

SUPREME COURT OF SINGAPORE

12 April 2019

Case summary

Malayan Banking Bhd v Barclays Bank PLC [2019] SGHC(I) 04
Originating Summons No 1 of 2018

Decision of Jeremy Lionel Cooke IJ:

Outcome: The SICC holds that the defendant, Barclays, is liable to reimburse the plaintiff, Maybank, for transferring a sum of US\$871,085.61 to a third party pursuant to a payment instruction which Barclays sent Maybank via the SWIFT (Society for Worldwide Interbank Financial Telecommunication) system but which Barclays subsequently sought to cancel.

Background

1 The plaintiff, Malayan Banking Berhad (“Maybank”), applied for declarations *vis-à-vis* the defendant, Barclays Bank PLC (“Barclays”), that:

- (a) an implied contract arose between the parties by Barclays sending to Maybank and Maybank accepting and acting upon the payment instruction contained in a Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) “MT 103 STP”;
- (b) pursuant to such an implied contract, Barclays was obliged to initiate a sequence of transfers that would have ultimately led to Maybank being paid the funds in relation to the MT 103 STP; and
- (c) Barclays breached such an implied contract by failing to initiate the said sequence of transfers.

Maybank further sought an order that Barclays pay Maybank the sum of US\$871,085.61, being the equivalent of the interbank settlement amount specified in the MT 103 STP.

2 Barclays did not initiate the said sequence of transfers set out in para 1(b) because, after sending the MT 103 STP, Barclays received information that the funds to be transferred had been received by its customer in “questionable circumstances”. Barclays thus cancelled the “MT 202 COV” instruction it had initially sent, where the MT 202 COV instruction was supposed to provide the cover payment for Maybank in relation to the MT 103 STP.

3 Maybank’s case, which was founded on principles of contract law and banking law relating to entitlement to reimbursement for fulfilment of instructions from other banks, was that an implied contract arose between the parties upon Barclays sending the MT 103 STP to Maybank and Maybank acting upon it.

4 Barclays’ case was that Maybank was not entitled to treat the MT 103 STP as irrevocable because it could be cancelled and was so cancelled by Barclays when it sent another SWIFT message upon the discovery of a potential fraud. Barclays also submitted that Maybank acted in a manner inconsistent with market practice by effecting the credit transfer without having first received the cover payment and that this was an internal credit risk decision which Maybank took and for which it should bear the consequences.

5 The originating summons took the form of proceedings with oral evidence and cross-examination.

The Court's ground of decision

6 The SICC found the conduct of both Barclays and Maybank explicable only on the basis, as supported by the SWIFT documentation, of an implied contract requiring Barclays to reimburse Maybank for payment made on Barclays' express instructions (at **[23]**). The SICC held that in the context of the SWIFT system, the sending of the MT 103 STP carried within it an implied promise on the part of the "Sending Bank" (*ie*, the bank issuing the MT 103 STP, which in this case was Barclays) to issue an MT 202 COV and to make the necessary payment to cover the payment which the "Receiving Bank" (which, in this case, was Maybank) was instructed to make (at **[52]**). Contrary to Barclays' case, the MT 103 STP was not merely a document setting out information as to the identity of the beneficiary and the amount to be paid, but an instruction to pay, which – when acted upon – gives rise to an obligation on the part of the Sending Bank to pay the covering sum to the Receiving Bank (at **[56]**).

7 The SICC also rejected Barclays' alternative arguments. It found that Barclays could not show that there was an established banking practice that Receiving Banks did not pay on MT 103 STPs until a cover payment had been received, let alone that Receiving Banks which had paid sums pursuant to MT 103 STPs before receipt of a cover payment were not entitled to be reimbursed (at **[89]**). It also rejected Barclays' submission that to make payment at the material time or after investigation would fall foul of para 5.5 of the SWIFT General Terms and Conditions, because Barclays could have made payment without breaching industry practice or relevant laws, regulations or third-party rights (at **[110]**).

8 Thus, the SICC held that Maybank was entitled to the declarations sought and to judgment in the sum of US\$871,085.61 (at **[111]**).

This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.