

# SUPREME COURT OF SINGAPORE

17 November 2017

## Media Summary

### **Singapore International Commercial Court Suit No 2 of 2016 *BNP Paribas SA v Jacob Agam and another* [2017] SGHC(I) 10**

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1 This suit arose out of a dispute between BNP Paribas SA (“BNP”), a multi-national private bank incorporated in France, and Jacob Agam and Ruth Agam (“the Agams”), who are siblings and Israeli nationals. The Agams owned four properties in France and Monaco through companies which were incorporated in France, Denmark and Panama (“the Agam companies”). In 2010, the Agam companies entered into four facility agreements with BNP Paribas Wealth Management (“BNPWM”), the former subsidiary of BNP, under which a total amount of €61.7m was loaned to the companies. The monies were disbursed through BNPWM’s local branch in Singapore. Approximately €20.2m was used to repay the previous mortgage loans secured on the properties, some €24.7m was held as securities in a joint pledged account maintained by the Agams with BNPWM’s Singapore branch, and the balance was left on deposit with the Singapore branch and managed by BNPWM for discretionary investment. Each facility agreement was for a term of five years. They were secured by various securities including mortgages over the four properties and joint personal guarantees executed by the Agams in favour of BNPWM. Both the facility agreements and the personal guarantees contained clauses stating that they were governed by Singapore law and that the Agams and their companies agreed to submit to the jurisdiction of the Singapore courts.

2 In 2014, the *Tribunal de Grande Instance of Paris* (“the Paris Court”) ordered the criminal seizure of one of the properties in France following a request by the authorities of the United States of America as part of their money laundering investigations. This led to a dispute between the parties as to whether

the Agam companies were in breach of their obligations under the facility agreements. The parties subsequently entered into discussions to settle the outstanding monies which the Agam companies owed to BNPWM. But these discussions did not lead to repayment of the monies loaned under the facility agreements with two of the Agam companies – SCI Ruth Agam and Det Internationale Ejendoms-OG Udviklingselskab ApS (“Det Internationale”). Following the contractual maturity date for these two facility agreements, BNPWM issued formal notices of demand to SCI Ruth Agam and Det Internationale for repayment of the loans. SCI Ruth Agam and Det Internationale failed to make repayment. Hence BNPWM demanded payment of the outstanding sum of approximately €30.1m from the Agams under the personal guarantees. BNPWM then commenced this present action in the Singapore High Court in November 2015 against the Agams on the same basis. The action was transferred to the Singapore International Commercial Court before a coram comprising Steven Chong JA, Roger Giles IJ and Dominique Hascher IJ.

3 The Agams were not present at the trial, but raised various defences in their pleadings. Ruth Agam claimed that she was not liable based on her not understanding the nature of the personal guarantees and supposed improprieties in the execution of the loan documents and the opening of the relevant bank accounts in Singapore. She asserted that she only understands Hebrew and would not have agreed to undertake personal liability by way of the personal guarantees. In addition, it was alleged by the Agams that BNPWM had wrongly declared breaches of the facility agreements following the criminal seizure by the Paris Court and failed to follow subsequent instructions by Jacob Agam on the application of the funds held in the pledged account. Premised on these allegations, it was pleaded that SCI Agam and Det Internationale, together with the other Agam companies, had claims against BNP for damages which diminished or extinguished its claims against the Agams.

4 In its judgment, the Court rejected Ruth Agam's defences based on her not understanding the nature of the personal guarantees and the supposed improprieties in the execution of the loan documents and the opening of the relevant bank accounts. It was not established that the alleged improprieties had any consequence for her liability under the personal guarantees. Furthermore, there was a preponderance of evidence which demonstrated that Ruth Agam understood English and the nature of the personal guarantees.

5 The Court also rejected the Agams' defences based on the assertion that BNPWM had wrongly declared breaches of the facility agreements and committed breaches of its own, which entitled the Agam companies to claim damages from BNP that diminished or extinguished the Agams' liability under the personal guarantees. The Court was not satisfied that BNPWM was wrong in asserting that there was a breach of the facility agreements, or had failed to follow Jacob Agam's instructions on the application of the pledged funds. In any event, the terms of the personal guarantees were clear and indicated that repayment had to be made by the Agams in full and on demand without any set-off, counterclaim, deduction or withholding whatsoever. A counterclaim by Jacob Agam based on conservatory proceedings brought by BNPWM in France against him in November 2015 was also dismissed as he was not present to prosecute the claim, and there was no evidence in support of the counterclaim.

6 The Court thus awarded BNP a total of approximately €32.2m in damages, including contractual interest.

*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.*

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