

HONG KONG / JUDGMENT

ZHANG XIAOCHEN v. PC SECURITIES LTD**[2026] HKCFI 1975****COURT**

Court of First Instance

DECIDED

10 April 2026

CASE / FILE NUMBER

HCA1160/2021

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj Mb6) 8R gP

Before: Hon Fung J in Court Dates of Hearing: 2 6 & 9 December 2024, 15 April and 4 July 2025
Date of Judgment: 10 April 2026

J U D G M E N T

The Plaintiff is suing the Defendant for (1) breach of contractual and/or tortious duties by recommending or advising the Plaintiff to subscribe for the bonds issued by Lamtex Holdings Limited (Lamtex); and (2) misrepresentations to the Plaintiff in relation to the Lamtex Bonds. The Plaintiff seeks to hold the Defendant liable for all his losses totalling HK\$10.6 million arising from the investment in the Lamtex Bonds.

Background

In 2015, the Plaintiff and his wife (Mrs Zhang PW2), both Mainland residents, applied for the right of abode in Hong Kong under the Capital Investment Entrant Scheme (CIES). The Plaintiff engaged the Defendant, a securities brokerage firm in Hong Kong, to act as his financial intermediary under the CIES. The Plaintiff was born in 1988, an engineering graduate in the Mainland, and he founded a tech company in the Mainland with support from his family soon after graduation. Mrs Zhang was pursuing a master s degree in translation in 2014. The Defendant is and was at all material times licensed under s.119 of the Securities and Futures Ordinance Cap. 571 () to carry out Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) activities. The Defendant was part of the PC Securities Financial Group (PCS Group). Under the CIES, the applicants and their dependents could obtain the right of abode in Hong Kong by investing not less than HK\$10 million in Permissible Investments

specified under the CIES rules for a minimum period of 7 years. Under the Permissible Investments Asset Classes, the applicant may invest in:

- (1) Real estate (commercial, industrial or mixed);
- (2) Specified financial assets:
 - (a) Equities (listed on the Hong Kong Stock Exchange);
 - (b) Debt equities issued or fully guaranteed by:
 - (i) HKSAR Government or public corporations in Hong Kong; (ii) Companies listed on the Hong Kong Stock Exchange;
- (3) Certificates of Deposits denominated in Hong Kong Dollars by authorized institutions defined in the Banking Ordinance (Cap. 155) which acquisition must take place after Approval-in-Principal has been granted by the Director of Immigration;
- (4) Subordinated debt by authorized banking institutions; and
- (5) Eligible Collective Investment Schemes as defined. On 24 March 2015, the Plaintiff had a meeting with Ms Ruby Lee (DW1) and Ms Janet Lui of the Defendant. Ruby was at then working in the insurance department of the PCS Group, later became a licensed dealer under SFO. The Plaintiff was given an Introductory of the PCS Group (PCS Pamphlet). There is no issue as to the relevant language(s). The PCS Pamphlet listed out the Investments for CIES:
 - (1) Shares (high risk, uncertain return);
 - (2) Bonds:
 - (a) Hong Kong Government Bonds (low risk, low return);
 - (b) Bonds of listed corporations (risk depending on the corporation, medium return);
 - (3) Eligible collective investments:
 - (a) Bond Fund (medium to low risk, return comparable to bonds);
 - (b) Equity Fund (high risk (lower than direct investment of shares, long term return high); and
 - (c) Investment linked insurance. The PCS Pamphlet also set out the Risk and Return Analysis for Choice of Investment for Investment Immigration to Hong Kong (Risk and Return Analysis):
 - (1) Government bonds (lowest risk, expected annual return 0% to 2%, medium to high liquidity);

-
- (2) Major blue-chip corporate bonds (low risk, expected annual return 2% to 4%, medium to high liquidity);
 - (3) Bond funds (low risk, expected annual return 1% to 3%, high liquidity);
 - (4) General corporate bonds (medium to high risk, expected annual return 6% to 10%, low liquidity);
 - (5) PC 1200 Protective Full Discretion Authorization (medium risk, expected annual return 8% to 12%, high liquidity);
 - (6) Equity fund (medium to high risk, expected annual return 5% to 20%, high liquidity); and
 - (7) Shares (high risk, expected annual return -50% to 50%, high liquidity). The PCS Pamphlet further set out the Comparison between Corporate Bonds and Corporate Debt Agreement, which stated, inter alia, the default risk depended on the financial situation of the listed company. During the meeting, the Plaintiff signed the following:
 - (1) Account Opening Form;
 - (2) Client Agreement; and
 - (3) Supplementary Client Agreement for CIES. In the Account Opening Form, the Plaintiff had ticked the following boxes under the respective sections:
 - (1) Investment Objective:
 - (a) long term (over 2 years);
 - (b) dividend income;
 - (2) Risk Profile Questionnaire:
 - (a) 6 to 10 years investment experience;
 - (b) Have invested in stock;
 - (c) Very experienced when it comes to investing;
 - (d) Can tolerate some capital loss in order to improve potential returns, maximum acceptable loss is 20%;
 - (e) Current investment objective: Growth of capital is important;
 - (f) In normal market conditions, what do you expect from your investment: Over 15% per annum;
 - (g) If have spare money to invest, will totally confident to make his investment decision. Under the Risk Profile Questionnaire, it was stated that: The questions in this section are set for the purpose of assessing the client's attitude to risk and risk tolerance in investment. There is no direct relationship between the questions asked in this section and the actual performance of any investments the client may decide to purchase. Under the scoring system of the Risk

Profile Questionnaire, scores were assigned to individual questions, with the total scoring corresponding to different risk levels:

- (1) 10-14 points Preservative;
- (2) 15-22 points Conservative;
- (3) 23-30 points Balanced;
- (4) 31-36 points Growth;
- (5) 37-40 points Aggressive. The Plaintiff's total score was 37, which belonged to the aggressive risk level, with the definition: This portfolio aims at investors who are mainly interested in capital growth, with little regard for volatility. Investors should not be over-reliant on this category of portfolio, but rather that this is as high risk, high return investment. Only those investors who are aware of the dynamics of equity markets and higher risk alternative investment, and accept their risks, should seek to invest in this type of portfolio. In the Declaration section of the Account Opening Form, the Plaintiff confirmed that he had read the Client Agreement and agreed to accept the terms and conditions set out therein, and the Defendant was entitled to rely fully on such account opening information for all purposes, unless the Defendant received notice in writing of any change. The Plaintiff signed on every page of the Account Opening Form. The Client Agreement included the following terms, which made it clear that Defendant was an execution-only broker who owed no advisory duties to the Plaintiff:
 1. The [Defendant] will act as the [Plaintiff's] agent in effecting Transactions (Clause 4.1).
 2. The [Plaintiff] agrees that the [Defendant] (including the [Defendant's] directors, officers, licensed representatives and employees) does not provide tax, legal or investment advice nor does the [Defendant] give advice or offer any opinion or recommendation with respect to the suitability of any Securities or Transactions. The [Plaintiff] agrees that the [Plaintiff], independently and without reliance on the [Defendant], makes his own decisions and judgments with respect to his Instructions. Should the [Plaintiff] need investment advice from the [Defendant], a separate agreement has to be made between the [Plaintiff] and the [the Defendant] (Clause 4.3). On 2 April 2015, the Plaintiff's Account was opened. Then, the Plaintiff deposited HK\$10,020,000 into the Account. On 13 April 2015, the Defendant emailed the Plaintiff and attached three documents for the choice of investments respectively in funds, bonds and shares stated to be for reference. In the information sheet on HK\$ bonds, the list set out from Hong Kong Government Bonds with the lowest return of 1.1% to some blue-chip corporation at 4.25%. On 13 April 2015, the Plaintiff signed a Professional Investor Assessment and Declaration Form where he agreed to be treated as a professional investor as defined in Part 1 of Schedule 1 of the SFO. Between 2016 and 2021, the Plaintiff has confirmed on an annual basis his status as professional investor with the Defendant. On 25 March 2015, Ruby and Mrs Zhang were linked up on WeChat. The first chat message was on 8 April 2015 where Mrs Zhang stated We buy bonds. On 9 April 2015, Ruby asked Mrs Zhang

whether the HK\$10 million was for buying Heng Fat Ginseng ? Mrs Zhang also asked whether there would be a first hand bond of in April. Ruby said yes. On 14 April 2015, the Defendant emailed the Plaintiff two high yield bonds for his reference, ie Hang Fat Ginseng Holdings Company Limited () and Yue Da Mining Holdings Limited (). The indicative term sheets for the private placement of these two bonds were enclosed. On 15 April 2015, the Defendant emailed to the Plaintiff two sets of subscription documents of the HF Bonds and YD Bonds. On 16 April 2015, the Plaintiff subscribed for HK\$5 million HF Bonds and HK\$5 million YD Bonds. On 17 April 2015, a staff member of the Defendant telephoned the Plaintiff and confirmed, inter alia, that (i) he had read and understood the risk warning statements in the HF Bonds Subscription Form; (ii) he was a professional investor well-versed with commercial and financial matters and (iii) he made the decision to invest in the HF Bonds based on his own independent assessment. This was a routine carried out in every subscription of bonds. On 20 April 2015, the Plaintiff acquired HK\$5 million worth of HF Bonds. On 6 2015, a staff member of the Defendant telephoned the Plaintiff and confirmed on the phone, inter alia, that (i) he had read and understood the risk warning statements in the YD Bonds Subscription Form; (ii) he was a professional investor well-versed with commercial and financial matters and (iii) he made the decision to invest in the HF Bonds based on his own independent assessment. On 8 May 2015, the Plaintiff acquired HK\$5 million worth of YD Bonds. On 15 May 2015, the Defendant signed a Supplementary Client Agreement for CIES (Supplementary Agreement), under which the Plaintiff appointed the Defendant as his financial intermediary under CIES. The Supplementary Agreement provided, inter alia, that:

1. [The Defendant s] role is limited to carry out securities transactions as a usual securities broker (Clause 17);
2. Any investment remains the sole decision and responsibility of [the Plaintiff] and [the Defendant] shall not be liable in any way whatsoever arising out of or in connection with the ring-fencing of the Scheme assets or any decision or transaction made by [the Plaintiff] to comply with the specific Scheme Rules, in particular, the provisions relating to reinvestment of Specified financial assets within 14 days (Clause 20). On 1 June 2016, the Defendant informed the Plaintiff by letter that a Change of Control as prescribed in the HF Bonds had occurred, and that the Plaintiff was entitled to redeem all of the HF Bonds. On 6 June 2016, Mrs Zhang contacted Ruby using WeChat voice message to ask about the 1 June 2016 letter. Ruby explained that the decision whether to redeem the HF Bonds was up to the Plaintiff and Mrs Zhang. If they decided to redeem the HF Bonds, the Defendant would assist them to find another investment which complied with the CIES requirements. On 31 July 2016, prior to the redemption of the HF Bonds, Mrs Zhang contacted Ruby to ask whether there were any new bonds to invest in. Ruby stated that, under the requirements of CIES, the Plaintiff had to re-invest the redemption proceeds from HF Bonds within 14 days of redemption. On 31 August 2016, the Defendant sent the Plaintiff a set of documents relating to bonds issued by Huajun Holdings Limited (), including:

- (1) Financial Adviser Recommendation Form from Ruby recommending the HJ Bonds, stating the corporate bond default and liquidity risk and the worst scenario would be unable to recover the principal;
- (2) Indicative term sheet in respect of the HJ Bonds;
- (3) A letter issued by the Defendant setting out the terms of subscribing the HJ Bonds to be signed by the Plaintiff; and
- (4) Private Placement Bond Subscription Form in respect of HK\$5 million of HJ Bonds. By an email dated 5 September 2016, the Plaintiff returned the signed copies of the Financial Adviser Recommendation Form, the Letter and the Subscription Form relating to the HJ Bonds. On 5 September 2016, a staff member of the Defendant had a telephone call with the Plaintiff, during which the Plaintiff confirmed, inter alia, that (i) he had read and understood the risk warning statements in the Term Sheet and the Subscription Form for the HJ Bonds, (ii) he was a professional investor well-versed with commercial and financial matters and (iii) he made the decision to invest in the HJ Bonds based on his own independent assessment. In September 2016, HJ Bonds in the principal amount of HK\$5 million were issued to the Plaintiff. On 14 March 2019, the HJ Bonds matured and the Plaintiff recovered the principal with interest due thereunder. After the redemption of the HJ Bonds, the Plaintiff temporarily invested the proceeds in the Bank of China (Hong Kong) Income Fund (BOCHK Fund), a HK\$ based fund which complied with the requirements under CIES. Lamtex Bonds On 7 May 2019, Mrs Zhang sent a WeChat message to Ruby stating she wanted to consult Ruby whether a bond product was out as the temporary product was falling all along. On 8 May 2019, Ruby told Mrs. Zhang on WeChat that there was a financial product with a one-year maturity period and the Plaintiff could use the redemption proceeds from the BOCHK Fund and the YD Bonds to invest in the that product. On 9 2019, Ruby sent to the Plaintiff two documents:
 - (1) Analysis Report of Lamtex Holdings Limited (Lamtex) prepared by the Defendant (Lamtex Analysis Report);
 - (2) One Year Term Bonds Introduction of Lamtex (Lamtex Bonds Introduction). In the Lamtex Analysis Report stated that: Performance Review of the Group
5. In the year 2018, the turnover was HK\$41,287,000, the year-on-year increase was 15.3%. However, due to the grant of stock options and the impact of factors such as booking into the profit and loss at fair value of losses from sale of financial assets, the loss recorded was HK\$59,840,000, earnings in the same period last year was HK\$28,344,000, and the loss per share was 3.83 cents. Potential Positive Factors 6. This time Mr Tse Ping (Mr Tse) invested in Lamtex to indirectly enter the financial field, under the strong background of the Tse family, it should believably be a good start for Lamtex which performance was lackluster in recent years.

Conclusion

7. Because the control and management has changed to the Tse Family with a strong background, there will be more room for development and business direction in the future. Because of Mr Tse's strong background of, solid assets, and personally taking up Chairman and executive director of the company, it will provide intangible support to its bonds, to strengthen the confidence of investors. Hence, we consider the chance of default of the Lamtex Bonds should be extremely low. In the footnote at the last page of the Lamtex Analysis Report, it was stated (in small and faded font), inter alia, that: The contents of this document are for general reference only. This document is not and should not be construed as an offer or invitation to invest in or buy or sell securities or any financial products. Investment product prices may rise or fall, and investment involves the risk of profit or substantial loss. Past performance is not a guarantee of future performance. You should carefully consider your own financial situation, investment experience, objectives and capabilities, as well as your ability to bear losses, or consult your independent financial advisor before making any investment. While some data believed to be from reliable sources has been used in the preparation of this document, [The Defendant] does not guarantee the accuracy or completeness of such data. [The Defendant] also reserves the right to update or change any data without prior notice. [The Defendant] and any companies or individuals affiliated with it shall not be liable for any legal responsibility arising from the use of this document or reliance on its contents. The copyright of this document belongs to [The Defendant], and no one may copy or publish all or part of its contents for any purpose without the written consent of [the Defendant. [The Defendant], any companies of [the PC Group], and their directors and employees may hold and trade any securities mentioned in this report, and may hold positions opposite to those of the client. The Lamtex Bonds Introduction set out the business of Lamtex and the background and assets of the major shareholder Mr Tse in Hong Kong and Thailand. In the section on Positive Factors, it was stated: Strong background of the shareholders {Charoen Pokphand Group and Tse family, abundant assets, providing intangible support} Low default rate of bonds {Impressive past performance of Sino Biopharmaceutical Limited increasing the confidence of investors} Short term (only 1 year) {Short term bond, capital protection upon maturity, choice of stable interest} By an email dated 23 2019, the Defendant sent the Plaintiff a set of documents in relation to the Lamtex Bonds, including:
- (1) Indicative Term Sheet for the Lamtex Bonds issued by the Defendant;
 - (2) Financial Adviser Recommendation Form signed by Ruby recommending the Lamtex Bonds;
 - (3) Private Placement Bonds Subscription form in respect of HK\$10 million of Lamtex Bonds. The Indicative Term Sheet of the Lamtex Bonds issued by the Defendant in English and Chinese contained, inter alia, the following warnings: Important Warning The contents of this Term Sheet including the enclosed information summary issued by the relevant product issuer or the designated dealer have not been reviewed by any regulatory authority in Hong

Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice. You should read this Term Sheet carefully and ensure that you fully understand the risk associated with investing in the Bonds before deciding whether to apply for the Bonds. If you are in doubt as to any aspect of this offer, you should consult a licensed securities dealer, bank manager, solicitor, certified public accountant or other professional adviser.

Important Notice This indicative term sheet has been prepared by [the Defendant] solely for general information purposes. In furnishing this indicative term sheet, [the Defendant] reserves the right to amend or replace the indicative term sheet at any time, and undertake no obligation to provide the recipient with access to any additional information. Although [the Defendant] may provide additional information to the recipient, [the Defendant] shall not be obligated to update or correct the information set forth in the indicative term sheet or to provide, update or correct any additional information. This indicative term sheet may contain certain forward-looking statements based on current expectations, estimates and projections. These statements are not guarantees of future performance and involve risks, uncertainties and assumptions that are difficult to predict, so the actual outcome and results may differ materially from what is expressed or forecast in such forward looking statements. Any projections, estimates, forecasts, targets, prospects and returns contained herein are not a reliable indicator of future performance. Nothing in this indicative term sheet is, or should be relied upon as, a promise or representation as to the future. This indicative term sheet does not purport to contain all the information that interested parties may desire. In all cases, interested parties should conduct their own investigation and analysis. [The Defendant] has not independently verified any of the information set forth herein and does not undertake any obligation to do so. None of [the Defendant] nor any of its related corporations or any of their respective directors, officers, employees, advisers, representatives or agents (the PCS Group) makes any representation or warranty, express or implied, as to the fairness, accuracy, reasonableness, validity, sufficiency or completeness of this indicative term sheet or the information contained herein and none of such parties shall have any liability for the information contained in, or any omissions from, this indicative term sheet, nor for any of the written, electronic, or oral communications transmitted to the recipient in connection herewith. Neither the receipt of this indicative term sheet by any person, nor any information contained herein or supplied herewith or subsequently communicated in written, electronic or oral form to any person in connection herewith constitutes, or shall be relied upon as constituting, the giving of investment advice by the PCS Group to any such person. Each person should make his or her own independent assessment of the merits of any indicative proposal contained herein and should consult their own professional advisors. This indicative term sheet does not constitute an offer or invitation or personal recommendation by any member of the PCS Group to subscribe for or purchase any securities, financial instruments or assets, business or undertaking, nor any form of commitment or recommendation by any member of the PCS Group and neither this indicative term sheet nor anything contained herein shall form the basis of any contract or commitment whatsoever.

Risk Warning Statements

-
- (1) Risks factor relating to the Bonds in general
 - (a) The Bonds are mainly for medium to long term investment, not for short term speculation. You should be prepared to invest your funds in the Bonds for the full investment tenor: you could lose part or all of your investment if you choose to sell the Bonds prior to maturity.
 - (b) The Bonds are not equivalent to, nor should be treated as substitute for, a time deposit. They are NOT protected deposit and are NOT protected by the Deposit Protection Scheme in Hong Kong.
 - (c) Receipt of any interest and principal amount at maturity of the Bonds is subject the credit risk and default risk of the Bonds. In case of default, you may not be able to receive back the principal amount invested or any interest payable on the Bonds. You bear the credit risk and the default risk of the issuer and have no recourse to [the Defendant].
 - (2) Specific risk factors relating to the Bonds
 - (a) The Bonds are unrated and hence there is a lack of credit rating opinion on the credit quality of the Bonds. The Issuer has no plan to obtain ratings on the Bonds from any credit rating agencies. If, in the future, credit ratings are assigned to the Bonds, such credit ratings may not reflect all of the risks related to the Bonds and other factors that may affect the value of the Bonds. Credit ratings do not guarantee the creditworthiness of the Issuer.
 - (b) The Bonds may be illiquid since they are not listed and will not be traded on any exchange, market or other trading platform. You may not be able to sell or transfer the Bonds and may need to hold the Bonds to maturity. Other than market changes, price of the Bonds may also be adversely affect by any deterioration in the business, financial condition and results of operation of the Issuer.
 - (c) The Bonds are unsecured and you will not have recourse to any security or other assets of the Issuer should the Issuer default on its payment obligations in respect of any Bond.
 - (d) Other specific risk factors associated with the issuer.
 - (3) Risk factors relating to high-yield bonds/unrated bonds
 - (a) Higher credit risk since they are typically rated below investment grade or are unrated and as such are often subject to a higher risk of issuer default;
 - (b) Vulnerability to economic cycles during economic downturns such bonds typically fall more in value than investment-graded bonds as (i) investors become more risk averse and (ii) default risk rises. Disclaimer This Indicative Term Sheet is issued by [the Defendant]. The information herein is based on the reference from the sources including the information provided by the product issuer which [the Defendant] believes to be reliable, but [the Defendant] has not independent verified. [The Defendant] shall bear no warranty or responsibility for the completeness or accuracy of any information provided by the said sources. Any rates or prices quoted above are for indicative purposes only and may be

subject to changes due to market conditions. Any information expressed therein is given in good faith, but subject to change without notice. [The Defendant] bears no liability for any direct or indirect loss arising from the use of this Indicative Term Sheet by any person. In the Financial Adviser Recommendation Form, the following answers were additionally typed in (underlined added): D. Investment Product Recommended - Risk rating: 5 E. The product that I have recommended is/are appropriate for the client because: The investment object is for Hong Kong investment immigration, in pursuit of fixed return and understand the related risks of corporate bonds. F. Deficiencies, nature of risk and downside risk of the recommended product: Bond default and bond liquidity risk G. Material Queries Raised by Client: The worst situation of corporate bonds? H. Response Given by Financial Advisor: Unable to recover the principal. At the Client Signature section of the Financial Adviser Recommendation Form where the Plaintiff has signed, it was stated:

1. I/We hereby declare that my/our financial adviser has clearly explained the recommendations to me/us as stated herein and I/we understood and accepted those recommendations.
2. I/We have read and understood the contents of the relevant offering documents including information memorandum, prospectus and key fact statement of my/our selected investment product(s).
3. After my/our own analysis, I/we consider my/our selected investments are suitable for my/our personal circumstances and decide to proceed with my transaction request(s). And at the end of the Financial Adviser Recommendation Form, there was a Disclaimer Any information given to you has been prepared from the information you have given to us. You are therefore exclusively responsible for all acts and decisions made as a result of the information supplied by us to you. Any opinion, projections or any estimations given by us to you are not guarantees and are merely an expression of opinion and are intended for illustration purposes only. We do not guarantee the repayment of your capital in full or on the interest maturity date nor do we guarantee any particular rate of return. Although historical information may be provided, the information may not necessarily be a good guide to future performance. No taxation, insurance, asset protection or estate planning information is provided. You should seek independent professional and legal advice where appropriate. Every care has been exercised in supplying information to you and the information provided is believed to be accurate, as such; no liability can be accepted for any errors or omissions that may occur. The Lamtex Bonds Subscription Form also contained similar Risk Warning Statements. On 23 2019, Mrs Zhang returned the signed copy of the Lamtex Bonds Subscription Form and the Financial Adviser Recommendation Form to Ruby on WeChat. On 24 May 2019, a staff member of the Defendant had a telephone call with the Plaintiff, during which the Plaintiff confirmed, inter alia, that (i) he had read and understood the risk warning statements in the Lamtex Bonds Term Sheet and the Subscription Form, (ii) he was a professional investor well-versed with commercial and financial matters and (iii) he made the decision to invest in the Lamtex Bonds based on his own independent

assessment. On 29 May 2019, Lamtex Bonds in the principal sum of HK\$10 million were issued to the Plaintiff. The Defendant was the sole placing agent for the Lamtex Bonds with 1% commission, ie the Defendant would get 1% commission upon any successful subscription of the Lamtex Bonds. The Lamtex Bonds was the only choice the Defendant has recommended to the Plaintiff in this round. On 24 February 2020, Lamtex issued an announcement, stating that Mr Tse had resigned as chairman and director of the board of Lamtex with effect from 24 February 2020. On 26 February 2020, Lamtex issued a further announcement, stating that Mr s resignation was unexpected without any prior notice or reason. Lamtex was still trying to contact Mr Tse to determine the reasons of his sudden resignation. On 6 March 2020, the Defendant sent an email to its clients including the Plaintiff, attaching a Bondholders Notice dated 28 February 2020 issued by Lamtex stating that an Event of Default had occurred under Clause 9.1(d) of the Lamtex Bonds instrument as a result of Mr s resignation from the board of Lamtex. On 8 May 2020, the Defendant sent an email to its clients including the Plaintiff, attaching a letter from Lamtex addressed to the Plaintiff seeking his agreement to:

- (1) Extend the maturity date of the Lamtex Bonds from 28 2020 to 31 2021 (); and
- (2) Irrevocably waive the EOT under the Lamtex Bonds instrument which had arisen as a result of the changes in Lamtex s board (Waiver Request). On 15 May 2020, Ruby and Mrs Zhang had a WeChat call (no content recorded) in respect of the EOT and Waiver Request. Thereafter, the Plaintiff agreed to the EOT and Waiver Request. On 3 August 2020, trading in the shares of Lamtex on the Hong Kong Stock Exchange was suspended. On 20 August 2020, a winding up petition was presented against Lamtex in Hong Kong. Later, Lamtex was wound up in Bermuda. On 11 March 2021, Lamtex was wound up by the High Court of Hong Kong. The Plaintiff s HK\$10 million investment in Lamtex was lost. Plaintiff s case The Plaintiff s case was that he was induced by false representations made by Ruby into buying high risks bonds including the Lamtex Bonds. The Plaintiff and Mrs Zhang both said that right from the beginning they had made clear to Ruby that their only objective was to obtain residency under CIES, and their investment objective would be to preserve capital and they wanted only low risk investments. Safety and not return was the sole consideration. Ruby had made false representations to them that applicants under the CIES were not allowed to invest in financial products which would guarantee the return of capital, and the applicants must assume some risks in the investments. Also. The bonds recommended by the Defendant would be of low risks; the Defendant would take proactive approach to notify the Plaintiff to redeem the bonds in order to protect the principal. The Plaintiff said Ruby advised him to choose a high risk profile in the Account Opening Form in order to have flexibility to acquire high risk products in the future, and the Risk Profile Questionnaire was not directly related to subsequent investments. The Plaintiff had signed the Client s Contract, but could not recall whether he was given a copy. On 9 April 2015, Ruby stated to Mrs Zhang on WeChat that she could rest assured and let her handle investment. While not shown on WeChat, Ruby said HF and YD Bonds were of the lowest risks, and they would be safer than Government Bonds. Mrs Zhang said Ruby told her that when the Defendant s staff

would conduct a telephone confirmation with the Plaintiff, he was required to answer in order to subscribe smoothly (see the WeChat messages on 22 March and 24 2019). Sometimes before 2016, Ruby has become the Plaintiff's investment manager. She had the duty to explain the documents relating to the Lamtex Bonds to the Plaintiff but failed to do so. The subscription of the Lamtex Bonds was in reliance of Ruby's advice, hence, the Plaintiff is entitled to claim the loss and damage on the Lamtex Bonds against the Defendant. On 13 May 2020, Mrs Zhang sent a WeChat message to Ruby asking about the EOT and Waiver Request. On 15 2020, Ruby had an unrecorded WeChat call with Mrs Zhang for 7 minutes. Mrs Zhang said during this call, Ruby explained to her that Lamtex had encountered some financial difficulties but there was nothing to worry about. While Mr Tse had resigned from the board of Lamtex, he was making arrangement to bring substantial investment into Lamtex. The Lamtex Bonds remained a very safe investment with very low default risk. All other bondholders had agreed to extend the maturity on the Lamtex Bonds. As a token of thanks, Lamtex would pay the bondholders the second and third instalments of the interest within 7 days of indication of agreement to the EOT and Waiver Request. Mrs Zhang related the message to the Plaintiff. Thereafter, the Plaintiff agreed to the EOT and Waiver Request. Apart from the testimony of the Plaintiff and Mrs Zhang, it was submitted there were other evidence including contemporaneous documents and admissions by Ruby during cross-examination in support of the Plaintiff's case:

- (1) The PCS Group Pamphlet stated that the PCS Group was a leading brand in securities, financial management and investment immigration in Hong Kong and it had an impression of the Plaintiff's mind;
- (2) Although the Lamtex Analysis Report stated there were record of loses in the past, the Potential Positive Factors stated that after the joining of Mr Tse, it was believed to be a good start (para 6), and Hence, we considered the chance of default of the Lamtex Bonds should be extremely low (para 7);
- (3) The Lamtex Bonds Introduction on Positive Factors also stated Low default rate of bonds ;
- (4) In the WeChat between the Plaintiff and Ruby on 4 April 2016, the Plaintiff said there were default in many companies recently and how about the HF and YD? Ruby replied there were more defaults in the Mainland because regulation was more ecause in immigration investment one could buy capital guaranteed items, and there must be risk to be borne in immigration investment. One could only choose the items with lowest risk in compliance with the rules of the Immigration Department. To be realistic, the only risk with the corporation is collapse, but that is the worst scenario, and only then one could not have return of the principal, and that was not our expectation. Defence Case Ruby (DW1) denied any false representation as alleged. She said at the initial meeting, she was a staff member of insurance section the PCS Group and not the Defendant. Ms Janet Lui (who had resigned from the Defendant on 21 November 2017 and was not called to give evidence) was responsible for the account opening for the Plaintiff. The Account Opening Form was signed by Janet rather than her. She was not involved in the account opening, and only provided

information on the insurance products under CIES. Hence, she never made any representation as to choosing high risk in the Risk Profile Questionnaire. In the WeChat early on 9 April 2015 with Mrs Zhang, Ruby referred to an investment manager who was primarily responsible for liaising with the Plaintiff and Mrs Zhang. Mr YF Lai (DW2) was a director of the PCS Group. He did not personally deal with the Plaintiff or Mrs Zhang. He gave evidence as to the internal rating of the financial products by the Defendant. He said that unrated bonds such as then Lamtex Bonds would always be assigned a high risk rating of level 4 or 5 in the Defendant's internal rating.

Issues

The issues agreed between the parties are: The Plaintiff's Claim for Breach of Contract and in Tort

- (1) Whether the Defendant owes the contractual duties (as financial advisor under the contract) and/or the tortious duties (by reason of the Defendant assuming the responsibility to act as the financial advisor to the Plaintiff)?
- (2) Whether the Plaintiff is estopped from claiming that the Defendant owed the contractual duties and/or tortious duties to him?
- (3) Whether the Defendant acted in breach of the contractual duties and/or tortious duties?
- (4) If the answer to para
- (3) is yes:
 - (a) Whether the Defendant's liability for breach of the Contractual Duties and/or Tortious Duties is excluded and/or restricted by any contractual provision(s)?
 - (b) If so:
 - (i) whether s.5(1) of the Unconscionable Contracts Ordinance (Cap.
 - 458) () applies to such contractual provision(s)? (ii) whether such contractual provision(s) are void and/or unenforceable for failure to satisfy the reasonableness test under s.3(1) of the Control of Exemption Clauses Ordinance (Cap.
 - 71) (CECO)?
- (5) Whether the Plaintiff has suffered loss and damage as a result of the Defendant's breach(es), and if so, the quantum of such damages?
- (6) Whether the Defendant's liability is eliminated or reduced by reason of the Plaintiff's contributory negligence? The Plaintiff's Claim under s.108 of the Securities Futures Ordinance (Cap. 571)

- (7) Whether the Defendant made (i) the Low-Risk Investment Representations (as referred to in [68] above); (ii) the EOT and Waiver Representations (as referred to in [76] above) (together, Representations)?
 - (8) Whether the Representations were false?
 - (9) Whether the Representations were made by the Defendant recklessly or negligently?
 - (10) Whether the Plaintiff relied on the Representations in subscribing for the Lamtex Bonds and agreeing to the EOT Request and the Waiver Request, and if so, whether such reliance was reasonable?
 - (11) Whether the Plaintiff is estopped from asserting that he relied on the Representations by reason of any contractual provision(s)?
 - (12) Whether the Plaintiff sustained pecuniary loss as a result of his reliance on the Representations, and if so, the quantum of the compensation due to the Plaintiff under s.108 of the Securities and Futures Ordinance (Cap.
- 571) ()? Legal Principles The starting point is that the mere fact that the relationship between the parties is one of banker and customer does not mean that the bank has a duty to advise the customer on the prudence of an investment transaction from the customer s perspective or to warn him of the risk involved (Shine Grace Investment Ltd v Citibank N.A. [2018] HKCFI 1737 per Ng J at [88]). An execution only service was to be distinguished from a discretionary account where investment decisions were made by the bank for the customer. Under an execution only service, the bank had no duty to give any investment advice, and if any view, recommendation and/or information was given by the bank, the customer was not entitled to place any reliance on them and should exercise his own independent judgment to make his own investment decision, or to seek independent advice for any investment decision to be made and to undertake the risks involved (DBS (Hong Kong) Ltd v Sit Pan Jit (Unrep., HCA 382/2009, 2 April
- 2015) per DCHJ Ng (as she then was) at [305]. Of course, in any given case, it is possible that a bank may assume responsibility to provide advice to a customer. However, the mere giving of advice does not necessarily mean that a bank has assumed legal responsibility for it (Shine Grace (op cit) [89]-[90]). There is a clear distinction between giving some advice and assuming legal responsibility for that advice. The fact that a salesperson gives some investment advice tells us nothing about what, if any, obligations were in fact owed, still less does it tell to the extent of any such duties of care as were owed (JP Morgan Chase Bank v Springwell Navigation Corp [2008] EWHC 1186 (Commercial Court) per Gloster J at [372]). The real question is whether the giving of investment advice by a salesperson in that capacity attracts the obligations and duties of care of an investment advisor. It is important to bear in mind there is a real distinction between the investment advice, properly so called, who is retained to advised a client, usually backed by considerable research, and the advice or recommendations given by a bonds salesperson as part of the selling process

(JP Morgan Chase v Springwell (op cit) at [451]-[452]). Whether a bank has assumed legal responsibility to provide advice is a legal inference to be drawn from their conduct against the background of all the circumstances of the case (Customs & Excise Commissioner v Barclays Bank Plc [2007] 1 AC 181, per Lord Hoffmann; cited in Chang Pui Yin v Bank of Singapore Limited [2017] 4 HKLRD 458 per Lam VP (as he then was) at [35]-[37]. One important aspect in determining whether a bank has assumed legal responsibility to provide advice and owes a duty of care to its customer is the terms of the contract between them (Titan Steel Wheels Ltd v Royal Bank of Scotland Plc [2010] 2 Lloyd s Rep 92 per David Steel J, at [85]-[89]; DBS Bank (Hong Kong) Ltd v San-Hot HK Industrial Co Ltd [2013] 4 HKC 1 per DCHJ SC at [223]; cited in Shine Grace (op cit) [91]). Where the parties have allocated by contract their respective roles and responsibility in their relationship, this will normally preclude any wider obligation from arising under common law (Titan Steel (op cit) at [89]; cited in Shine Grace (op cit) [92]). When one objectively analyses the things said and done by the bank s staff to the customer throughout their dealings, one has to firmly bear in mind the contractual context under which such things were said and done. That was an important, if not the most important, contextual scene. The proper question was whether such things were said and done within the framework contemplated by the terms of the banking services agreement as opposed to the bank assuming responsibilities over and above their contractual obligations stipulated in the express term of the banking service agreement (DBS v San Hot (op cit) [223F-H]. The concept of contractual estoppel has been accepted by the Court of Appeal in Nokia Corp v TCT Mobile Ltd [2017] 3 HKC 102 as promoting certainty in contractual relationship (per Barma JA at [24]). Where the terms of the agreement assume or stipulate a certain state of affairs to be the case, the parties will be bound to proceed on that basis that this is the position for the purposes of the agreement, whatever the true state of affairs may be as a matter of actual fact (Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd [2006] 2 Lloyd s Rep 511; Springwell Navigation Corp v JP Morgan Chase Bank [2010] 2 CLC 705, [2010] EWCA Civ 1221 (CA); cited in Nokia v TCT (op cit) at [20]). There is no reason in principle why parties to a contract should not agree that a certain state of affairs should form the basis for the transaction, whether it be the case or not. Where parties express an agreement in a contractual document, neither can subsequently deny the existence of the facts and matters upon which they have agreed, at least so far as concerned those aspects of their relationship to which the agreement was directed. The contract itself gives rise to an estoppel (Peekay Intermark (op cit) per Moore-Brick LJ at [56], cited in Nokia v TCT (op cit) at [21]). Contractual estoppel was in addition to and distinct from any question of estoppel by representation. It was firmly rooted in, and consistent with the freedom of contract and contractual certainty. In each case, the parties contractually free to determine the factual basis upon which they conduct business (JP Morgan Chase v Springwell (op cit) at [558]. That the Bank s employee was well aware that he had made recommendations as to the advisability of purchasing the product did not prevent a contractual estoppel from arising [567]. The UCO provides that an unconscionable contract or part thereof is unenforceable:

5. Relief where contract unconscionable

- (1) If, with respect to a contract for the sale of goods or supply of services in which one of the parties deals as consumer, the court finds the contract or any part of the contract to have been unconscionable in the circumstances relating to the contract at the time it was made, the court
- (a) refuse to enforce the contract;
 - (b) enforce the remainder of the contract without the unconscionable part;
 - (c) limit the application of, or revise or alter, any unconscionable part so as to avoid any unconscionable result.

6. Matters to be considered by the court

- (1) In determining whether a contract or part of a contract was unconscionable in the circumstances relating to the contract at the time it was made, the court may have regard to (among other things)
- (a) the relative strengths of the bargaining positions of the consumer and the other party;
 - (b) whether, as a result of conduct engaged in by the other party, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the other party;
 - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the goods or services;
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the other party or a person acting on behalf of the other party in relation to the supply or possible supply of the goods or services; and
 - (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent goods or services from a person other than the other party.
- And with regard to CECO:

7. Negligence liability (1)

- (2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.
- (3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk. Under s.3 of CECO: The reasonableness test

- (1) In relation to a contract term, the requirement of reasonableness for the purposes of this Ordinance and section 4 of the Misrepresentation Ordinance (Cap. 284) is satisfied only if the court or arbitrator determines that the term was a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made. Unconscionability means something not done in good conscience and it is to be evaluated by reference to a normative standard of conscience. Whilst the court must have regard to the non-exclusive list of factors in the statute, it should also consider all other relevant matters and circumstances reasonably foreseeable at the time of the making the contract in determining if there is any unconscionability in the terms of the contract. Hardship or bad bargain for a party per se cannot be a sufficient foundation for finding unconscionability (*Chang Pui Yin v Bank of Singapore* (op cit) [66]-[67]). Unconscionable means wholly unreasonable, not guided or restrained by conscience (*Shum Kit Ching v Caesar Beauty Centre Ltd* [2003] 3 HKC 235 per Recorder Chan SC at [13]. CECO would not apply to a situation where the bank has not undertaken duties towards the plaintiff. Terms that merely define the nature and scope of the parties relationship and are not exclusion clauses are not subject to CECO (*Frank Lee & Lay Kuan Kwek Lee v The Hong Kong and Shanghai Banking Corporation Ltd* [2022] HKCFI 3680 per Au-Yeung J at [134]; *DBS v Sit Pan Jit* (op cit) at [103]). Under s.108 SFO: Civil liability for inducing others to invest money in certain cases
- (1) Where a person makes any fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation by which another person is induced
- (a) to enter into or offer to enter into
- (i) an agreement to acquire, dispose of, subscribe for or underwrite securities; or (ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or
- (b) to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme, the first-mentioned person shall, whether or not he also incurs any other liability (whether under this Part or otherwise), be liable to pay compensation by way of damages to the other person for any pecuniary loss that the other person has sustained as a result of the reliance by the other person on the misrepresentation.
- (6) Nothing in this section affects, limits or diminishes any rights conferred on a person, or any liabilities a person may incur, under the common law or any other enactment.
- (7) For the purposes of this section (a)
- (c) negligent misrepresentation means
- (i) any statement which, at the time when it is made, is false, misleading or deceptive and is made without reasonable care having been taken to ensure its accuracy; (ii) any promise which, at the time when it is made, is not capable of being fulfilled and is made without

reasonable care having been taken to ensure that it can be fulfilled; (iii) any forecast which, at the time when it is made, is not justified on the facts then known to its maker and is made without reasonable care having been taken to ensure the accuracy of those facts; or (iv) any statement or forecast from which, at the time when it is made, its maker negligently omits a material fact, with the result that (A) in the case of the statement, the statement is rendered false, misleading or deceptive; or (B) in the case of the forecast, the forecast is rendered misleading or deceptive. The only differences between relying on SFO s.108 as opposed to a conventional claim based on common law misrepresentation or the Misrepresentation Ordinance (Cap.

284) () are: (i) the definition of representation under SFO s.108 includes forecast which are not representation of facts that can give rise to remedies under misrepresentation under common law or MO; and (ii) the claim under SFO s.108 is confined to compensatory damages (DBS v San-Hot (op cit) p 6E-F). It has not been held before whether contractual estoppel applies to s.108 of SFO.

Analysis

Mr Dawes, leading counsel for the Defendant, submitted that the case is fact sensitive on the evidence of the parties. Miss Ho, for the Plaintiff, agreed. First, I shall deal with the evidence of Ruby. She said she was only assisting Janet Lui to deal with the account opening including filling in the Risk Profile Questionnaire. But it was she who linked up with Mrs Zhang on WeChat right after the first meeting, and there was no mention of Janet throughout the WeChat. Ruby said she was merely acting as Customer Service before she become their investment manager. However, by early April 2015, Ruby was already dealing with Mrs Zhang on the purchase of the HF and YD Bonds as their first investments. Ruby was evasive as to her role in the first meeting where allegation of false representation made against her. I do not find her a credible witness. That said, it is not necessary that the Plaintiff and Mrs Zhang are credible witnesses. On the other hand, Mr Dawes criticized the Plaintiff as an unreliable and incredible witness, as his evidence was irrational and contradictory to documentary evidence. The Plaintiff alleged that right from the beginning, he had told Ruby that he only wanted low risk investments and safety was his sole consideration. He said Ruby advised him that to choose a high risk profile in the Account Opening Form in order to have flexibility to acquire high risk products in the future. During cross-examination, he gave three new explanations not mentioned in his witness statement: (1) Ruby told him by indicating high risk, it would be more likely to successfully open the account; (2) later, Ruby told him the Account Opening Form had no direct relationship to the subsequent investment; (3) he signed the Account Opening Form to ensure his application under CIES would be smooth. The Plaintiff said Ruby told him the HF and YD Bonds were of the lowest risks. During cross-examination, he agreed that he had been given the PCS Pamphlet, where it clearly stated that Government Bonds were of the lowest risk and lowest return of 0-2%, and corporate bonds were of medium to high risk, with a higher return of 6-10%. The Plaintiff tried to explain away this obvious discrepancy by saying that corporate bonds could have lower risks than Government Bonds. The Plaintiff also claimed that he did not understand default risk and was

unaware that he could lose his investment in the event of default of the corporation. However, in the WeChat between him and Ruby in April 2016, he himself referred to the term default risk (in Chinese) and made enquiries about such risk. Further, when the Plaintiff was cross-examined on the risk warning statements and disclaimers in the Defendant's documents, he invariably said that he did not read them, or not recall being given the Client Agreement. Yet, for those parts of the documents relied on for his case, he said he had read them. These inconsistencies demonstrated the lengths to which he was willing to go to advance his case. As to Mrs Zhang, she also said safety was their sole consideration, and yield did not matter to them. This was patently untrue when right from the beginning they chose the HF and YD Bonds instead of Government Bonds. Also, after the HJ Bonds were redeemed, she again chose the BOCHK Fund rather than Government Bonds even as a transitional investment. She claimed it was also on the advice of Ruby, but the WeChat record did not contain the alleged advice. Similarly, the WeChat record on EOT and Waiver Request only showed Mrs Zhang's enquiries, and alleged advice or representation as to the agreeing to the EOT on Waiver Request only came in Mrs Zhang's evidence. Mr Dawes invited the Court to reject the evidence of the Plaintiff and Mrs Zhang's evidence as their allegation of lowest risk defied logic given the choice of Government Bonds. Miss Ho submitted that the Plaintiff was confused during cross-examination since he was not well versed in finance and investment. It is important to note that the Plaintiff and Mrs Zhang were university educated. Under cross-examination, they were shown certainly not bases in the wood as they attempted to portray. I do not find the Plaintiff and Mrs Zhang credible witnesses. Even though I do not accept the evidence of Ruby, I do not accept that the Plaintiff filled in the Account Opening Form selecting the high risk investment category because Ruby had told him that it bore no reference to the future investment and would give flexibility of investments. Not only did the Risk Profile Questionnaire score represented high risk, it was the highest risk. It defies anyone's imagination that if the Plaintiff's starting point was lowest risk, how come it had ended up with the highest risk and not even medium risk? I found that the Plaintiff had signed the Account Opening Form of his own accord. It defies common sense that corporate bonds could be safer than Government Bonds. The Plaintiff was provided with PCS Pamphlet and the Risk and Return Analysis before any investment, which had set out the comparison of risks and return of different categories of investments, especially Government and corporate bonds. Mrs Zhang actively made enquiries about the return on the bonds, and it exposed the lie that they did not care about the return. Granted that in the WeChat Ruby did state that one could not get capital guaranteed product, there must be some risk to be born. I note that was in the context when Ruby was asking Mrs Zhang to tell the Plaintiff to sign on some risk disclosure document. There were some discussions on capital protection at the trial. I noted that under CIES there was the choice of certificate of deposit issued by banks but such were only permissible after approval in principle granted by the Director of Immigration. There was no evidence as to such approval in principle in this case, and this aspect was not explored in the trial. In any case, there existed the choice of Government Bonds which bore the lowest risk but also the return but it was not chosen. Mr Dawes pointed out that unlike the series of cases cited where the products were derivatives or structured products, the present case is one of a simple corporate bond. It was a simple exercise of comparison of the risk and return. Mr Dawes submitted that all the Permitted Products under

CIES involved some risk as least in relation to default. Hence, capital protection should not be interpreted as absolute. It is a truism that even Government Bonds or bonds of major banks or corporations are not immune from default risks, though generally regarded as extremely low. Default risk is always present even with such financial products. The Plaintiff was less than frank on ignorance of default risk. But he admitted he was aware the concept of default risk upon cross-examination. The fact remained that the Plaintiff was shown the various investment options, and had chosen corporate bonds instead of Government bonds, which would have been the obvious choice if lowest risk was the sole objective. As to EOT and Waiver Request, I note that there was an almost 7 minutes WeChat call between Ruby and Mrs Zhang after Mrs Zhang asked Ruby about them. No doubt they must have discussed something important given the duration of the call. However, as I do not accept the credibility of the Plaintiff and Mrs Zhang, I shall not infer that the unrecorded WeChat conversation was the misrepresentations by Ruby as alleged by Mrs Zhang. Ruby did tell the Plaintiff to answer to the telephone confirmation. It goes without saying if the Plaintiff was to subscribe for the bonds, and there was no coaching or manipulation. I find the Plaintiff and Mrs Zhang's case of alleged misrepresentations by Ruby in inducing the Plaintiff to choose a higher risk profile upon account opening, as well as agreeing to the EOT and Waiver Request were made up by them afterwards to explain away their choices independently made. In the premises, I reject the evidence of the Plaintiff and Mrs Zhang. As a separate point from choosing a high risk profile as coached by Ruby, Miss Ho submitted that the Defendant could not rely on the Account Opening Form and Risk Profile Questionnaire in any case. Miss Ho point out that in the Account Opening Form, under the Investment Objectives section, the Plaintiff had chosen Long Term (over 2 years) and Dividend Income . And as to Dividend Income , it was the only choice amongst the options of Capital Growth Hedging and Speculation . Hence, it was tantamount to a conservative approach. Miss Ho submitted that the Investment Objectives section was included pursuant to the requirement of Know the Client by the Securities and Futures Commission (), whereas the Risk Profile Questionnaire section where the Plaintiff's total score was indicating Aggressive was the initiative of the Defendant not required by the SFC. Furthermore, Miss Ho submitted that in the Important Note under the Risk Profile Questionnaire, there is a discrepancy between the English and Chinese versions. In English: The questions in this section are set for the purpose of assessing [the client's] attitude to risk and risk tolerance in investment. There is no direct relationship between the questions asked in this section and the actual performance of any investments [the client] may decide to purchase. But in Chinese (translated into English): The questions in this section are set for the purpose of assessing [the client's] attitude to risk and risk tolerance in investment. There is no direct relationship between the questions asked in this section with any investments and the actual performance of [the client] may decide to purchase. (Underline added). In some way, it harked back to the allegation that Ruby told the Plaintiff that there was no direct relationship between the risk profile and the investment decision by the Plaintiff (though argued separately). I do not see any inconsistency between the choice of long term investment for dividend income and the choice of an investment product with higher return and correspondingly high risk. They could complement each other. The alleged discrepancy does not impinge my assessment of the Plaintiff's credibility. In any case, the Important Note was really a rider by the Defendant that the

Questionnaire did not bear a direct relationship with the actual performance of the investment chosen. It did not prove any inducement per se. Construing the Important Note bilingually with the aim of finding a purposeful meaning, what was meant must be by the English version. There is no point in making a mountain out of a molehill. More importantly, the approach is to look at all the circumstances as a whole, weighing all the pros and cons, rather than to pick and choose amongst the each point separately. Miss Ho also submitted there was no disclaimer in the Lamtex Bonds Instruction, and the disclaimer at the foot of the Lamtex Analysis Report was in small and faded font. Be that as it may, there were numerous warnings such as in the Indicative Terms Sheet of the Lamtex Bonds, and disclaimer in the Financial Advisor Recommendation Form and the Subscription Form for the Lamtex Bonds. The same should be looked at together. The Plaintiff s pleaded case was implied contractual and/or assumption of tortious duties of negligent investment advice or lack of proper advice on the part of the Defendant. Miss Ho submitted that the lack of any express contractual obligation between the parties to provide advice was not determinative of whether the defendant had assumed duties and responsibilities to advise. Other relevant factors included the factual matrix of the relationship of the parties, what was said between them, what roles each played in the relationship, the extent of the parties financial experience and sophistication, and the extent of the plaintiff s reliance on the defendant and the foreseeability of such reliance. Miss Ho submitted that notwithstanding that the contract was expressed to be execution only only, Ruby had gone beyond merely introducing financial products acceptable under CIES, but had actively advised the Plaintiff on the specific investments over and beyond the contract, and failure to advise on the high risk of the Lamtex Bonds while the promotion materials stated low risk. Given that the promotional materials for the Lamtex Bonds stating low default risk, Ruby s failure to draw to the Plaintiff s attention the internal rating of high risk by the Defendant was a breach of duty towards the Plaintiff. Miss Ho relied on *Chang Pui Yan v Bank of Singapore* (op cit) for the assumption of duty to advise. The plaintiffs there were husband and wife and customers of the defendant bank. Although the defendant knew the plaintiff s investment objective was that of medium risk, it recommended high risk products to them. Upon being alerted to this mismatch, the defendant promised to readjust their portfolio to medium risk level. Despite this promise, the defendant, acting without the plaintiff s knowledge, changed their risk profiles to high risk. Substantial losses were incurred in the plaintiffs account. The defendant denied liability, its stance being the accounts were not advisory accounts and were only operated on the plaintiffs instructions. The trial judge held that on the true construction of the agreement between the defendant and the plaintiffs, it had agreed to provide an advisory service to them. The Court of Appeal dismissed the appeal by the bank in *Chang Pui Yin v Bank of Singapore* (op cit), and held that:

- (1) The terms of the agreement between a bank and its customer could not be altogether disregarded in assessing the purpose of the customer s account. There were clauses in the agreement between the defendant and the plaintiffs which ruled out the construction at which the trial judge had arrived at;

- (2) Contrary to the Judge's view, private banking services could be regarded as services of a type ordinarily supplied or provided for private use within the meaning of s.3(1)(c) of the UCO. Giving full effect to the clauses on which the Judge's construction was reached would be unconscionable. To avoid such an unconscionable result, the power under s.5 of the UCO should be exercised to limit the application of those clauses by holding that the defendant could not rely on them to avoid liability to the plaintiffs;
- (3) In deciding whether those clauses came within the ambit of the CECO, a superficial classification of their nature simply by reference to their drafting without reference to the context in which they were agreed or the circumstances in which Ps appended their signatures would not suffice. As a matter of substance, those clauses were for the exclusion or restriction of D's relevant obligation or duty. Given the unconscionability of those clauses, they were not fair and reasonable. D could not rely on them to escape liability to the Plaintiffs. Miss Ho also referred to *Susan Field v Barber Asia Ltd* (HCA 7119/2000, 17 June 2003 unrep.) where DHCJ Barma (as he then was) held at [155] that the pertinent factors to take into account in finding responsibilities contrary to express term included:
- (1) The relative skill and knowledge of the parties;
 - (2) The context in which the advice was given;
 - (3) Whether the giver of the advice was doing so completely garrulously or was getting a reward, whether in some direct or indirect form;
 - (4) Whether or not there were any express disclaimer of responsibility. Miss Ho submitted that the nomenclature of the Financial Advisor's Recommendation Form and Ruby signing as the Financial Advisor indicated the Defendant did assume the responsibilities of a financial advisor over and above the contract. That was so even without relying on the evidence of representations by the Plaintiff and Mrs Zhang. Miss Ho submitted that although the Defendant did point out to the Plaintiff the default risk, there was the express representation of low default risk in the promotional materials for the Lamtex Bonds, which was contrary to the Defendant's internal assessment of high risk for the Lamtex Bonds. Nevertheless, Ruby did not specifically explain the discrepancy to the Plaintiff. There was no express disclaimer in the promotional pamphlet. Hence, the Plaintiff was induced by such clear misrepresentation, and he did not make an informed decision. Miss Ho submitted that the Plaintiff was a consumer. Although he was an adult and educated, he was new and not experienced to the Hong Kong market. Hence, he was not a sophisticated investor. The Defendant was a licensed dealer and claimed expertise in investment immigration. The contract was in standard terms prepared by the Defendant. There was not an equality in arms. Miss Ho also pointed out that the Defendant's financial motivation of sole placing agent was also relevant. In the circumstances, the Defendant did assume responsibilities as the financial advisor of the Plaintiff and liable as in *Chang Pui Yin v Bank of Singapore*. Mr Dawes, for the Defendant, submitted that the four main points of the Defence case are:

- (1) There is no allegation of fraud against the Defendant;
- (2) The respective responsibilities of the parties are clearly defined by the contractual terms;
- (3) Given the mainstream authorities (as cited above), it is very difficult for the investor to make a claim for loss in an execution only type of contract when there is no duty to advise on the part of the financial intermediary;
- (4) At the end of the day, the question is whether the investor was aware of the nature of the product he was buying, and had made the decision of his own. Mr Dawes submitted that the relationship between the Plaintiff and the Defendant was clearly defined by the contract. The Client s Agreement stated the Defendant would not provide investment advice. Should the client need investment advice, a separate agreement had to be made (para 4.3). There was no separate agreement for investment advice between the parties. The Supplementary Agreement reaffirmed that the agreement was for execution only, and investment remained the sole decision and responsibility of the client. And the Plaintiff had periodically confirmed that he was a professional investor. As to the Financial Advisor Recommendation Form, Mr Dawes submitted that it was actually in favour of the Defendant rather than the Plaintiff. It expressly stated that the Plaintiff understood the related risks of corporate bonds, the deficiencies of bond default and bond liquidity risk, and the worst scenario for corporate bonds was unable to recover the principal. The Plaintiff had signed on the Form indicating the risk rating of the investment was 5, ie highest risk. Mr Dawes submitted that the Defendant was the sole Placing Agent for the Lamtex Bonds was not concealed and it was not an uncommon feature in the investment field in Hong Kong. Upon due consideration, I agree with Mr Dawes that looking at the terms in the Client s Agreement, Supplementary Agreement and the warnings and disclaimers in the other contractual documents, the agreement was one of execution only and financial advice was not provided without further agreement reached upon payment. The essence is really what the parties had bargained for and what was the price to be paid. Notwithstanding that Ruby was addressed as Financial Advisor in the Financial Advisor Recommendation Form, it must be a matter of substance rather than form having regards to all the circumstances including all the terms contractual documents. Of course the Defendant could go beyond the contract and assumed special responsibilities, but the Plaintiff has a high threshold to reach for the assumption of responsibilities, or that the original bargain was unconscionable having regard to the conduct of the parties especially of the Defendant. *Chang Pui Yin v Bank of Singapore* (op cit) was distinguished in *Frank Lee v HSBC* (op cit), where Au-Yeung J observed at [133] that the customers in *Chang Pui Yan v Bank of Singapore* were an elderly couple who led very humble lives until they came into very substantial inheritance at an old age. They had limited knowledge and rudimentary understanding about the investments they made through the bank and the risks associated with them. Their investment objective had always been to preserve their capital and achieve a return slightly between than bank deposits, belonging to the category of medium risk investors. They were manipulated by the bank officer investing in high risk products that were demonstrably not suitable. The bank

officer had broken her promise of re-adjusting their portfolio back to medium level. The risk profiles maintained by the bank internally were changed, without the couple's knowledge, to high risk. Their accounts were held to be discretionary accounts to which the exclusions clauses did not apply. The conduct of the bank officer in *Chang Pui Yin v Bank of Singapore* (op cit) was simply dishonest and reprehensible, whether it be analysed as negligent, unconscionable, or unreasonable. The conduct of the Defendant here was nothing like that. As to the purported representation of low default risk, the Lamtex Bonds Introduction and the Lamtex Analysis Report did clearly set out the past losses of Lamtex, and with the background and assets of Mr Tse, it was believed there would be a good start for Lamtex after years of lackluster performance, and hence, the default risk was low. It was warts and all. It was stated to be a belief of a good new beginning. I do not find it amounting to negligent misrepresentation nor failure to specifically bring to the Plaintiff's attention of high risk, where the Plaintiff was fully aware as he had signed on it. Not only was the contractual arrangement specified to be execution only the Plaintiff had confirmed that he was a professional investor making investment decisions independently without reliance on the Defendant. There was clear warning on the default risk, which the Plaintiff had signed to acknowledge. There were disclaimer statements clearly stating no vouching on the corporate information and no recourse to the Defendant on default risks pertaining to the issuer of the bonds. The Plaintiff and Mrs Zhang were highly educated, and could not simply say they did not read the documents carefully. Their evidence of aims of lowest risk and safety only, and alleged manipulation and coaching had been rejected. The fact remained that they were aiming for a higher return than the safest Government Bonds available. In *Kwok Wai Hing Selina v HSBC Private Bank (Suisse) SA* [2012] 4 HKC 260, the Defendant's relationship manager gave the Plaintiff an account opening booklet which included a risk disclosure statement expressly warning that then investment risks associated with a financial product might be substantial, and if any doubt about whether a product was suitable, the client should seek independent third party advice. Reyes J held that the statement could not be clearer. In that light, His Lordship was unable to see how the manager's personal views as to the extent of a relationship manager can be regarded as somehow modifying the plain meaning of the statement. Further, it is also an elementary principal of contract law that one cannot imply obligations which are contrary to the express terms of the agreement ([104]-[105]). Hence, I found that the Plaintiff was estopped from raising term contrary to the express terms in the contract. Once contractual estoppel was to apply, CECO was not engaged. In the same vein, I do not find anything amounting to unconscionability under UCO. It is unnecessary to consider SFO as I do not find negligence in failing to specifically drawing the attention of the Plaintiff to the high overall risk in the context of low default risk in the Lamtex Bonds promotional materials.

[illegible]

A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C
 D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V h:7 hd,) hd,) hd,) h6Aj phf3f [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@!j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r ~*P(5 .}x E /,EE} theme/theme/_rels/ themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/ theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml DR>< Q%?*_mG[Ea;- ;%jj 3u?U C0pE66:*|f drs/downrev.xmlL o{j5 3#>t Z_- w ". [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK

[Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml e^vj
NYJj 5(FB zU\PFRj >|R0 a%AU<p6_ drs/downrev.xmlL noJSX? [Content_Types].xmlPK
_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.;
rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml DR>< e^vj NY*j a,5=A ;a[u hY6: j LR yEXIP
drs/downrev.xmlL \$"^G IC2S Ccz|n [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK
drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5
{SJ\$ drs/e2oDoc.xml 8 O!vI Ny6T QhCMOP7 {a:u `Y2YW a\$AU drs/downrev.xmlL Ch=i B4dM
uy}U 1=>7X}oON [Content_Types].xmlPK _rels/.relsPK {SJ\$ drs/e2oDoc.xmlPK drs/
downrev.xmlPK uW#n9L <rd=2 kU-? IC,B vZb3 dxfU 6H<XZ \:Hi tDci T+u~ <rd= dxfU IC,B
tDci kU-? \:Hi 6H<X ~0 L s(O6 Pr,c2F J'2N ;h5bM OZ;Db O!N }3'u# <#\$3-^ 4<#\$3 u"57 mY8z/+T
3G4G _wG#j GtPDs @fK=6 Lu"57 z/+T ,y];d s g9m+ ;d s3G4G tPDs fFt> w4v* gzv0 High Court
CACC 283-2007.dot Barnabas w fung Microsoft Office Word Judiciary Hong Kong Title <?xml
version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL"
StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/officeDocument/2006/
bibliography" xmlns="http://schemas.openxmlformats.org/officeDocument/2006/
bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?>
<ds:datastoreItem ds:itemID="{9F4BE46C-81D2-40F9-A378-ED5A29C7BF28}"
xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/
customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/
officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word
97-2003 Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=179384

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/zhang-xiaochen-v-pc-securities-ltd-2026>

Prepared on 29 October 2026 · Esheria