

SINGAPORE INTERNATIONAL COMMERCIAL COURT

15 March 2018

Media Summary

Singapore International Commercial Court Suit No 2 of 2016 (Summons No 5 of 2018)

***BNP Paribas SA v Jacob Agam and another* [2018] SGHC(I) 03**

Background facts

1 The plaintiff, BNP Paribas SA (“the Plaintiff”), is a French-incorporated private bank which conducts business in Singapore through its Singapore-registered branch. The two defendants (“the Defendants”), Israeli citizens, were customers of the Plaintiff’s subsidiary company, BNP Paribas Wealth Management (“BNPWM”), prior to BNPWM’s merger with the Plaintiff on 1 October 2016.

2 In November 2015, BNPWM commenced an action in the Singapore High Court against the Defendants for the recovery of certain sums allegedly owed under personal guarantees the Defendants had provided to BNPWM as security for loans BNPWM had extended to two of their companies under two facility agreements.

3 In April 2016, the proceedings were transferred to the Singapore International Commercial Court (“SICC”). The SICC issued its judgment in November 2017, finding for the Plaintiff and awarding the claimed amounts, and dismissing a counterclaim by the first defendant. In December 2017, the Defendants appealed, filing an offshore case declaration (“the Declaration”) together with their notice of appeal.

The application

4 In January 2018, the Plaintiff filed the present application (“the Application”) pursuant to O 110 r 37(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“the Rules”) seeking a declaration that the action is not or is no longer an offshore case, and that, consequently, the Declaration would cease to have effect.

The decision

5 Vivian Ramsey J (“the Judge”) allowed the Application. He concluded that the action was not one which has no substantial connection with Singapore, and was therefore not an “offshore case”.

Reasons for the judgment

6 The Judge first dealt with two preliminary issues. The first concerned whether the Declaration was valid under O 110 r 35 of the Rules. The Judge noted that O 110 r 35 required any offshore case declaration to be filed “together with the first document filed by the party in the action” which, in the case of the Defendants, would have been in January or February 2016. As the Defendants had not applied for or been granted an extension of time, the Judge concluded that the Declaration was not validly made.

7 The second concerned whether it was the SICC or the Court of Appeal which had the jurisdiction to hear the Application. This issue arose because the Defendants had made the Declaration in the context of their appeal, and filed it in the case file for the appeal; however, the Application was filed in the case file for the suit. The Judge concluded, after reviewing the relevant provisions of the Rules and the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) (“the SCJA”), that it was the SICC and not the Court of Appeal which had the jurisdiction to consider the Application. Among other things, he noted that O 110 r 37(6) of the Rules provides that the SICC’s decision as to whether an action is an offshore case is “final” for the purposes of s 34(1)(e) of the SCJA, which in turn provides that no appeals would lie to Court of Appeal where it was expressly declared under written law that the order would be final. This showed that the Rules contemplated that any question as to whether an action is an offshore case would be heard by the SICC, whose decision on the matter would be final.

8 Turning to the merits of the Application, the Judge noted that the test was that an action would be an offshore case if it could properly be said to be one with “no substantial connection with Singapore”. In this case, it was of fundamental importance that Singapore was the place of performance of the obligations under both the facility agreements and the personal guarantees. The factors raised by the Defendants (*eg*, that

the parties were not Singaporean) were not in themselves determinative of the issue of whether the action has a substantial connection with Singapore. The Judge also held that the Defendants were not entitled to rely on the argument that their defences engaged issues of French law in support of their position that the present action was an offshore case, because those issues fell away when they decided not to adduce evidence of or prove any issues of French law.

9 Finally, the Judge observed that while all cases in the SICC are international and commercial in nature, not all such cases would be offshore cases. Hence, the fact that the suit had been transferred from the Singapore High Court to the SICC was not relevant to the question of whether it was an offshore case.

* This summary is provided to assist in the understanding of the Court's judgment. It is not intended to be a substitute for the reasons of the Court.