Dispute Resolution

Singapore High Court Finds Broker Not Liable for Investor's Decisions

Introduction

When an experienced investor suffers losses after instructing his broker to sell his futures contracts, to what extent can the broker be held liable for his losses?

In *Rajesh Harichandra Budhrani v INTL FCStone Pte Ltd and others* [2024] SGHC 18 ("***Budhrani***"), the dispute centred around several telephone conversations between the plaintiff and two employees of the first defendant ("**INTL**"), a Singapore-incorporated company dealing in capital markets products and exchange-traded derivatives contracts. During the conversations, the plaintiff instructed the employees to sell 66 of his silver futures contracts ("**contracts**"). After the sale, however, the plaintiff's account remained in deficit, and he brought proceedings against the defendants for alleged loss of profit.

Budhrani raises several interesting issues for investors and brokers alike. Can a margin call be issued on a Saturday? Does the unfair contracts terms regime apply to a contractual term stating that the broker assumes no responsibility for any information provided? Under what circumstances would a seasoned investor be considered as having been subject to duress and undue influence?

On these and other issues in *Budhrani*, the High Court ("**Court**") found resoundingly in favour of the defendants, who were represented by Disa Sim, Torsten Cheong, and Jodi Siah of Rajah & Tann Singapore.

Background

The plaintiff was an accredited and experienced investor who was party to a Customer Agreement and a Client Agreement (collectively "**Agreements**") with INTL. The second and third defendants were employees of INTL (collectively "**Employees**"), whose job scope involved executing trade orders for clients including the plaintiff.

The Agreements contained certain key terms, including:

1. That (i) INTL assumed no responsibility for the accuracy and completeness of any information provided, and (ii) any dealings in the plaintiff's account was solely and exclusively based on his own judgment and after his own independent appraisal and investigation into the risks ("**Terms**");

2. That the plaintiff was obligated to furnish additional margin within one business day of being informed of a margin call; and
3. In the event the plaintiff was in default of his payment obligations under the Client Agreement, INTL would be entitled to liquidate the positions in his account.

Prior to 13 March 2020, the plaintiff held 88 lots of contracts. On 14 March 2020 – a Saturday – INTL sent the plaintiff an email ("**14 March Email**") attaching a daily statement dated 13 March 2020 ("**13 March DS**"). The 14 March Email indicated that there was a margin call for approximately US$399,000.

Over the course of 16 March 2020, the price of silver fell significantly. The plaintiff had various phone conversations with the Employees, during which the plaintiff gave instructions to sell 66 contracts in batches. At 10.30pm that day, the plaintiff was informed that the last 27 of his contracts had been sold, and further that his account was in deficit of US$277,000 (i.e. in an equity deficit).

The plaintiff commenced proceedings against the defendants, alleging, among other things:

1. In relation to the Agreements:
    a. That the defendants were precluded from relying on the Agreements. Among other grounds, the plaintiff claimed that the defendants could not rely on the Terms because the Unfair Contract Terms Act 1977 ("**UCTA**") applied.
    b. That the essence of the Agreements was an execution service only contract ("**Execution Only Contract**"), under which INTL would act as a broker for the plaintiff and had no right to interfere with his decisions in respect of the disposal and retention of his contracts.

2. In relation to the margin call:
    a. It had only been made on 16 March 2020, not 14 March 2020.
    b. The plaintiff had been granted an extension to settle the margin call by 18 March 2020.
    c. Accordingly, the plaintiff had not in been default in settling the margin call on 16 March 2020, and the defendants were not entitled to either liquidate his positions or compel him to do so.

3. In relation to the sale of the 66 contracts:
    a. The plaintiff's instructions to sell were the result of, variously, the defendants' undue influence, duress, misrepresentation and/or breach of their duty of care. The defendants made misrepresentations that he would be able to eliminate his equity deficit through selling his contracts.

The defendants denied these allegations. The plaintiff had been in default in settling the margin call due on 16 March 2020, and they were thereby entitled to liquidate his contracts immediately. This remained the case although they had been prepared to give the plaintiff a three-day grace period that was not binding.

With regard to the alleged misrepresentations, they had been made on the basis that the plaintiff would transfer additional funds to his account. The plaintiff's equity deficit could not be eliminated by selling his contracts.

The defendants further counterclaimed for damages of approximately US$198,000 and interest thereon, arising from the plaintiff's liability pursuant to the Customer Agreement and Client Agreement for any debit balance (and interest thereon) remaining in his account.

Decision of the High Court

The defendants could rely on the Agreements

The Court concluded that the defendants could rely on the Agreements.

The plaintiff claimed that the defendants could not rely on the Agreements as they were subject to the UCTA, among other matters. One argument related to section 3(2)(*a*) of the UCTA, which precludes INTL from excluding or restricting its liability in respect of its contractual breach by reference to any contract term, except insofar as the contract term satisfies the requirement of reasonableness. This was allegedly contravened by the second Term, which stated that the plaintiff represented that any dealings in his account were solely and exclusively based on his own judgment, after his own independent appraisal and investigation into the risks.

However, section 3(2)(*a*) was inapplicable in light of the Court's findings that the defendants were neither negligent nor in breach of the Agreements. In any event, the Court agreed with the defendants that this was a clause that defined the scope of the parties' respective legal obligations, rather than excluding or restricting liability.

There was no Execution Only Contract

The plaintiff submitted that under the Execution Only Contract, the defendants had no right to interfere with his decisions. By causing or procuring the plaintiff to sell the 66 contracts by 16 March 2020, the defendants were in breach of the Execution Only Contract.

However, the Court found that this was a misconstruction of the nature of the agreement between the parties. The "execution only" concept was a limit on the services the defendants were obligated to provide to him, not a limit on what they were entitled to do. As such, the Execution Only Contract was not part of the agreement between the parties, and could not have been breached by the defendants.

The margin call was made on 14 March 2020

The plaintiff contended that the margin call was issued on Monday 16 March 2020 and not Saturday 14 March 2020, since a margin call could not be made on a Saturday. Further, he argued that a margin call had to take the form of a letter intended to be a margin call rather than a notification, and that the 13 March DS was merely an "update on the financial information". He relied on *Lam Chi Kin David v Deutsche Bank AG* [2011] 1 SLR 800 ("***Lam***"), in which two letters had been found to be notifications for discussion purposes while the margin call had been made in a different letter.

The Court rejected his contention. There was no reason to assume that margin calls could not be made on a Saturday, even if Saturday is not a business day. *Lam* was not authority for the proposition that notifications were generally insufficient to constitute a margin call. In any event, the Client Agreement provided that a margin call could be made in any form, distinguishing the present circumstances from that in *Lam*. Additionally, the 13 March DS was deemed to be conclusive and binding under the Client Agreement unless the plaintiff objected to it, making it unlikely to have only been for discussion purposes.

The plaintiff was in default in settling the margin call

Since the 14 March Email constituted the margin call, the plaintiff was obliged to meet it by the next business day, i.e. 16 March 2020. The Court dismissed the plaintiff's allegations that he had entered into a binding oral agreement allowing him to settle the margin call by 18 March 2020, finding that it was unsupported by the facts.

The plaintiff had thus been in default in settling the margin call by the close of business on 16 March 2020, and INTL was entitled to liquidate his position.

The plaintiff's claims of duress and undue influence were untenable

The plaintiff argued that the defendants had exercised duress and undue influence by unlawfully and illegitimately requiring him to immediately liquidate his contracts by 16 March 2020.

However, the Court agreed with the defendants that duress and undue influence were not causes of action, but grounds for vitiating a contract. In other words, even if a finding of duress or undue influence was made, the effect would be that the contract entered into was voidable. The plaintiff was not seeking to set aside the 66 contracts, which INTL was not a party to. Nor was he pleading that a contract with the defendants was voidable. The plaintiff's claims in duress and undue influence were therefore untenable.

The Court also highlighted that the plaintiff was an accredited and experienced investor with knowledge specific to margin trading, and had demonstrated that he was perfectly capable of making decisions for himself and disagreeing with the defendants' suggestions. As such, the plaintiff was not capable of being influenced.

Dispute Resolution

The misrepresentations had not been made

In considering whether the alleged misrepresentations (i.e. that he would be able to eliminate his equity deficit through selling his contracts) had been made, the Court similarly took the plaintiff's experience as an investor into account. As a seasoned investor, the plaintiff ought to have known that it was impossible for him to obtain a positive equity on his account without bringing in more funds. Given that the deficit already accounted for the unrealised losses of the contracts he was holding, selling his contracts would merely realise the losses, not reduce the equity deficit. Although he may have subjectively intended to ask for the price at which he could liquidate all his contracts without transferring any money to his account, this was not relevant to ascertaining whether the alleged misrepresentations had been made.

Ultimately, the Court accepted that the Employees' calculations and representations had been made on the basis that the plaintiff would bring in more funds, and that the alleged misrepresentations had not been made. Even if they had been made, the plaintiff was estopped from claiming he relied on them pursuant to the Terms.

No duty of care existed

The plaintiff maintained that the defendants owed him a duty to, among other things, inform him of the true value of his losses, take reasonable care to satisfy themselves of the accuracy of their representations, and act as reasonably competent brokers in making their representations. This duty arose from a principal and agent relationship, since the plaintiff relied on the pricing information given by the defendants.

The Court rejected this contention. The plaintiff's reliance on the defendants' pricing information did not mean that the defendants were his agents. Further, pursuant to the Terms, the plaintiff was not entitled to rely on the information provided by the defendants. No such duty of care was owed by the defendants, and therefore no such duty had been breached.

Counterclaim

INTL counterclaimed for loss and damages arising from the plaintiff's breach of the Agreements. INTL had issued a daily statement dated 17 March 2020 to the plaintiff ("**17 March DS**") which reflected a deficit of approximately US$198,000. Under the Client Agreement, the 17 March DS was deemed to be conclusive and binding against the plaintiff due to his lack of objection. The plaintiff was therefore liable for any debit balance and interest thereon in his account.

The plaintiff pleaded that he had objected to the 17 March DS by way of a letter from his solicitors. However, the letter did not contain any mention of the 17 March DS, instead merely stating that the plaintiff "[took] issue with the sale of the Contracts". This did not amount to an objection to the 17 March DS, let alone an unequivocal one.

The Court thus allowed the counterclaim on the basis of the plaintiff's non-objection to the 17 March DS.

Concluding Remarks

The Court's decision in *Budhrani* raises several noteworthy points for investors and brokers alike. Investors would do well to take note that margin calls may be made on non-business days, and be aware that the courts will take their experience into account when considering issues of duress and undue influence.

Brokers, on the other hand, may be assured that terms clarifying that they do not assume responsibility for the accuracy and completeness of information provided do not run foul of the UCTA.

For further queries, please contact our partners below, who will be pleased to assist you.

Contacts

Disa Sim
Head, Appeals & Issues

T +65 6232 0415

disa.sim@rajahtann.com

Torsten Cheong
Partner, Appeals & Issues

T +65 6232 0555

torsten.cheong@rajahtann.com

Click **here** for our Partners in Appeals & Issues.

Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com.

Regional Contacts

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*
Rajah & Tann LCT Lawyers

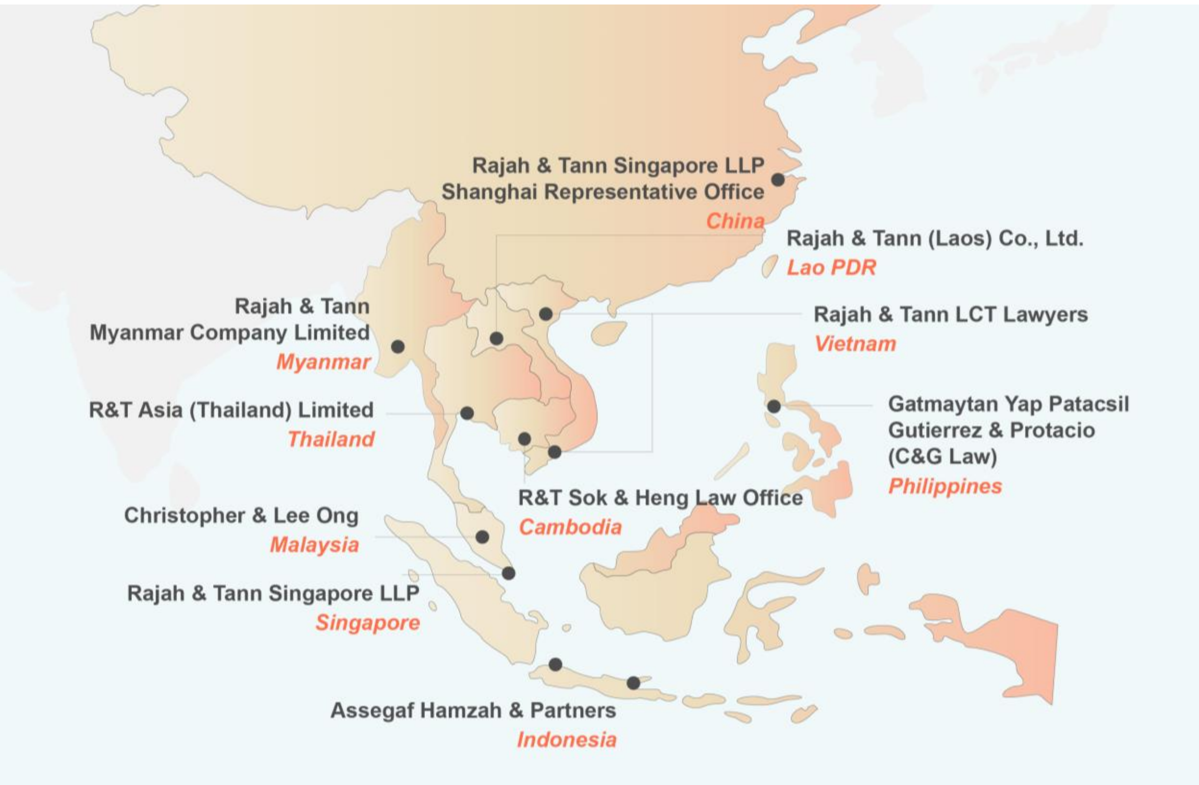
Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge & Risk Management at eOASIS@rajahtann.com.