SUPREME COURT OF SINGAPORE

17 February 2017

Media Summary

Singapore International Commercial Court Suit No 2 of 2016
(SIC/Summons No 24 of 2016)
***BNP Paribas Wealth Management v Jacob Agam and another* [2016] SGHC(I) 2**

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1 This was an application for BNP Paribas SA ("BNPSA") to be substituted for BNP Paribas Wealth Management ("BNPWM") as plaintiff in Suit No 2 of 2016 ("the Suit") consequent upon a merger. The application was opposed by the defendants. BNPWM was previously a multi-national private bank incorporated in France and a wholly owned subsidiary of BNPSA, also a French incorporated bank. It acted in Singapore through a Singapore branch and was registered in Singapore as a foreign company. On 25 February 2016, BNPSA and BNPWM executed a merger agreement ("the Merger Agreement"), which was effected on 1 October 2016 pursuant to the French Commercial Code ("the Code"). It was common ground that a merger so made takes effect by the doctrine of universal succession under French law, resulting in the transfer of all assets and liabilities of BNPWM to BNPSA. It was also common ground that all necessary steps had been taken as required by French law and the merger was effective in France. BNPWM's surrender of its banking licence in Singapore was notified in the Government Gazette on 3 October 2016 and its French registration was struck off on 12 October 2016.

2 In its judgment, the Court granted the application for BNPSA to be substituted for BNPWM as plaintiff in the Suit. In doing so, it rejected the defendants' argument that the parties to the Merger Agreement had chosen to carry out the transfer by the particular mechanism of subrogation, which in turn allowed BNPSA to sue only in the name of BNPWM. This argument rested on statements in Article 4.1A and B of the Merger Agreement that

BNPSA shall be "subrogated" in the rights and obligations of BNPWM. In the Court's view, this argument erroneously assumed that the subrogation referred to in Article 4.1A and B was the same as the common law (equitable) concept of subrogation. Although there was no expert evidence of subrogation in French law, the terms of the Merger Agreement were squarely against this argument: the merger was to lead to the dissolution of BNPWM and involved subrogation in obligations. The Merger Agreement also specifically gave BNPSA full power to bring or defend any legal proceedings "in the place of" BNPWM.

3 The Court also rejected the defendants' second argument that the transfer of BNPWM's business in Singapore to BNPSA should not be given effect because, in breach of s 55B of the Banking Act (Cap 19, 2008 Rev Ed), court approval for the transfer had not been obtained. BNPSA's response was that s 55B was merely "facilitative", that is, it prescribed a means of transfer but, through s 55B(2), left other means available. Section 55B(2) provided that the mechanism of transfer in s 55B(1) was "without prejudice to the right of a bank to transfer the whole or any part of its business under any law". The Court was of the opinion that s 55B(2) applied and it was not necessary that court approval be obtained. Section 55A also governs banks incorporated outside Singapore and subject to foreign laws, and the words "any law" in s 55B(2) amply extend beyond a Singapore statute and to a foreign law which will be recognised in Singapore as giving the right to transfer. The succession to corporate personality in the merger of French incorporated companies being governed by French law, the Code is a law for the purposes of s 55B(2) and the transfer thereunder will be recognised by this Court out of international comity.

4 Accordingly, the Court granted the application.

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.