IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 291

Suit 2115/1997

Between

AMS Securities (S) Pte Ltd

… *Plaintiff*

And

Tan Poh Choon

… *Defendant*

GROUNDS OF DECISION

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

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AMS Securities (S) Pte Ltd v Tan Poh Choon

[1998] SGHC 291

Suit 2115/1997
Kan Ting Chiu J
31 August 1998

Judgment :

GROUNDS OF DECISION

1. This is an appeal against the Assistant Registrar's order in an Order 14 application that the defendant be granted leave to defend the plaintiffs' claim upon furnishing security in the form of a banker's guarantee for RM 7,807,947.36.

2. The plaintiffs are securities brokers with whom the defendant had an account. The plaintiffs claimed that the defendant had incurred trading losses of RM 7,807,947.36 in his account with them.

3. The plaintiffs applied for summary judgment against the defendant. In an affidavit filed on 5 February 1998 in support of the application Thio Gwan Choon, the plaintiffs' Chief Executive Officer, deposed that the defendant's account was opened in November 1997. The plaintiffs received a power of attorney executed by the defendant dated 6 November 1997 appointing Sim Joo Hock (hereinafter referred to as "Sim") as his attorney with power *inter alia*

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> To act for me in all matter connected with any shares, stocks, debenture stock, annuities, bonds, obligations, mortgages or other securities or investments of whatever nature which I now hold or may hereafter acquire (collectively, "investments").

4. Thio Gwan Choon added that between 19 November and 21 November, the defendant through his attorney purchased and sold 1370 lots of Innovest Bhd shares, and incurred a debt of RM 7,807,947.36 to the plaintiffs through these transactions.

5. In opposition to the application the defendant filed an affidavit on 3 March 1998. He agreed that he had opened an account with the plaintiffs. He admitted that he had authorised Sim to trade on the account through the power of attorney, but added that he had an arrangement with Sim that he was to be consulted before Sim executed any trading orders on his account.

6. The defendant deposed that Sim did not inform him that he was going to place any purchases or sale orders on the account and he himself had not placed any orders with the plaintiffs.

7. He complained that he did not receive any trading statements from the plaintiffs before 26 November. He was surprised when Christian Wu Yuei-Chen (whom he referred to as Chris Wu), the plaintiffs' broker in charge of his account, telephoned him on or about 22 November and informed him that Sim had traded Innovest Bhd shares on his account from 19 to 21 November on a contra basis and had incurred losses in the region of RM 7 million, for which he was liable. The defendant said that "I had at that time and before going through matters with Sim, no reason to suppose that Chris Wu may be misrepresenting the situation to me."

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8. He did not explain why he did not ask Wu for the trading statements or tell him that Sim was not supposed to trade without consulting him. Instead he tried to contact Sim from 22 to 25 November to verify whether he had traded on the account, and "(w)hen Sim could not be contacted … I assumed the worst, that these transactions were entered into by Sim on my account."

9. On 24 November he requested his Malaysian lawyer Mr Chong Ki Keong to arrange for a meeting between the plaintiffs and himself. The meeting was held on 25 November between himself, Mr Chong, Chris Wu and the plaintiffs' lawyer at Mr Chong's office. At the meeting no documents or statements of account were shown by the plaintiffs in support of their claim. He said that Wu represented that he had tape-recordings of telephone conversations of the purchase and sale orders made by Sim to prove that Sim had made the orders on his account.

10. He felt in that situation that

> 16 *I had no choice but to ask Chris Wu to give me time to settle these "debts*". Quite obviously it would be impossible to raise over M$7 million in a few days. Chris Wu told me that if his company were to grant me such a favour, the Plaintiffs will incur difficulties with the Monetary Authority of Singapore to whom they had to answer. He told me that I must arrange to put up security for the debts incurred by 28 November 1997. He also told me that I would have to acknowledge in writing the loss-making trades, to justify the granting of time to me to raise funds and for the Plaintiffs not to take legal action against me.
>
> 17 I replied that I would try to get Sim to put up further shares as security since it was he who made these trades.
>
> 18 As for the requested acknowledgment in writing for the incurring of the trades, I told Chris Wu that I could not give a written acknowledgment without speaking to Sim. I had no authority to acknowledge these trades for Sim, and as for myself I did not know what Sim had traded and could not verify the transactions properly.

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> 19 Chris Wu also told me that the Plaintiffs in being indulgent to their customers in allowing/facilitating such huge trades to take place without security may also run into difficulties with the Monetary Authority of Singapore for such practices. He therefore urged me to obtain the securities by 28 November 1997 on an urgent basis, otherwise he would not be able to hold off legal action against me. *I felt hard-pressed at this time, so I agreed to try my best without making concrete promises that shares would definitely be available or on the number of shares to be made available.*
>
> (Emphasis added)

11. Apparently he did not ask to hear the alleged taped conversations, or to see the statements of accounts during that meeting. He said that the latter were sent to his lawyers some days later.

12. Mr Chong in his affidavit filed on 8 April 1998 referred to the meeting of 25 November. He did not refer to the defendant's request for time but deposed that -

> 7 The Defendant reiterated during the meeting since all instructions regarding the alleged trading of Innovest shares for his accounts are given by Mr Sim Joo Hock, the Defendant could not provide any written acknowledgment of debt until he has verified the matter with Mr Sim Joo Hock. He emphasized that he did not give Sim specific instructions to purchase Innovest shares.
>
> However, feeling sorry for Mr Christian Wu, the Defendant agreed to speak with Mr Sim Joo Hock to try and obtain some free shares for the Plaintiff. There was no concrete promise that such shares will be available and most certainly there was no concrete promise on the number of shares involved.

Another point of departure between Mr Chong's account and his client's was that the defendant had not professed any sympathy for Wu but had said that he has felt hard-pressed because Wu had intimated that the plaintiffs would take legal action against the defendant if security was not furnished by 28 November.

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13. The defendant said that when he eventually managed to contact Sim on 3 December, Sim told him that he had not made any trades on his account and had only traded under his own trading account.

14. Sim filed an affidavit on 3 March 1998. He confirmed that he had to notify the defendant and obtain his approval before he made any trades on the account. He went on to state that he had not executed any trades on that account, although he had traded on his own account with the plaintiffs.

15. Sim had also deposed another affidavit on 31 March 1998 in an action by the plaintiffs against him. The defendant gave notice under Order 32 rule 13 of the Rules of Court 1996 to refer to this affidavit. In this affidavit Sim deposed that

> 11. Tan and his lawyer, Chong Ki Keong, tried to contact me on several occasions by telephone between 22 November 1997 to 24 November 1997. They left messages that Wu and Thio have been harassing Tan about trades made in his account and that I should meet them to discuss the matter. I returned the call and left a message for Tan and Chong that there was nothing to discuss until all the Contract Notes and Statements for the transactions were received. In any case, since I had not placed any trading orders for Tan's account there was nothing to discuss. My immediate priority was getting in touch with the placee. Also, I wanted to buy more shares since the price was coming down. Accordingly, I did not see any point in meeting with Tan or his lawyer Chong and I therefore declined to attend a meeting organised at Chong's office on 25 November 1997 to discuss Tan's account with the Plaintiffs.

16. The defendant's secretary, Yip Choon Hoh, filed an affidavit on 2 April 1998 stating that no faxes were received at the defendant's facsimile 03-9254601 from the plaintiffs relating to the defendant's trades.

17. That was in reply to the affidavit of Chong Siew Yoke, the plaintiffs' Chief Administrator filed on 12 March 1998 exhibiting the records of the defendant's

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trades. Among the exhibits were two messages from the plaintiffs dated 19 and 20 November relating to the purchase and sales of Innovest shares on his behalf, sent to the defendant at fax 9254601, the defendant's fax number stated in his trading account application form. The messages were sent from the plaintiffs' fax 5366080. This was collaborated by the telephone bill for the plaintiffs' telephone 5366080 which recorded transmissions to the defendant's fax on those two days.

18. The defendant had also alleged that the plaintiffs were in a fiduciary position and had a duty of care towards him, and that they have failed in their fiduciary and contractual duties. However these matters were not raised or developed before the Assistant Registrar or in the appeal.

19. In the face of the matters agreed to and those in dispute, the issues should be identified. The defendant does not dispute that he was a client of the plaintiffs, and has not taken issue on the computation of the claim. His complaint is that his agent Sim was not authorised to make trades without notifying him, and had not made any trades in his name and that he had not been informed of such trades. Sim's alleged failure to consult him is not a defence to the plaintiffs' claim because nothing in the power of attorney required the plaintiffs to enquire with Sim when they act on his instructions.

20. His complaint that he was unaware of his trades was contradicted by the two facsimile messages from the plaintiffs to him confirming trades of Innovest shares.

21. He claimed that he promised on 25 November to settle his debts because Sim did not answer or return his calls and he assumed that Sim had made the transactions on his account. The assumption was inconsistent with the alleged

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arrangement with Sim for Sim was to consult him before transacting any trade. A reasonable man in his position would not make that assumption without verifying the trades with his agent, and would be even less likely to do that when he is facing a substantial claim, and is meeting the claimants at his lawyer's office with his lawyer in attendance.

22. His assertion that he was unable to contact Sim before he went to the meeting was contradicted by Sim's disclosure that he had left a message for him and his lawyer that he had not traded on the defendant's account, and that he would not attend the meeting on 25 November.

23. There are questions over the defence raised - was the defendant ignorant of the trades despite of the two faxed messages from the plaintiffs, why he asked for time to settle the plaintiffs' claim, and whether Sim communicated with him before the meeting of 25 November.

22. The central issue to the plaintiffs' claim is whether the trades in question were placed with the plaintiffs on the defendant's account. This is a question of fact that should proceed to trial. The Assistant Registrar was right when he gave the defendant leave to defend the plaintiffs' claim. However there are questions, inconsistencies and contradictions in the defence raised in resisting the plaintiffs' application. They must have led the Assistant Registrar to require the defendant to furnish security before he proceeds with the defence. In my view, he was right to make that order, and I dismissed the appeal against his decision.

Kan Ting Chiu

Judge

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Kan Ting Chiu J

C Patel (Dave Shaun Patel & Jim) for the appellant/defendant
Chan Hock Keng (Wong Partnership) for the respondents/plaintiffs

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