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which*

> *they have conducted the dealings between them - neither of them will be allowed to go back on that assumption when it would be unfair or unjust to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.*

111 99.Clearly, on these alternative facts, it would still be unconscionable to put the additional loss at the doorstep of the plaintiffs by assessing the damages as at T + 8. It is only right that I should hold that the plaintiffs were entitled to rely on the previous dealings and course of conduct of the defendants to grant them indulgence to pay later in the same belief and expectation that they would pay up later and there was nothing to show that the defendants were financially incapable of paying up or were unable to arrange the necessary finances to do so. I do not think that the plaintiffs had acted unreasonably at all in granting more time of their own accord to the defendants in reliance on the previous course of dealings of these valued clients of theirs. As such, the damages must be assessed at the date when it became clear to that the plaintiffs had no choice but to treat the contracts as lost and then force sell the shares in the disputed transactions.

112 100.I therefore gave judgment in Suit 2085/95 for the amount of $511,617.57 plus interest of $111,618.11 up to 20 October 1997 plus further interest at $119.40 per day to 22 October 1997. I also gave judgment in Suit 2084/95 for the amount of $293,129.93 plus interest of $65,600.76 up to 20 October 1997 plus further interest at $68.26 per day to 22 October 1997, which is the date of my judgment. Costs were to be taxed and paid by the defendants to the plaintiffs. Dissatisfied with my decision, the defendants have appealed.

Version No 1: 29 Oct 2026 (23:45 hrs)

OCBC Securities Private Limited v Phang Yul Cher Yeow and Another Action [1997] SGHC 339

Chan Seng Onn JC

K Shanmugam and Maria Ho (Allen & Gledhill) for the plaintiffs
Lim Chor Pee (Chor Pee & Partners) for the defendants

Version No 1: 29 Oct 2026 (23:45 hrs)