

SUPREME COURT OF SINGAPORE

18 May 2017

Media Summary

Civil Appeal No 71 of 2017

Jacob Agam and another v BNP Paribas SA [2017] SGCA(I) 01

Background to the appeal

- 1 The appellants are Jacob and Ruth Agam. They are citizens of Israel and operate a number of companies. BNP Paribas Wealth Management (“Wealth Management”) was a bank incorporated in France. It was a wholly-owned subsidiary of BNP Paribas SA (“Paribas SA”). Paribas SA is the respondent to the present appeal.
- 2 In 2010, Wealth Management (through its Singapore branch) loaned approximately €61.7m to the appellants’ companies (“the Loans”), which were secured by personal guarantees by the appellants. The Loans were not fully repaid on maturity in 2015. Wealth Management therefore commenced proceedings in the Singapore High Court to recover approximately €30m from the appellants in their capacity as guarantors of the Loans (“the Main Proceedings”). The Main Proceedings were transferred to the Singapore International Commercial Court in April 2016.
- 3 Paribas SA succeeded to the assets and liabilities of Wealth Management by way of a merger (“the Merger”), effected by a written merger agreement (“the Merger Agreement”). In essence:

(a) the Merger Agreement was effected pursuant to Art L.236 of the French Commercial Code, which allows for the universal transfer of the assets of a company to an existing company [10];

(b) the Merger “consists of the absorption of Wealth Management by [Paribas SA], with the suppression of its legal personality” [13];

(c) the Merger entailed “the universal transfer of all of the assets and liabilities of Wealth Management, which shall be entirely vested in [Paribas SA]” [13];

(d) the Merger by absorption of Wealth Management by Paribas SA “shall have as a consequence, on the Closing Date, the universal transfer of the assets and liabilities of Wealth Management and its winding-up without liquidation” [13]; and

(e) Paribas SA “shall be generally subrogated purely and simply ... in all the rights, legal actions, obligations and miscellaneous commitments of Wealth Management” [14].

4 On 12 October 2016, Wealth Management was struck off the register of French companies [15]. The surrender of Wealth Management’s banking licence in Singapore was notified in the Government Gazette on 3 October 2016 [15].

5 On 27 October 2016, Paribas SA applied to be substituted for Wealth Management as plaintiff in the Main Proceedings. The Singapore International Commercial Court granted the application at first instance: see *BNP Paribas*

Wealth Management v Jacob Agam and another [2017] SGHC(I) 2 (“the Judgment”). The appellants brought the present appeal against the Judgment.

Main issues and decision

Subrogation

6 The first set of issues was whether the word “subrogated”, which was used in the Merger Agreement, meant that the Merger Agreement had to be treated as having the effect of subrogating Paribas SA to the rights of Wealth Management [27]. The appellants essentially argued that this had to be the case because this is the way the word “subrogated” is understood in common law systems.

7 The Court of Appeal held that the word “subrogated” could not be given the common law meaning where it would contradict the entire substance of the Merger Agreement [30]. The Merger Agreement was to lead to the dissolution of Wealth Management and the universal transfer of its assets to Paribas SA [30]. That outcome contradicted the idea of subrogation at common law, which was that Wealth Management would survive as a legal person in a way permitting Paribas SA to sue in its name [30]. Further, the common law conception of subrogation does not include succession to a liability, and the Merger Agreement, in referring to subrogation in obligations, involved succession to a liability [30].

Section 55B(2) of the Banking Act

8 The second set of issues concerned s 55B of the Banking Act, which applies to the transfer of the whole or part of the business of a bank in Singapore, *ie* a “transferor”, to another bank in Singapore or a company, *ie*, a “transferee”. In essence, s 55B(1) of the Banking Act provides for the conditions under which the transfer may be done, while s 55B(2) provides that s 55B(1) is “without prejudice to the right of a bank to transfer the whole or any part of its business under any law”.

The expression “without prejudice” in s 55B(2)

- 9 The appellants contended that the use of the expression “without prejudice” in s 55B(2) indicated that a bank is “not free to disregard the requirements necessary to complete a transfer” under s 55B(1) [32]. The appellants also put forward various policy justifications for this interpretation of the provision [33].
- 10 The Court of Appeal found that the meaning attributed to s 55B(2) by the appellants was completely contrary to the plain meaning of the provision [33]. Furthermore, the policy arguments raised overlooked the context of s 55B(2) in ss 7 and 55B(1) [34]. Section 55B ensures that the transfer can only be made to an entity which is licensed to carry on banking business in Singapore. That is because s 55B(1) makes reference to a “transferee”, which is further defined in the Banking Act as “a bank in Singapore, or a company which has applied for or will be applying for a licence to carry on banking business in Singapore”. Accordingly, the transferee would not be some wholly unsatisfactory legal person operating without surveillance from the Monetary Authority of Singapore [34].

The expression “under any law” in s 55B(2)

- 11 The appellants argued that the words “under any law” in s 55B(2) of the Banking Act meant “under Singaporean law” or “under any written law” [37]–[38]. They relied on policy arguments to support this argument, such as the safeguards afforded by the need for Ministerial and court approval under s 55B and the role of the Minister in granting a certificate of approval for s 14A mergers. The appellants submitted that once Wealth Management decided not to apply to the court under s 55B, it should have applied to the Minister for approval under s 14A.
- 12 The Court of Appeal held that the words “under any law” in s 55B(2) could refer to any law in the world [36]. The policy concerns articulated by the Appellants were met by the fact that s 55B(2), in preserving the

right to make a transfer “under any law”, is dealing only with transfers to transferees already licensed in Singapore [40]. The appellants thus failed to demonstrate any reason for not giving “under any law” its ordinary meaning and instead reading it as “under Singaporean law” [40]. The argument that Wealth Management should have applied to the Minister under s 14A once it decided not to apply to the court under s 55B was also incorrect [41]. Sections 14A and 55B are permissive in nature, and do not compel a transferor to choose one method or the other; a transferor may thus proceed “under any law” if it wishes [42].

13 For these reasons, the Court of Appeal dismissed the appeal in its entirety.

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. All numbers in square brackets refer to the corresponding paragraph numbers in the Court’s judgment.
