

SINGAPORE INTERNATIONAL COMMERCIAL COURT

4 May 2018

Media Summary

Singapore International Commercial Court Suit No 5 of 2017
***Macquarie Bank Limited v Graceland Industry Ltd* [2018] SGHC(I) 05**

1 The plaintiff, Macquarie Bank Limited (“Macquarie”), is an Australian company and a global provider of banking and financial services. The defendant, Graceland Industry Ltd (“Graceland”), is a Singapore company that engages in trading of phosphate-based chemical products. This suit arose out of a dispute over Macquarie’s claim for a sum of US\$1.2m in relation to a commodity swap agreement in respect of 30,000 mts of urea (the “Transaction”) entered into with Graceland sometime in 2014.

2 Macquarie’s case was that the Transaction was made in the course of certain emails in May 2014 and recorded in a Long Form Confirmation (“LFC”) dated 6 June 2014 incorporating the standard 2002 International Swaps and Derivatives Association Inc. Master Agreement (“ISDA Form”); that Graceland wrongfully repudiated the Transaction, thereby entitling Macquarie to terminate the Transaction as it did on 8 July 2014; and that the sum of US\$1.2m was accordingly recoverable by Macquarie as the “Close-out Amount” as defined in the ISDA Form.

3 In its defence, Graceland disputed the nature and terms of the Transaction and denied the claim on four main grounds (*ie*, unilateral mistake, mutual mistake, breach of fiduciary duties and fraudulent misrepresentation or non-disclosure), alleging that the Transaction was void *ab initio* and/or had been rescinded. Graceland also challenged the calculation of the Close-out Amount claimed by Macquarie. Additionally, Graceland advanced a counterclaim against Macquarie and/or Mr Stephen Wolfe, who was at all times employed by Macquarie as a Senior Advisor, for the loss and damages suffered as a result of the above.

4 In its judgment, the Court first found that there was a binding agreement between Macquarie and Graceland on the terms of the LFC dated 21 May 2014 which, on its face, made an express and direct reference to the ISDA Form and was effective to incorporate its terms. The LFC dated 6 June 2014 subsequently prepared by Macquarie and sent to Graceland simply recorded the agreement reached between them.

5 Next, the Court rejected Graceland's case based on unilateral mistake. The Court did not accept that Graceland was under a mistaken belief that the Transaction would be effected by Macquarie as agent or broker on behalf of Graceland with a third party in an exchange-traded transaction. Rather, based on the objective contemporaneous evidence including various emails and contractual documents, the Court's findings on what occurred during a meeting between representatives of the parties in May 2014, as well as the absence of any agreement by Graceland to pay commission to Macquarie, the Judge concluded that Graceland was well aware that the Transaction was between Macquarie and Graceland as counterparties or principals in what was, in effect, an over-the-counter transaction. For similar reasons, the Court also rejected Graceland's case that the Transaction had been entered into by reason of mutual mistake.

6 The Court then rejected Graceland's case based on breach of fiduciary duties. The Transaction was one between counterparties acting as principals and the facts did not justify a conclusion that Macquarie and Mr Wolfe were fiduciaries of Graceland or owed it fiduciary duties. Further, Macquarie and Mr Wolfe were not in breach of any fiduciary duties that might have existed. The Court found that Macquarie and/or Mr Wolfe had not placed themselves in positions of conflict of interests or failed to fully inform or advise Graceland of certain matters.

7 Finally, the Court rejected Graceland's case on misrepresentation, finding that Graceland had not established on a balance of probabilities that Macquarie or Mr Wolfe had made the alleged representations. In any event, Graceland had not relied on these representations in entering the Transaction. The Court then rejected Graceland's case based on non-disclosure because it was founded on the same premise that Macquarie or Mr Wolfe had in fact made certain representations.

Additionally, the Court held that Macquarie and Mr Wolfe had no obligation to inform Graceland that the urea market had “started to rise”, that the provision of such information would not have made any difference, and that it was, in the first place, not possible to say that the urea market had “started to rise” at the material point in time.

8 Having rejected all the defences raised by Graceland, the Court held that Macquarie was entitled to terminate the Transaction as it did on 8 July 2014, and dismissed Graceland’s counterclaim.

9 Regarding the quantum of Macquarie’s claim, it was common ground that pursuant to the ISDA Form, in determining the Close-out Amount, Macquarie was required to act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. Macquarie determined the Close-out Amount primarily by reference to the actual cost incurred in relation to replacement transactions for 20,000 mts of urea, and a quotation of US\$320 per mt in relation to the balance of 10,000 mts (“US\$320 Quote”) which it obtained on 8 July 2014. After taking into account brokerage, operations costs and rounding-up, this came up to US\$1.2m. Graceland’s primary objection was that Macquarie did not use commercially reasonable procedures when it “dumped” 30,000 mts of urea swaps on the market on 8 July 2014 and did not produce a commercially reasonable result by the US\$320 Quote obtained. The Court disagreed with Graceland that Macquarie should have waited until 9 July 2014 to obtain a quote, concluding that it was commercially reasonable for Macquarie to have determined the Close-out Amount as at 8 July 2014. The Court further rejected Graceland’s objections to the inclusion of brokerage, operation costs and the rounding-up exercise. Accordingly, the Court held that Macquarie was entitled to recover US\$1.2m as the Close-out Amount.

* 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.