

SUPREME COURT OF SINGAPORE

28 October 2016

Media Summary

Singapore International Commercial Court Suit No ¹ of 2016

(SIC/Summons No 2 of 2016)

***BNP Paribas Wealth Management v Jacob Agam and another* [2016]**

SGHC(I) 5

1 This application arose out of a dispute between BNP Paribas Wealth Management (“BNP Paribas”), 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 under which a total amount of €61.7m was loaned to the companies. These monies were disbursed through BNP Paribas’s local branch in Singapore. 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 BNP Paribas. 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.

¹ 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 BNP Paribas. But

they were not able to reach a compromise on 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, BNP Paribas 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 BNP Paribas demanded payment of the outstanding sum of approximately €30.1m from the Agams under the personal guarantees. BNP Paribas 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 (“the SICC”) before a coram comprising Steven Chong J, Roger Giles JJ and Dominique Hascher JJ. In January 2016, BNP Paribas also brought foreclosure proceedings in France to enforce the mortgages over the properties belonging to SCI Ruth Agam and Det Internationale.

- 3 In response, the Agams and their companies brought a counter-action in the Paris Court seeking a declaration that the facility agreements and personal guarantees were invalid and “non-existent” under French law. They claimed that the entire transaction was illegal and contrary to the laws of France. This French counter-action was commenced in May 2016, some six months after BNP Paribas commenced the present action in Singapore. Shortly after, the Agams made this application for a limited (*ie*, temporary) stay of the SICC proceedings pending the determination of the foreclosure proceedings and the counter-action in France. The application was ostensibly to avoid the risk of conflicting judgments from the overlapping proceedings in Singapore and France.
- 4 In its judgment, the Court held that the grant of a limited stay of proceedings is a discretionary case management power which has to be exercised in order to ensure the efficient and fair resolution of the dispute

as a whole. In this case, the foreclosure proceedings were found to be distinct as 3

they did not materially overlap with the current action. So the principal reason for the multiplicity of proceedings was because of the French counter-action commenced by the Agams against BNP Paribas. The French counter-action was not only brought after the commencement of the Singapore proceedings, but after the Agams had already taken steps in this suit including the filing of a counterclaim. Further, the French counter-action was substantially a mirror of this action – the claim in France that the personal guarantees were unenforceable was the very issue before the SICC. In essence, the Agams were not applying for a limited stay but were instead seeking for the validity and the enforceability of the personal guarantees to be decided in France. The Court thus found that the French counter-action and the stay application had been commenced to deliberately stifle the expeditious resolution of the current action and in order to embroil BNP Paribas in a much wider and protracted dispute in France.

5 The Court also rejected the Agams' argument that this present action should be stayed temporarily as a matter of international comity. The principle worked both ways. Here, the Agams conceded that Singapore was an appropriate forum for the resolution of this dispute; and the French court could take cognisance of any Singapore judgment. Further, there was no reason why the Agams could not bring in any additional issues which they have raised in the French counter-action into this suit rather than starting *de novo* in France. This would clearly be, as a matter of case management, the more sensible way to resolve the dispute in an efficient and fair manner especially given that the SICC proceedings were at a more advanced stage than the French counteraction, which was still in its nascency.

6 The Court thus dismissed the Agams' 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.
