

Fraser Securities Pte Ltd v Seet Ai Kiang and Others
[2004] SGHC 9

Case Number : Suit 478/2003, RA 310/2003
Decision Date : 15 January 2004
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Andrew Ong (Rajah and Tann) for plaintiff; Lee Mun Hooi and Wong Nan Shee (Lee Mun Hooi and Co) for defendants
Parties : Fraser Securities Pte Ltd — Seet Ai Kiang; Chang Chwee Leong; Ang Tian Kiat; Tan Kim Eng; Chan Peng Kheng

Civil Procedure – Summary judgment – Leave to defend – Whether triable issues raised – Whether special reason for trial existed – Rules of Court (Cap 322, R 5, 1997 Rev Ed) O 14.

Contract – Contractual terms – Parol evidence rule – Whether oral agreement admissible to vary written contract – Evidence Act (Cap 97) ss 93 & 94.

Introduction

1 The plaintiffs, a firm of stockbrokers, commenced this action against the defendant, a lady working as a secretary in a trading company, to recover the sum of \$578,911.90 which they alleged was payable to them in respect of the stockbroking services they had provided to the defendant and the transactions carried out on her account. The plaintiffs were awarded summary judgment against the defendant. She appealed and I dismissed her appeal. She has now appealed to the Court of Appeal.

The Defence

2 The Defence contained the following material averments. The defendant admitted that on 13 September 2001, she applied to the plaintiffs for the following accounts:

- (a) a trading account (individual); and
- (b) a personal margin account.

She also signed a margin facility agreement and memorandum of deposit. The defendant denied, however, that she had appointed the plaintiffs as her stockbrokers in and about the purchase of stocks and shares as pleaded by the plaintiffs in their statement of claim.

3 The defendant went on to aver that she was a friend of Mdm Tan Kim Eng, the wife of one Mr Chan Peng Kheng, a director of the publicly listed company, Leong Hin Holdings Ltd ("Leong Hin"). She said that she was asked by Mdm Tan to open the accounts with the plaintiffs so that Mdm Tan, Mr Chan, his brother Mr Chan Chwee Leong (also known as Bernard Chan) and one Mr Ang Tian Kiat could trade in Leong Hin shares with the plaintiffs. (I should point out here that the defendant took out third party proceedings against these four persons and I will therefore refer to them as the third parties.) The defendant was told that she would be a mere nominee holder of these accounts and any transactions effected under them and payment for the transactions would be the responsibility of the third parties.

4 The defendant was taken to the plaintiffs' office by one of the third parties (which specific

third party she could not remember) to apply for the aforesaid accounts and to enter into the aforesaid agreements in the presence of the plaintiffs' remisier (the name of whom the defendant could not recall) who was told of the arrangement between the defendant and the third parties.

5 Thereafter, trading in Leong Hin shares was carried out by the third parties. The defendant did not effect payment for these trades. She did not give any letter to the plaintiffs authorising any of the third parties to trade in Leong Hin shares under her accounts. She further averred that the plaintiffs were well aware that these trades had been carried out by the third parties as principals. The defendant averred that she had no knowledge whatsoever as to how the outstanding sum of \$578,911.90 was incurred or derived as she did not effect any transaction or authorise any party to deal in Leong Hin shares on her behalf.

The affidavits

The first affidavit filed by the defendant

6 In her first affidavit in response to the O 14 application, the defendant fleshed out the allegations in her Defence. She averred that at all material times she was a mere nominee account holder for the third parties in respect of the accounts opened with the plaintiffs and that she was never involved in any of the trades conducted for the accounts.

7 The defendant is secretary to one Mr Ong Choon Seng, the chairman of Associated Auto Agencies Pte Ltd ("AAA"), a company that had a long standing business relationship with Mr Chan. As a result, in the 1980s, the defendant came to know Mdm Tan and also Bernard Chan.

8 Sometime in 2001, Mdm Tan approached the defendant and said that she and her husband would like to use the defendant's name as a nominee to trade in Leong Hin shares. The defendant agreed as Mdm Tan was a good friend and also Mdm Tan and her husband assured her that they, together with the other third parties, would bear all liabilities arising from the trading of the said shares. Mdm Tan stated that all procedures relating to the opening of accounts would be handled by Bernard Chan and Mr Ang Tian Kiat.

9 In September 2001, Bernard Chan and Mr Ang took the defendant to the plaintiffs' broking house to open a securities trading account in her name and to sign the necessary documents. At the plaintiffs' office, they met the plaintiffs' "remisier/broker" whose name the defendant could not remember. All that she could remember was that she was taken to a room and there she met the remisier who gave her a blank application form for the opening of a trading account and she was told to sign at the portion designated for her signature. The defendant could "vividly recall" that at this juncture, Bernard Chan and Mr Ang told the remisier that the defendant was merely a nominee for the accounts, that all transactions would be carried out by either of them or any of the other third parties, and that the defendant would not be responsible for any transactions relating to or carried out under the accounts.

10 After signing the documents, the defendant left the plaintiffs' office while Bernard Chan and Mr Ang remained behind with the remisier. The defendant did not speak to or see the remisier again. She continued to work at AAA and did not bother about the trading accounts as her understanding with the third parties was that she would be a mere nominee of the accounts and they would be responsible for all instructions. The defendant asserted that she had never given any instructions to the plaintiffs' remisier and had no dealings with the latter apart from the occasion on which she opened the accounts. She also stated that none of the trades effected by the plaintiffs allegedly on

her behalf had been paid for from her account nor had she received any of the proceeds of sale of Leong Hin shares traded under the accounts.

11 The defendant referred to the allegation of the plaintiffs that contract notes and *contra* statements in respect of transactions in the accounts were regularly, and as a matter of course, sent to the defendant at her residential-cum-mailing address and that these were not disputed by her. The defendant said that notwithstanding that these documents were sent to her, this did not detract from the fact that at the time of the opening of the accounts, the plaintiffs by their remisier were told, and had knowledge, that she was only a mere nominee account holder. Their subsequent conduct clearly reflected that their remisier was taking instructions from the third parties as regards the transactions in the accounts. The defendant further said that whenever she received the contract notes and *contra* statements, she gave them to Mdm Tan.

12 The defendant referred to investigations carried out by the Commercial Affairs Department ("CAD") in respect of the suspected rigging of Leong Hin shares. She said that all the third parties had been called in for questioning and she too had been asked to assist in the investigation. From the investigation carried out by CAD, it was apparent that the third parties were suspected of utilising nominee accounts to rig the price of Leong Hin shares. The defendant also referred to seven other suits in the High Court started by share broking firms against individuals for amounts owing on trading accounts in which the respective defendants had asserted that the purchases or trades sued on were not authorised or conducted with their knowledge. It was not a mere coincidence that all these other defendants had the same line of defence in that they had no knowledge of the trades involved and did not authorise the same. The third party, Mr Ang Tian Kiat, was a defendant in two of these suits and he too had denied any knowledge of trading whereas in the present action the defendant had identified Mr Ang as a key player in this rigging scheme. As such, there was something suspicious in the circumstances and there was a triable issue as to what had truly transpired.

The affidavits filed by the plaintiffs

13 Various employees of the plaintiffs filed affidavits in support of the plaintiffs' claim. One Ms Agatha Song Cheng Sim identified herself as the remisier who had handled the defendant's account with the plaintiffs. She stated that at all material times she was in charge of servicing the defendant's two share trading accounts, namely, a securities trading account ("the cash account") which formed the subject matter of the action, and a margin trading account which was the subject matter of a pending suit in the Subordinate Courts.

14 Ms Song stated that another of her clients, Mr Ang Tian Kiat, introduced the defendant to her as a client towards the end of August 2001 or in early September 2001. A few days prior to 13 September 2001, Mr Ang spoke with Ms Song over the telephone and indicated that he wished to open an margin trading account with the plaintiffs, in addition to the ordinary trading account which he already had. He told her that the defendant also wished to open two trading accounts with the plaintiffs to be serviced by Ms Song. As Ms Song had just joined the plaintiffs and was eager to expand her client base, she agreed to accept the defendant as a new client. Ms Song was not familiar with the defendant though she recalled having met her once previously in a social setting.

15 During the telephone conversation, Mr Ang stated that both he and the defendant did not want to go to the plaintiffs' office to sign the necessary account opening forms and asked that the forms be made available for him and the defendant to complete. As the plaintiffs' policy required that the signing of the account opening documentation by a customer be witnessed by a customer service officer, arrangements were made between Ms Song and Mr Ang for the officer concerned to meet him

and the defendant at a coffee shop near Lavender Street on 13 September 2001. On the date in question, two officers, Ms Ong Wuen Wuen and Ms Cindy Loo, met Mr Ang and the defendant at the designated site and duly witnessed the completion and signing of the necessary forms.

16 Ms Song said it was untrue that the defendant had visited the plaintiffs' office to open the two accounts, let alone met with Ms Song on that occasion or discussed the alleged matters as recounted in her first affidavit. The defendant's allegation that she or Bernard Chan or Mr Ang had informed Ms Song or any of the plaintiffs' representatives that the defendant would be a "mere nominee account holder" for the cash account was untrue. Furthermore, she herself had definitely not agreed with the defendant that the defendant would not be responsible for any losses incurred in the cash account. Ms Song asserted that she would not have agreed to allow the defendant to open an account on such terms and would not have accepted the defendant as one of her customers on that basis. At all material times she accepted the defendant as a client on the footing that the defendant was the account holder for both the accounts and that the defendant would be responsible for any trading losses incurred in the two accounts.

17 Ms Song also stated that she was neither privy to nor aware of any alleged arrangement between the defendant and the third parties in relation to the operation of the accounts. Nor was she aware of the nature of the relationship between the defendant and the third parties. Ms Song said that at all material times the defendant was the only person from whom she had obtained orders to trade in shares in the cash account including the relevant transactions giving rise to the *contra* losses claimed in this action. All of the defendant's instructions were communicated to Ms Song verbally over the telephone in the normal course of trading by the defendant herself. Ms Song had not sought or taken instructions or orders to trade from any of the third parties in respect of the defendant's accounts.

18 Ms Ong Wuen Wuen filed an affidavit in which she stated that on 13 September 2001 she had taken account opening forms to the defendant and Mr Ang Tian Kiat at a coffee shop near Lavender Street. This coffee shop was close to the defendant's workplace. Ms Ong's colleague, Ms Cindy Loo, accompanied her.

19 When the two officers arrived at the coffee shop, Mr Ang was already there. He then completed and signed the forms needed to open a margin account with the plaintiffs. Thereafter, the defendant arrived at the coffee shop and joined them at the table. She had forgotten to bring her identity card with her, but Ms Ong allowed her to complete and sign the account opening forms for the cash and margin accounts. Ms Ong witnessed the defendant's signature and then accompanied the defendant back to her office and waited for her outside the premises whilst the defendant went in to retrieve her identity card. After cross-checking the defendant's particulars in the completed account opening forms against her identity card, Ms Ong and Ms Loo returned to the plaintiffs' office.

20 Ms Ong confirmed that at no time during her meeting with Mr Ang or the defendant on 13 September was any mention made by them that the defendant would only be a nominee account holder. Neither the defendant nor Mr Ang mentioned that a third party or parties would be authorised to give instructions to trade on the defendant's behalf in respect of either the cash account or the margin account. Had any such indication been given, Ms Ong would have advised the defendant that both she and the party whom she wished to authorise would have to sign the plaintiffs' standard "Mandate Form".

21 The assistant general manager of the plaintiffs, one Mr Chua Seng Yam Lawrence, made two affidavits. He stated that all contract notes and *contra* statements evidencing the relevant

transactions were sent to the defendant's residential-cum-mailing address and were received by her in good order. The defendant did not at the material times indicate to the plaintiffs that she disputed any of the transactions carried out in her account. She only saw fit to raise these allegations after the plaintiffs demanded payment from her for the losses claimed in this action.

22 Further, the defendant had made *contra* profits as a result of her trading activities. The plaintiffs had paid out these profits to the defendant by way of three cheques dated on various dates in October 2001. The total amount paid was \$6,291.80. The cheques were drawn in favour of the defendant. The plaintiffs believed that they were banked in and the defendant would have received the proceeds. There was no complaint by the defendant that the said transactions giving rise to the profits were made without her knowledge and that she was not entitled to those profits. Copies of these cheques were attached to Mr Chua's affidavit.

23 Ms Song made a further affidavit in response to the defendant's allegation (in her second affidavit) that she had not received the cheques for the *contra* profits. Ms Song stated that these cheques had been generated by the company and were mailed out to the defendant's address as stated in her account opening form. The cheques were crossed cheques made payable to the name of the defendant and there was a stamp on the copies of the cheques evidencing that they were cleared into the defendant's bank account no 030-42823-6. Ms Song asserted that this was the current account that the defendant had with Citibank. If the defendant had not presented the cheques for payment, the copies of the cheques would not have borne the stamp showing presentation and clearance. Ms Song also produced copies of the plaintiffs' bank statements showing that the three cheques had been presented and cleared for payment on 1 November 2001.

The defendant's affidavits in reply

24 The defendant filed two further affidavits in reply. In the first, she said that as the plaintiffs' remisier had been told by the third parties that the latter would be responsible for all the transactions, there was no reason for the defendant to object when the contract notes and *contra* statements were received by her. The cheques for the *contra* profits were not forwarded to her and she did not receive any benefit arising from these cheques. She said that the truth of the matter would be revealed if the plaintiffs would produce evidence as to who actually effected payment for the transactions carried out in her accounts. She herself had never made any payment for any of the transactions.

25 The defendant also denied that she had met Ms Ong and Ms Loo at a coffee shop near Lavender Street. She found it ludicrous that the plaintiffs would allow their staff to arrange the signing of the account opening forms in such an informal place. The defendant denied that she had given Ms Song any orders to trade. She stated that apart from the occasion when she met Ms Song at the plaintiffs' office to sign the application forms, she had no dealings with her. The defendant did not give Ms Song any trading instructions.

26 In her third affidavit, the defendant pointed out that she had no account with Citibank, but that the account number quoted by the plaintiffs referred to an account that she had with Keppel TatLee Bank. She exhibited her bank statements to show that the account had not been credited on 1 November 2001 with the amounts of the three cheques issued by the plaintiffs. She repeated that she had not banked in these cheques. The defendant also exhibited a transcript of a conversation that she said had taken place at the home of Mdm Tan on 1 May 2003. Present during this conversation were Mdm Tan, her husband (Mr Chan), the defendant and some others. The defendant considered that the transcript lent credence to her allegations that the transactions carried out in

the accounts were not done by her and that the plaintiffs' remisier had been told that the third parties would be responsible for all transactions carried out.

My reasons

27 On the hearing of the appeal, it was submitted for the defendant that there were numerous triable issues of fact. These related to the following areas:

- (a) where and how the accounts were opened;
- (b) the remisier's knowledge of the agreement/understanding between the defendant and the third parties
- (c) how the transactions were carried out and who gave instructions for them;
- (d) who effected payment for the transactions in the accounts.

It was also submitted that there was a special reason for a trial to be held. The CAD had investigated the matter and the defendant had been told that the investigations had been completed and the matter handed over to the Attorney-General's Chambers for consideration. In the circumstances, if summary judgment was pronounced at this stage and it was later discovered that the defendant was indeed only a nominee, it would greatly prejudice the Prosecution's case and great injustice would be done to the defendant.

28 Counsel for the defendant also referred me to another action (Suit No 434 of 2003) instituted in the High Court against the defendant. The plaintiffs in that suit are OCBC Securities Pte Ltd ("OSPL") and they had commenced the action to recover moneys arising from *contra* losses incurred on the defendant's cash and margin accounts with them. The defendant's Defence in OSPL's action was identical to that filed in this action and she had also brought in the same persons as third parties in that action. OSPL had filed an application for summary judgment but the defendant had successfully persuaded the assistant registrar hearing the case that she should be given unconditional leave to defend. OSPL's appeal to the judge in chambers was dismissed. Counsel informed me that the arguments canvassed by OSPL's solicitors were similar to those put forward by the plaintiffs' counsel in this case.

29 It was clear from the affidavits filed by both sides that there were disputes of fact. It did not appear to me, however, that such disputes raised triable issues entitling the defendant to obtain leave to defend the action. First, even if the defendant's version of the facts was entirely correct, that version did not afford her a defence to the action which was brought on the basis of a written contract signed and agreed to by the defendant. Secondly, I found the defendant's version of the facts to be, in certain material aspects, unworthy of belief.

30 The plaintiffs' action arose from the accounts which they opened for the defendant pursuant to the individual account application form that she signed on 13 September 2001. By cl 3 of this form, the defendant agreed to abide by the plaintiffs' Terms and Conditions for the operation of her accounts and that such terms may be varied or amended from time to time at the plaintiffs' discretion. She also confirmed, by cl 4, that she had received and fully understood and accepted the Terms and Conditions. These Terms and Conditions therefore governed the contract between the parties.

31 The following clauses of the Terms and Conditions were particularly relevant in the context of the present case:

6. Payments

6.1 The Client [*i.e.* the defendant] shall on demand pay to Fraser [*i.e.* the plaintiffs] such sums of money to enable Fraser to discharge any liability incurred or to be incurred in connection with transactions effected or to be effected for the Account(s) and shall on demand reimburse Fraser all costs, charges and expenses incurred by Fraser in connection therewith including legal costs on a full indemnity basis.

7. Interest and Costs

7.1 The Client agrees to pay interest on all amounts owed by the Client to Fraser after as well as before judgment at such rate or rates and on such periodic rests as Fraser shall determine from time to time, from the due date of payment of such amounts until receipt of payments thereof by Fraser.

7.2 The Client further agrees to pay Fraser all costs including legal costs on a full indemnity basis as may be incurred by Fraser for the purpose of recovering any monies due from the Client to Fraser.

21. Dealer's Representative

21.1 The Client confirms that in the purchase and/or sale of any securities under the Account(s) by any dealer's representative on the Client's and/or the Authorised Person's instructions or though without their instructions but with their consent and/or authority (expressed, implied or otherwise) and/or knowledge, such dealer's representative shall be deemed to be the Client's agent whether or not such dealer's representative is deemed to be engaged or employed by the Client in law. The Client will, as between Fraser and the Client, be liable for all purchases and sales of securities executed by the dealer's representative for the Account regardless of whether the dealer's representative would also be liable to Fraser for the same and the Client shall be liable to Fraser for all costs, expenses, damages, losses, fees, charges, rates or duties which may be incurred by Fraser in respect of all such securities transacted. In addition, the Client confirms that in the purchase and/or sale of any securities under the Account(s) by any dealer's representative who is a remisier, such dealer's representative shall be deemed to be the Client's agent and Fraser is entitled to assume that as between Fraser and the Client (i) any order said by the remisier to be intended to be executed for the Client is so intended; and (ii) every order executed by the remisier for the Client is the order intended to be executed by the Client.

32 It is plain from the above that the defendant had agreed to pay the plaintiffs all costs, charges and expenses incurred by the plaintiffs in relation to her accounts with them. She had further agreed that, in placing orders for trades on her account, the remisier in the plaintiffs' company would be acting as her agent and not as the agent of the plaintiffs. Having agreed to these terms as part of a written contract, it was not open to the defendant to seek to vary the contract by adducing parol evidence of an alleged oral agreement between the plaintiffs, acting through the remisier, and herself, that whilst the account was to be held in the name of the defendant, the third parties would be responsible to the plaintiffs for all transactions carried out in the account and the defendant would not have to pay for any liabilities in the account. Sections 93 and 94 of the Evidence Act (Cap 97, 1997 Rev Ed) make such oral evidence inadmissible. Further, the remisier's alleged knowledge of the defendant's prior arrangement with the third parties, even if proven, could not constitute knowledge

on the part of the plaintiffs, let alone a waiver of the defendant's liabilities. As stated, the remisier was the defendant's agent in respect of her relationship with the plaintiffs and therefore any matter in the knowledge of the remisier could not be imputed to the plaintiffs.

33 It was further contemplated by the terms of cl 21.1 that trading instructions might be given in relation to the defendant's account by parties other than the defendant. In such a case, then, as long as the purchases and sales were effected with the consent and/or authority, express, implied or otherwise, of the defendant, the remisier would be deemed to be the defendant's agent in effecting such purchases and sales even though the defendant herself had not given specific instructions for the same. Here, on the defendant's own version, she was aware that trading activities in the accounts would be carried out by the remisier on the instructions of the third parties and she was well content that it should be so. According to her, when she visited the plaintiffs' office, Bernard Chan and Mr Ang told the remisier that she was merely a nominee for the account and all transactions would be carried out by either of them or one of the other third parties. The defendant did not tell the remisier that the statement was incorrect. By remaining silent, she gave express (or, at the least, implied) authority for trading instructions to be issued by the third parties. Thus, even if her story is true, the wording of cl 21.1 makes her responsible to the plaintiffs for all costs, expenses, losses, etc incurred by the plaintiffs in respect of her account.

34 The defendant's allegation was that the third parties had approached her to use her name as a nominee to trade in Leong Hin shares. She deposed on affidavit that she had agreed to this proposal because she trusted the third parties, especially Mdm Tan and her husband as they were both wealthy and had never given her any cause not to trust their promises. Thus, her own case is that, through a private arrangement she had consented to and had authorised the third parties to use her account in order to trade on the stock market. This position does not provide any defence to the plaintiffs' claim for the losses in the defendant's cash account as it merely confirms that all trades in the cash account whether effected pursuant to her instructions or pursuant to the instructions of any of the third parties (the allegation was that it was Mr Ang who usually gave the instructions) were authorised trades for which the defendant had to be responsible under the plaintiffs' Terms and Conditions.

35 The defendant admitted receiving all the contract notes and *contra* statements which the plaintiffs sent her. She did not contest any of the trades nor notify the plaintiffs that any of the trades were unauthorised. Clause 22.1 of the Terms and Conditions provided that the contract notes and statements sent by the plaintiffs in respect of transactions effected in relation to the account "shall be conclusive unless an objection in writing" from the customer was received within seven days from the date of the same. The defendant had never objected in writing (or even orally) to these documents, much less within seven days of their issue. The contract notes and statements were therefore binding on her.

36 In any case, I did not find the defendant's account of the manner in which her securities accounts with the plaintiffs and her assertion that the remisier was told about the alleged private arrangement between the defendant and the third parties to be credible. First, the defendant had asserted that she was an ordinary secretary earning about \$60,000 a year and had thereby attempted to portray herself as an inexperienced and naïve person. A search at the Registry of Companies on AAA revealed, however, that she had been the company secretary of AAA since 1976 and a director of that company since May 2002. Further, it was odd that her bank statements showed some \$27,000 being deposited in her Keppel Tatlee Bank account during the period 17 September to 15 October 2001, another \$27,231.88 being deposited during the period 16 October to 15 November 2001 and at least \$76,000 being deposited between 16 November and 3 December

2001. Those deposits could not have come from her salary. Thirdly, the defendant's assertions that she had never banked in the three cheques which the plaintiffs issued in her favour were difficult to believe since the documentary evidence showed that the cheques were drawn in her name, were marked account payee, were deposited into a bank account which bore the same number as the defendant's Keppel Tatlee Bank account, and were cleared. Whilst the defendant's bank statement did not show her being credited with three deposits bearing the amounts of the cheques, it did show that on 1 November 2001, the date on which the cheques were cleared according to the plaintiffs' documents, an amount of \$8,047.72 was deposited into her account against the rubric "cheque deposit". That amount exceeded the total amount of the three cheques and it may have been that that deposit comprised the three cheques and one or more further cheques. Further, since the defendant received all the account statements and the cheques were sent to the same address, the probabilities were that she had received the cheques as well. Even if the defendant did not bank the cheques into her account, she certainly did not return them to the plaintiffs.

37 The plaintiffs produced evidence from both Ms Song and Ms Ong contesting the truth of the defendant's account of the place where and manner in which her account was opened. Ms Song deposed on oath that the defendant had never gone to the plaintiffs' office for this purpose. Ms Ong affirmed that the account opening was effected at a coffee shop near the defendant's work place for the convenience of the defendant. Ms Ong was a customer service officer, not a remisier. She did not stand to gain personally from any of the trades carried out by the defendant. Assuming that she was the person who met the defendant in relation to the opening account, it is not at all probable that she would have agreed to waive the defendant's liability for all trades in the account especially since she did not know the defendant at all. There was no reason at all for Ms Ong to lie in relation to her meeting with the defendant and what occurred on that occasion.

38 On the other hand, the defendant's account was inherently improbable. First, in her Defence, she stated that she could neither remember who took her to the plaintiffs' office nor remember who the remisier she met was. In the Defence, the defendant did not even specify whether the remisier was male or female. When it came to her affidavit filed to oppose the O 14 application, however, the defendant remembered that Bernard Chan and Mr Ang took her to the plaintiffs' office. She stated in her affidavit that she still could not remember the name of the remisier, but she "vividly recalled" Bernard Chan and Mr Ang telling this remisier that she was only a nominee for the account. She then said that after she left the office she never spoke to or saw the remisier again. In her second affidavit, the defendant responded to Ms Song's assertion that the defendant had been the person who gave her the trading orders. The defendant stated that this allegation was an absolute lie and "save for the occasion when I met her at the Plaintiffs' office to sign the application form, I did not have any further dealings with her thereafter". It appears that by then the defendant had recalled that she had met Ms Song. The defendant then went on to recount a telephone conversation she had had with Ms Song on 24 April 2003 about the CAD investigations into the alleged rigging of Leong Hin shares and the defendant's margin account. It was odd that, having had a conversation in April 2003 about the account with Ms Song, when her first affidavit was filed in July 2003, the defendant was unable to identify Ms Song as the remisier whom she had met when opening the account.

39 What was more striking was the way that the defendant described how she had opened stockbroking accounts with three stockbroking houses. When sued by these various stockbrokers (by OSPL in Suit No 434 of 2003 and by UOB Kay Hian Pte Ltd in District Court Suit No 1995 of 2003), the descriptions given by the defendant in her affidavits in these suits as to how the various accounts were established were practically identical. These descriptions, including the description she gave in this suit, were almost word for word the same. In each case, she said that she was taken to the broking house concerned by Bernard Chan and Mr Ang to open a trading account and that at the

stockbrokers' office she met the stockbrokers' "remisier/broker" whose name she could not remember. She further said she was taken to a room to sign forms "at the portion designated for [my] signature". She then said that she could "vividly recall that at this juncture" Bernard Chan and Mr Ang informed the "remisier/broker" that she was merely a nominee for the account and that all transactions would be carried out by either of them or any of the third parties and that she would not be responsible for any transactions relating to or carried out under the account.

40 The similarity of these accounts compels disbelief. The defendant cannot expect the court to accept that the events that had taken place in three separate broking houses on three separate dates were completely identical.

41 Further, while it was conceivable that one remisier would agree, against the interests of the broking firm that employed him, to open an account in the name of a person he knew to be a nominee, to waive her liability for transactions in the account, and that the account would be operated by third parties (with only a verbal assurance that these parties would make the necessary payments), it was not believable that three remisiers in three different stockbroking firms would agree to do such a thing. It was especially difficult to believe this as the remisiers concerned would themselves be responsible to the stockbrokers for the losses sustained in the defendant's accounts.

42 All in all, having considered the law and the facts alleged by the defendant, it was my judgment that she had not established any triable issue. The plaintiffs had proved their case and were entitled to judgment. The defendant may very well have had a private arrangement with the third parties (if the transcript she produced of a certain conversation has been correctly transcribed, there is some support for the existence of that arrangement) but there is no admissible or reliable evidence that that private arrangement was communicated to the plaintiffs and accepted by them. The defendant opened two accounts with the plaintiffs on terms that she would be responsible for all the charges and payments connected with the accounts and she was bound by that contract. Her right, if any, to an indemnity from the third parties, was an entirely separate matter and could not absolve her from her liability to the plaintiffs. The fact that, in a similar case, the defendant had succeeded in obtaining leave to defend the action by OSPL did not mean that triable issues existed in this case.