Chua Kok Tee David *v* DBS Bank Ltd
[2015] SGHC 198

Case Number : Suit No 743 of 2013

Decision Date : 31 July 2015

Tribunal/Court : High Court

Coram : Vinodh Coomaraswamy J

Counsel Name(s) : Tan Teng Muan and Ong Ai Wern (Mallal & Namazie) for the plaintiff; Tham Hsu Hsien, Tan Kai Liang and Hoh Jian Yong (Allen & Gledhill LLP) for the defendant.

Parties : Chua Kok Tee David — DBS Bank Ltd

Banking – Accounts – Deposit

Banking – Bankers books – Bank Statements

31 July 2015

Vinodh Coomaraswamy J:

Introduction

1 A creditor lends money to a debtor in 1983. The debtor is obliged upon demand to repay the money to the creditor together with interest compounded with monthly rests. In 2012, the creditor demands repayment. He claims that the debtor has not, in the intervening 29 years, repaid the debt to him. The debtor denies any obligation to repay the creditor. But it cannot offer positive proof that it has repaid the debt. Instead, it produces its internal records which show no evidence of any such debt due to the creditor from February 1984 onwards. Who succeeds?

2 That, in a nutshell, is the gist of this suit. The only unexpected feature is that the debtor is a bank and the creditor is the bank's customer. The plaintiff is David Chua Kok Tee, a prominent and successful businessman. The defendant is DBS Bank Ltd, one of Singapore's big three local banks. The debt in question is a fixed deposit which the plaintiff placed with the defendant in 1983 and which he sought to uplift in 2012.

3 Having reviewed the evidence and the submissions, I have dismissed the plaintiff's claim with costs. I have found that the defendant has established on the balance of probabilities that it, in or before 1985, it repaid the plaintiff the debt represented by the plaintiff's fixed deposit account. The plaintiff has appealed against my decision. I now set out my grounds.

The background

4 Over the years, the plaintiff maintained four accounts with the defendant. They were all opened in 1983. Those four accounts are as follows:

(a) The 9246 account: this is a fixed deposit account which the plaintiff opened on 13 March 1983 and which forms the subject-matter of this suit.

(b) The 9756 account: this is a fixed deposit account in the joint names of the plaintiff and his

wife. It was opened shortly after the 9246 account. The defendant accepts that it remains indebted to the plaintiff on this account.

(c) The 6143 account: this is a chequing account in the plaintiff's sole name. The plaintiff opened this account in July 1983 and closed it in June 1998. [note: 1]

(d) The 6144 account: this is a chequing account in the joint names of the plaintiff and his wife. They opened this account in July 1983 and closed it in June 2013, just before the plaintiff commenced this suit. [note: 2]

Although two of these four accounts are joint accounts with the plaintiff's wife, nothing turns on that fact. For ease of exposition, therefore, I will refer to all four accounts as though the plaintiff were the sole account-holder.

Events in 1983

The plaintiff opens the 9246 account

5 On or about 13 March 1983, the plaintiff opened the 9246 account at the defendant's Orchard Road branch. To open this account, the plaintiff placed the principal sum of $135,954.43 with the defendant on one month's fixed deposit, *ie*, until 13 April 1983, at an interest rate of 6.0625% per annum. [note: 3]

6 In exchange for this placement, the defendant issued to the plaintiff a fixed deposit receipt dated 13 March 1983. [note: 4] The plaintiff produced this receipt at trial. The defendant does not dispute the authenticity of this receipt or that it records accurately the terms of the fixed deposit placement which it records. In addition to recording these terms, the receipt also bears the notation "Automatic Renewal". It is common ground that this means that the plaintiff authorised the defendant, until further notice, to place the principal and all accrued interest in the 9246 account on a new one-month fixed deposit on the 13th of every month at the defendant's prevailing interest rate.

The plaintiff opens the 9756 account

7 Two months after opening the 9246 account, on or about 11 May 1983, the plaintiff opened the 9756 account. This was also opened at the defendant's Orchard Road branch. To open this account, the plaintiff placed the principal sum of $1,000 with the defendant on one year's fixed deposit, *ie*, until 11 May 1984, at an interest rate of 6.5% per annum. [note: 5] The plaintiff was required to place and maintain this deposit with the defendant as a condition of being permitted to rent one of the defendant's safe deposit boxes. The safe deposit box which the plaintiff initially rented was located at the Orchard Road branch. [note: 6] In December 1999, with the plaintiff's consent and participation, the safe deposit box which he rented was moved to the defendant's Shenton Way branch. [note: 7]

8 In exchange for the initial placement of $1,000 on the 9756 account, the defendant issued to the plaintiff a fixed deposit receipt dated 11 May 1983. The plaintiff produced this receipt at trial too. Again, the defendant does not dispute the authenticity of this receipt or that it records accurately the terms of the fixed deposit placement it records. This receipt also bears the notation "Automatic Renewal". It is common ground that this means that the plaintiff authorised the defendant, until

further notice, to place the principal and all accrued interest in the 9756 account on a new one-year fixed deposit on 11 May every year at the defendant's prevailing interest rate.

9 On or about 11 May 1983, the plaintiff put the two original fixed deposit receipts issued to him for both the 9246 account and the 9756 account into his safe deposit box at the defendant's Orchard Road Branch. The receipts remained in this safe deposit box until 2012, first at the Orchard Road branch, and from 1999 at the Shenton Way branch.

Events in 2012

10 On 6 January 2012 and again on 11 May 2012, the defendant wrote to the plaintiff to inform him that it would be terminating his safe deposit box facility with effect from 30 June 2012. This was because the defendant's Shenton Way branch was closing, to be replaced by a new branch at the Marina Bay Financial Centre ("MBFC"). The MBFC branch had no safe deposit box facilities. The defendant's letter invited the plaintiff to attend at its Shenton Way branch at the latest by 30 June 2012 in order to close his safe deposit box. [note: 8]

11 On 25 June 2012, the plaintiff visited the defendant's Shenton Way Branch to close and surrender his safe deposit box. The plaintiff retrieved from the box the two original fixed deposit receipts which he had placed there in 1983. He asked an officer of the defendant, Ms Ho Siew Fong ("Ms Ho") to confirm the amount due to him under each receipt and to uplift both fixed deposits and credit the proceeds to his 6144 account. After checking, Ms Ho was able to tell the plaintiff immediately the amount standing to his credit on the 9756 account. She was unable, however, to find any trace of the 9246 account in the records available to her. She told the plaintiff that the defendant would need time to respond to him. [note: 9]

12 On 17 July 2012, Ms Ho called the plaintiff and informed him that the defendant was still unable to find any trace of the 9246 account. She asked the plaintiff to make a formal request in writing to ask the defendant to trace the 9246 account. [note: 10]

13 The plaintiff thus wrote to the defendant on 18 July 2012. The plaintiff enclosed a copy of the initial fixed deposit receipt for the 9246 account which he had retrieved on 25 June 2012 from his safe deposit box. He asked the defendant to carry out further investigations to ascertain the principal and interest due to him on the 9246 account. He concluded by countermanding his instructions to renew automatically the fixed deposit comprised in the 9246 account. [note: 11]

14 By a letter dated 7 August 2012, the defendant informed the plaintiff that it had no details of any transactions on the 9246 account because it retains records of closed accounts for a maximum of seven years before deleting them from its archives. The letter was signed by the Service Manager of the defendant's Shenton Way branch, Ms Siah Christine Mrs Christine Tan ("Ms Christine Tan"). [note: 12]

15 The plaintiff responded to this letter on 17 August 2012. He told the defendant that the contents of its letter "raised disturbing questions as to the status of the Fixed Deposit Accounts maintained with your bank". He further told the defendant that until an original fixed deposit receipt is presented for payment, "it is incumbent upon your bank to maintain safe custody of the [fixed deposits] placed with you including accuracy of records, the principal sum and accumulated interest". He ended his letter by offering to travel to Singapore to present personally for payment the original fixed deposit receipts for both the 9246 and the 9756 accounts. [note: 13]

16 The plaintiff waited for a response from the defendant. No response having been received by 13 October 2012, the plaintiff wrote to the Monetary Authority of Singapore (MAS) by email on 13 October 2012 and by letter on 16 October 2012. His purpose was to draw this matter to the attention of the MAS and, in effect, to invite the MAS to intercede with the defendant in his attempts to uplift the 9246 account. [note: 14]

17 A correspondence then ensued between the plaintiff, the defendant and the MAS. Following this, on 2 January 2013, the defendant wrote to the plaintiff [note: 15] to say that its records showed that the 9246 account had been closed but that the lapse of time meant that it could not provide details of the circumstances in which it had been closed.

The plaintiff commences action

18 The plaintiff commenced this action on 20 August 2013. He claims an account of the money due and payable to him in respect of both the 9246 account and the 9756 account.

19 The defendant accepts in its pleadings that it remains indebted to the plaintiff on the 9756 account. Given the defendant's position on this aspect of the plaintiff's claim, I need say no more about the 9756 account.

20 The amount standing to the plaintiff's credit on the 9756 account as at 10 September 2013, the date on which the defendant filed its defence in this suit, was $2,300.93. [note: 16] The plaintiff's initial deposit of $1,000 on the 9756 account therefore increased by a factor of just over 2.3 over 30 years. That implies a constant average annual compound interest rate over that period of about 2.8% per annum. Assuming that plaintiff's initial deposit of $135,954.43 on the 9246 account grew at the same rate over the same period, it would have been worth $312,821.63 in September 2013. That then is a rough measure of the value of this dispute.

21 The defendant's defence on the facts to the plaintiff's claim is that the 9246 account was closed in or before 1985. [note: 17] In addition to this factual defence, the defendant relies also on certain legal defences. I begin by considering on whom the burden of proof lies on the facts. I then analyse the defendant's factual defence. I conclude with a brief analysis of the defendant's defences on the law.

Burden of proof

22 The threshold issue of contention between the parties is a legal one: who bears the burden of proof in this suit? The plaintiff and the defendant each argue that the burden of proof lies on the other. The defendant argues that the burden of proof lies on the plaintiff because it is the plaintiff who asserts that the defendant today owes him a debt. The plaintiff, on the other hand, argues that it is the defendant who bears the burden of proof because it is the defendant who asserts that debt was repaid in or before 1985.

23 I agree with the plaintiff. In my view, the burden of proof lies on the defendant both generally in the suit and also on the specific issue of fact as to whether the debt was indeed repaid and the 9246 account indeed closed in or before 1985. That is the result of s 104, 105 and 108 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act").

Burden of proof in the suit

24 Section 104 of the Evidence Act determines where the burden of proof lies in a particular suit. It reads as follows:

> **On whom burden of proof lies**
>
> **104.** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
>
> *Illustrations*
>
> ...
>
> (*b*) *A* sues *B* for money due on a bond.
>
> The execution of the bond is admitted, but *B* says that it was obtained by fraud, which *A* denies.
>
> If no evidence were given on either side, *A* would succeed as the bond is not disputed and the fraud is not proved.
>
> Therefore the burden of proof is on *B*.

25 The present case falls within the principle underlying the second illustration to s 104 of the Evidence Act. The essence of that illustration is that it is a debtor who admits having borrowed money from a creditor who bears the burden of proving that he is not, at the time of the suit, indebted to the creditor. The defendant admits that it borrowed money from the plaintiff. The defendant accepts that the initial fixed deposit receipt issued for the 9246 account is genuine and accepts that it accurately records the terms of the initial fixed deposit placement on the 9246 account. The defendant thus accepts that, at least as at 13 March 1983, it was indebted to the plaintiff in the sum recorded in that receipt together with the interest accruing on it.

26 Further, the plaintiff and the defendant agreed in 1983 that the fixed deposit comprised in the 9246 account was to be renewed automatically. That would mean therefore that the defendant's initial debt to the plaintiff would, in the ordinary course of the defendant's business, be replaced monthly by a new debt comprising the principal and accrued interest due but unpaid under the preceding debt. This would continue on the 13th day of every month from 13 March 1983 until the debt was repaid. [note: 18] It is common ground, further, that the defendant fulfilled this obligation of automatic renewal at least once. On 13 April 1983, the defendant renewed the fixed deposit comprised in the 9246 account for a further month, to 13 May 1983, at an interest rate of 7.25% per annum. [note: 19]

27 Section 104, applied in the light of these admitted facts and in the light its second illustration, places the burden of proof in this suit on the defendant. If the admitted facts were taken alone, they would make a finding that the defendant's debt to the plaintiff existed and continues to exist inevitable. In other words, if there were no evidence adduced on either side in this suit, the admitted facts mean that the defendant would fail.

Burden of proof of the specific fact

28 It is no doubt for this reason that the defendant feels compelled to run, on the facts, a positive defence rather than a bare denial. This positive defence rests on a single contested fact: that the

9246 account was closed in or after 1985. [note: 20]

29 Section 105 of the Evidence Act sets out the general rule as to where the burden of proof as to a particular fact lies. It reads as follows (illustrations omitted):

> **Burden of proof as to particular fact**
>
> **105.** The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

It is the defendant who asserts and wishes the court to believe that the 9246 account was closed in or before 1985. Section 105 therefore places the burden of proving that fact also on the defendant.

Fact especially within the knowledge

30 I consider also that s 108 of the Evidence Act places the burden of proof of this particular fact on the defendant. Section 108 reads as follows:

> **Burden of proving fact especially within knowledge**
>
> **108.** When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Where a debtor admits a debt but asserts positively that the debt has been repaid, the fact of repayment is a fact especially within the knowledge of the debtor. The burden of proving that fact therefore lies on the debtor.

Conclusion on burden of proof

31 The result of all of these provisions is to place the legal burden of proof in this suit squarely on the defendant. That burden comprises both the overall burden in the suit and the specific burden on the particular fact on which its entire factual defence rests. In order for the defendant to succeed in this defence, therefore, the defendant must satisfy me on the balance of probabilities that the 9246 account was indeed closed in or before 1985.

32 I do not consider that this allocation of the burden of proof causes any hardship to the defendant. It does not, in my view, cause hardship to a debtor to require a debtor who claims to have repaid a creditor to prove that he has done so. It would cause much greater hardship to a creditor to place the burden of proof on the issue of repayment on him. That would require the creditor to prove a negative, *ie*, to prove that the debtor did not repay the debt to him.

33 Further, in this particular case, it cannot cause hardship to allocate the burden of proof of repayment to a debtor such as the defendant whose very business it is to maintain exceedingly and exceptionally accurate records of debits and credits.

Was the 9246 account closed in or before 1985?

34 There is no direct evidence to show that the 9246 account was closed in or before 1985. Direct evidence is evidence which, if accepted to be true, leads to the desired conclusion without an intervening inferential chain. An example of direct evidence in this case would be the testimony of a

teller that he personally handed the funds on deposit in the 9246 account over to the plaintiff in 1984, for example, and then closed the account. No such evidence is available.

35 The defendant is therefore compelled to rely on circumstantial evidence of closure. Circumstantial evidence is evidence which, if accepted as true, leads to the desired conclusion only by a chain of inferential reasoning. The strength of a case which relies on circumstantial evidence depends on both the rigour of the inferential chain of reasoning leading from a given circumstance to the desired conclusion and on the number of circumstances leading to the same desired conclusion. Circumstantial evidence is not inevitably inferior to direct evidence. It can be every bit as probative as direct evidence if the circumstances or the inferential chain are obvious and compelling.

36 There is, in the present case, no positive circumstantial evidence to show that the 9246 account was closed in or before 1985. An example of positive circumstantial evidence would be, if we leave aside for the moment issues of hearsay, a letter sent by the defendant to the plaintiff in 1985 informing the plaintiff that it had closed the 9246 account. That letter, if accepted as genuine, could lead to the conclusion that the 9246 account was indeed closed but only if one is prepared to draw the inference from its existence and contents that the defendant had actually closed the 9246 account.

37 The only circumstantial evidence which the defendant has available to discharge its burden of proof is negative circumstantial evidence. By that, I mean evidence of the absence of circumstances, where it is that absence which is relied upon to lead to the desired conclusion by an inferential chain. The defendant's negative circumstantial evidence can be divided into two broad categories. First, there is its evidence that there has been no trace of the 9246 account in its records from February 1984 to the present day. [note: 21] Second, there is the evidence of the plaintiff's own conduct over the years which the defendant submits is inconsistent with any belief on his part that the defendant remained indebted to him on the 9246 account.

38 I deal with these two categories of evidence in turn.

Two points on admissibility

39 The evidence in the first broad category is itself of two types: (i) the oral evidence of witnesses on the defendant's systems and procedures dating back to 1983; and (ii) documents from the defendant's records dating back to 1983. The question arises as to the extent to which these two types of evidence are admissible.

Admissibility of oral evidence

40 For oral evidence to be admissible, it must be direct evidence within the meaning of s 62 of the Evidence Act. That section sets out the general rule stipulating, in short, that oral evidence of fact is admissible only if it comes from the personal knowledge of the witness giving it.

41 The defendant called five witnesses. Four of these witnesses are present or former employees of the defendant. Between them, these four witnesses were able to give evidence from personal knowledge of the defendant's systems and procedures for handling fixed deposit accounts both at the defendant's branch and at the defendant's head office from 1983 to the date of trial.

42 The defendant's first witness was Ms Cecilia Chia Mui Cheng ("Ms Cecilia Chia"). She was employed by the defendant from 1974 to 1992. From 1975 to 1982, she worked at the Buona Vista branch of the defendant handling, amongst other things, fixed deposit transactions both as a teller

and as an internal signatory and a junior branch officer. Her duties included verifying and signing the defendant's internal documentation for fixed deposit transactions. In 1982, Ms Cecilia Chia moved to the defendant's Consumer Banking Operations division at its head office. In that capacity, she was in charge of, and therefore had personal knowledge of, the transition between 1982 and 1985 of the defendant's system for recording fixed deposit accounts from a paper system to a computerised system.

43 The defendant's second witness was Ms Christine Tan. She has been employed by the defendant since 1980. She was the Branch Service Manager at the defendant's Shenton Way branch until September 2012, when that branch was replaced by the MBFC branch. She has held the same position at the MBFC branch from that date to the present.

44 The defendant's third witness was Mr John Tan Kian Tong. He has been employed by the defendant since 1981. From 1981 to 1984, he worked at the defendant's Rochor branch, where he handled fixed deposit transactions, amongst others.

45 The defendant's fourth witness was Ms Ng Cheng Cheng. She has been employed by the defendant since 1992. She is now a Vice-President at the defendant's Technology and Operations – Consumer Banking Group department. In that capacity, she supervises the defendant's computerised system for generating the statements which are mailed to customers who hold fixed deposit accounts.

46 I am satisfied that all of the material evidence of these witnesses is given from personal knowledge and is therefore admissible.

Admissibility of documentary evidence

47 For a document to be admissible as evidence of the truth of its contents, the maker of the document must generally be called as a witness to prove the document's authenticity and to be cross-examined on its contents: *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769.

48 The defendant's status as a bank means that this general rule does not apply to its documentary banking records. Under s 171 of the Evidence Act, these documents are admissible in evidence even without calling the maker, provided that the prerequisites in s 172 are met. Section 171 provides as follows:

> **Mode of proof of entries in bankers' books**
>
> **171.** Subject to this Part, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

49 "Banker's books" are defined in s 170 of the Evidence Act as follows:

> "bankers' books" includes ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank[.]

The expression "other books" in this definition is very wide. In *Wee Soon Kim Anthony v UBS* [2003] 2 SLR(R) 91, the Court of Appeal held at [36] that the expression was wide enough to include "[a]ny form of permanent record maintained by a bank in relation to the transactions of a customer"

[emphasis in original omitted].

50 The defendant has: (i) established that all of the documents on which it relies are "banker's books" within the meaning of s 170 of the Evidence Act; and (ii) established all three of the prerequisites to the admissibility of these documents as banker's books set out in s 172 of the Act. Therefore, all of the documents produced by the defendant at trial from its records, whether stored and retrieved by physical or electronic means, are *prima facie* admissible as evidence of the truth of their contents without any need for formal proof and even though the maker of the document is not available for cross-examination.

51 I now turn to consider the evidence which the defendant has adduced of its record-keeping systems and procedures.

The defendant's record-keeping systems and procedures

52 The defendant's systems and procedures for keeping records of fixed deposit accounts from the 1970s to the present day can be divided into three phases. From the 1970s to 1982, the defendant maintained records of fixed deposit accounts at its branches through a paper system. From 1982 to 1985, it maintained the paper system at the branches but operated a batch system at its head office to capture daily in a central database the contents of each branch's paper records. From 1985 onwards, it maintained a fully computerised system.

53 On the plaintiff's case, the 9246 account remained open while all three of these systems were in operation. I therefore set out now the defendant's evidence, which I accept, of the principal features of these three systems.

The paper system

54 A placement on fixed deposit was processed at the branch under the paper system as follows:

(a) The original fixed deposit receipt would be given to the customer, with the branch retaining a carbon copy. All carbon copies were stored in a folio arranged by maturity date.

(b) The branch's fixed deposit register would be updated. This register recorded all deposits, withdrawals and renewals in all fixed deposit accounts at that branch.

(c) The details of the transaction would be entered on the ledger card for the fixed deposit account in question. Each fixed deposit account had its own ledger card.

(d) The debit and credit vouchers arising from each fixed deposit transaction would be submitted to the branch's accounts staff. They would record the amounts set out in the voucher in the branch's master voucher. The master voucher contained the outstanding balance of all the fixed deposit accounts of all the customers of that branch.

55 Withdrawal of a fixed deposit was processed at the branch under the paper system as follows. In order to withdraw a fixed deposit, a customer would have to present the original fixed deposit receipt and proof of identity to a teller at the branch on or soon after the maturity date. The branch's carbon copy of the fixed deposit receipt would be retrieved from the folio to verify that the receipt presented by the customer was the latest receipt issued for that account. The ledger card for that fixed deposit account would also be checked to verify the details of the deposit and to confirm that the balance was sufficient to cover the withdrawal. The authenticity of the customer's signature on

the original fixed deposit receipt and the customer's identity would also be verified. No withdrawal from a fixed deposit account could be made without two officers verifying and authorising it. [note: 22]

56 The withdrawal would then be recorded in three places: (i) in the ledger card for that fixed deposit account; (ii) in the branch's fixed deposit register; and (iii) in the branch's master voucher. If the withdrawal resulted in there no longer being any funds on fixed deposit in that account, the fixed deposit account would be closed on the same day.

57 If a customer sought to withdraw a fixed deposit but was unable to present the original of the latest fixed deposit receipt, the customer's identity would be verified and the customer would be required to indemnify the defendant in writing against any losses that it may suffer from allowing a withdrawal without presentation of the original receipt.

58 Renewal of a fixed deposit was processed at the branch under the paper system as follows. Every banking day, branch staff would extract from the folio the carbon copy receipts for all of the fixed deposits which were maturing on that day. If the fixed deposit was not stamped "Automatic renewal", the carbon copy receipt would be set aside awaiting the customer's renewal or withdrawal instructions over the counter. If the fixed deposit receipt was stamped "Automatic renewal", the staff would renew the fixed deposit without waiting for the customer's instructions.

59 A renewal, whether over the counter or automatic, was recorded under the procedure described at [54]–[56] above as a withdrawal of the matured fixed deposit and the placement of the withdrawn funds on a new fixed deposit in the same fixed deposit account for the appropriate tenor at the defendant's prevailing interest rate. The fresh fixed deposit receipt would be handed over the customer (if renewal took place over the counter), or mailed to the customer (if renewal took place automatically). In the latter case, if the customer had indicated that he did not wish to receive correspondence from the defendant, the fixed deposit receipt would be kept at the branch for the customer to collect.

60 The branch staff would then file the carbon copy of the renewed fixed deposit receipt in the folio according to the new maturity date. The carbon copy of the matured fixed deposit receipt would be stamped "due and renewed" and archived separately. The ledger card for that fixed deposit account and the branch's master voucher would then be updated with the details of the renewed fixed deposit. [note: 23]

61 Under the paper system, each branch was obliged to submit a monthly report of all fixed deposit transactions at that branch during that month to the defendant's head office. [note: 24]

The batch system

62 In 1982, the defendant began the transition from a purely manual system of processing fixed deposit account transactions to a fully computerised system of processing those transactions. During the transition, from 1982 to 1985, it ran a computerised batch system at the head office in addition to the existing paper system at the branch.

63 Under the paper system, the head office received information about fixed deposit transactions at each branch only on a monthly basis. The batch system permitted the head office to receive this information on a daily basis and to capture the information in a central database. This enabled the defendant's head office to have an overview on a daily basis of all fixed deposit transactions across all of its branches and at any given branch.

64 The batch system operated in addition to the paper system, which continued to operate as described above at each branch. At the branch, the only additional feature of the batch system was that branch staff were now required to submit to the head office on a daily basis the details of all fixed deposit transactions at that branch for that day. They submitted this information under cover of documents known as batch control sheets. [note: 25] Data entry staff at a posting section in the defendant's head office would extract and post the data comprised in the batch control sheets into the defendant's central database every evening.

65 Data entry at the posting section into the central database took place under a "maker and checker system". All entries keyed into the central database by the posting staff (the makers) would be recorded in a journal. The supervisors (the checkers) would check the journal against the values shown in the batch control sheets submitted by the branch. [note: 26]

66 From the data captured in the central database, the defendant generated monthly batch control reports. These reports were sent back to the branch to be reconciled with the branch's fixed deposit records maintained under the paper system. These branch records included the branch's fixed deposit register and monthly reports. [note: 27]

Fully computerised system

67 The defendant rolled out the fully-computerised system for fixed deposit accounts across all its branches in phases in 1985. [note: 28] All records in the central database maintained under the batch system were migrated to the fully computerised system. Ms Cecilia Chia gave detailed evidence of the checks and balances at each stage of the migration process to ensure that all data entry errors were detected and corrected. It was also her evidence that branches were instructed to migrate only those records relating to fixed deposit accounts which were still open at the time of the migration, *ie*, which had not already been closed. [note: 29]

68 Once the defendant's system was fully computerised, the defendant ceased issuing fixed deposit receipts to fixed deposit customers. Instead, it generated and mailed account statements at least twice a year. The entire process to generate and mail these statements was automated. If the customer had given the bank instructions to hold mail, the statements would be generated automatically but would be retained at the branch for collection by the customer. The bank maintains an archive of images of these statements on microfiche. [note: 30]

No trace of the 9246 account since at least February 1984

69 Based on the defendant's record-keeping systems and procedures set out above, if the 9246 account remained an undischarged liability of the defendant in 2012 going all the way back to 1983, the consequences would be the following:

(a) the plaintiff's fully-computerised system, which has been operational since 1985, would contain a record of the 9246 account;

(b) the defendant's microfiche archive of fixed deposit statements generated by the fully-computerised system would contain imaged statements for the 9246 account;

(c) the batch control sheets generated by the Orchard Road branch and submitted to head office under the batch system between 1982 and 1985 would contain records of the 9246 account; and

(d) the records generated and retained at the Orchard Road branch under the paper system between 1983 and 1985 would have records of the 9246 account.

There is not a trace of the 9246 accounts in any of these records from February 1984 onwards.

No trace in the central database

70 The defendant's database of fixed deposit accounts in use today has records of all fixed deposits placed or renewed since the defendant's fully-computerised system became operational in 1985, and even if the fixed deposit account has been closed. That database has no record of the 9246 account. [note: 31] It does, however, have a record of the 9756 account. It will be recalled that records relating to closed fixed deposit accounts were not migrated in that transition (see [67] above). All of this suggests that there is no trace of the 9246 account in the defendant's database because the 9246 account, unlike the 9756 account, was a closed account at the time of the transition to the fully computerised system in 1985.

No trace amongst surviving batch system documents

71 The defendant, remarkably, has been able to find and adduce in evidence certain documents generated by the Orchard Road branch and submitted to the defendants' head office under the batch system between 1982 and 1985. These documents somehow escaped destruction under the defendant's document-retention policy.

72 The 13th of the month is a significant date. The plaintiff's initial placement under the 9246 account was on 13 March 1983 for one month on automatic renewal. His fixed deposit would therefore have been renewed on the 13th of every succeeding month. If that day fell on a Sunday or a public holiday, it would be renewed on the next banking day. [note: 32]

73 The defendant was unable to find any batch control sheets generated by the Orchard Road branch for 1983. This is not surprising given the lapse of time. However, the defendant has found and adduced in evidence batch control sheets for the 13th day of six months in 1984: February, March, September, October, November and December. All six of these dates were banking days. None of these batch control sheets include any record of the 9246 account. [note: 33] This suggests that the 9246 account had been closed before 13 February 1984.

No trace of statements for the 9246 account

74 The defendant's microfiche archive of imaged fixed deposit statements goes back only to 1985, because it is only in 1985 that the defendant began generating and issuing statements for fixed deposit accounts. There is no trace of any fixed deposit statements generated for the 9246 account in this archive. The archive does, however, contain statements for the 9756 account. [note: 34] In addition, it contains statements for the fixed deposits accounts, unconnected to the plaintiff, numbered just before and just after the 9246 account, *ie*, 9245 and 9248. All of this suggests that the 9246 account was closed before the defendant started issuing statements for fixed deposit accounts in 1985.

No trace of records under the paper system

75 In accordance with the defendant's document retention policy, all of the paper records dealing

with fixed deposit transactions generated and kept at its Orchard Road branch before 1985 have been destroyed. This is not surprising given the lapse of time.

76 Not all documents generated by the Orchard Road branch have, however, been destroyed. Amongst these surviving documents, the defendant found and has adduced a document titled "Outstanding List of Fixed Deposits as at 30/03/85". That list sets out in sequence by account number all fixed deposit accounts at the Orchard Road branch as at 30 March 1985. That list includes the 9756 account. It also includes the unconnected 9245 and 9248 accounts (see [74] above). The 9246 account does not appear in this list. Again, this suggests that the 9246 account had been closed on or before 30 March 1985.

The probative value of the absence of records

77 From the fact that there is no trace of the 9246 account in the defendant's records from February 1984 up to the present day, the defendant submits that I should draw the inference that the 9246 account was closed in or before 1985 and that it is therefore no longer indebted to the plaintiff. That submission raises the following question: what probative value, if any, is there in the absence of evidence of the 9246 account in the defendant's records?

78 The absence of a record where one would expect to find a record can, in itself, be evidence from which inferences can be drawn about the matters not recorded. In *R v Robert Dowson Shone* (1983) 76 Cr App R 72 ("*Shone*"), the issue was whether certain springs had been stolen from a company. Each spring had an unique identification number. The company's procedure was to record that number when a spring was properly disposed of. The prosecution was able to prove that certain springs had been delivered to the company and that the identification numbers for those springs were absent in the company's records of springs properly disposed of. The question for the English Court of Appeal was: (i) whether the company's records were hearsay evidence; and (ii) whether the absence in those records of the identification numbers of the springs in question could be relied on as evidence that those springs had been stolen. The court held that: (i) the records were not hearsay because the makers of the records had testified at trial; and (ii) that the absence of the identification numbers in those records was capable of supporting an inference that the springs had been stolen.

79 As in *Shone*, albeit for a different reason, no hearsay issue arises in the present case. The documentary evidence adduced by the defendant is admissible under s 171 of the Evidence Act (see [47]–[50] above). The issue to be analysed then is the probative strength of the inference which can be drawn from the absence of any trace of the 9246 account in the defendant's available records of fixed deposit accounts from February 1984 to the present day. That depends entirely on the extent to which the defendant is able to satisfy me that its systems and procedures for keeping those records are sufficiently rigorous and robust that the closure of the 9246 account in or before 1985 is, on the balance of probabilities, the only explanation for that absence. The more rigorous and robust those systems and procedures are shown to be, the stronger the chain of inferential reasoning from this negative circumstantial evidence to the conclusion that the 9246 account was closed in or before 1985.

Steps taken to minimise, detect and correct errors

80 Apart from the closure of the 9246 account in or before 1985, the only other possible explanation for the absence of a record of the 9246 account in the defendant's available records is either a record-keeping error by the bank, a process failure by bank staff or a deliberate act of dishonesty either by bank staff or a third party. I examine each possibility in turn.

Record-keeping error by the bank

Record-keeping error by the bank

81 I examine first the possibility of a manual or electronic record-keeping error by the defendant. I find on the balance of probabilities that the defendant's record-keeping has been sufficiently rigorous and robust to exclude any such error as the reason for there being no trace of the 9246 account in the defendant's available records from February 1984 to date.

82 First, under the paper system, the two critical records at the branch were the fixed deposit register and the branch's master voucher. Each of these records were maintained by separate sets of staff. The tellers maintained the branch's fixed deposit register and the accounts staff maintained the branch's master voucher. These two sets of records were reconciled on a daily basis. Any error in the record-keeping would have resulted in an imbalance between the two records. If any imbalance was detected in these two records, branch staff would turn to the ledger cards to identify the cause of the imbalance and to rectify it. [note: 35]

83 Second, the batch system which was in operation from 1982 to 1985 provided an additional layer of checks. The data in the branch's daily batch control sheets would be captured in the central database at head office and used to generate a monthly batch control report. The monthly batch control reports from head office were reconciled with a monthly list of outstanding fixed deposits generated by the branch. Error in the record-keeping would result in an imbalance between these two documents. The imbalance would prompt the branch to identify the cause of the imbalance and to rectify it.

84 Third, I am satisfied that the defendant took steps to minimise data-entry errors under the batch system. At the branch, the staff who completed the batch control sheets checked that the total figures in those sheets tallied. At the head office, the defendant's system meant that every item of data keyed in by the data entry staff from a batch control sheet was double-checked by a supervisor against the batch control sheet. If any data-entry errors escaped detection at the point of entry, they would be detected at month end when the branch reconciled its fixed deposit register against the head office's monthly batch control report.

85 Fourth, I am also satisfied that the defendant took utmost care during the migration from the batch system to the fully-computerised system in 1985 to minimise data-entry or migration errors and to detect and rectify any such errors. Ms Cecilia Chia gave detailed evidence from her personal knowledge of these steps which I need not recount.

86 I am therefore satisfied on the balance of probabilities that the absence of any trace of the 9246 account in the plaintiff's records did not result from record-keeping error. Any such error, I am satisfied, would have been detected and rectified in accordance with the bank's standard procedures.

Process failure by bank staff

87 Under the paper system, the branch is the origin and the repository of all data on fixed deposit transactions. That continued under the batch system. Although the batch system introduced some additional checks at the branch level, the purpose of the batch system was not to improve the accuracy of record-keeping at the branch. The purpose was to mirror the branch's fixed deposit register on a daily basis at the head office. If there were an error in the branch's record-keeping of transactions in fixed deposit accounts, therefore, and the error was not detected at the branch, that error would be propagated to the head office's records under the paper system and under the batch system.

88 To that extent, the weak link in the inferential chain relied on by the defendant lies at the

branch. To test this weak link, two specific alternative explanations arising at the branch for the absence of any records of the 9246 accounts in and after February 1984 were put to the defendant's witnesses: (i) a failure to record the original placement in the 9246 account in or about 13 March 1983; and (ii) a failure to record a renewal in the 9246 account on or after 13 May 1983. The defendant's evidence proved that each alternative explanation was highly unlikely.

89 The first alternative posits that, on 13 March 1983, the teller received the plaintiff's funds either in cash or by debiting one of his accounts, issued him a fixed deposit receipt for those funds but failed completely to record the transaction in the defendant's records. This would explain why there was no trace of the 9246 account in the defendant's records. This could not have been what happened, because the defendant has proven from available records that the fixed deposit in the 9246 account was renewed at least once, on 13 April 1983. Quite apart from that, however, it was also the defendant's evidence that any such failure would have been detected because the defendant's records would show that an original fixed deposit receipt had been issued but that none of the required accounting entries had been made.

90 The second alternative posits that on the 13th day of a particular month between May 1983 and January 1984, a teller recorded the fixed deposit in the 9246 account as withdrawn but failed to record that the plaintiff's funds were rolled over on a new fixed deposit in the 9246 account. But if this is what happened, there would be an unaccounted-for excess of funds held by the bank which would have been detected, identified and rectified.

91 The plaintiff pursued with the defendant's witnesses how this excess of funds would have been dealt with. The defendant's evidence was that if the source of the excess funds could not be identified, the funds would be placed in the Orchard Road branch's unclaimed balance general ledger pending investigation. The defendant was again able to find some records of the unclaimed balance general ledger of the Orchard Road branch for 1983. But those records do not show any trace of an unclaimed sum which is even close in size to the funds on deposit in the 9246 account in 1983. Further, the defendant's evidence, which I accept, is that it takes very seriously its obligation as the custodian of its customers' money and would have carried out thorough investigations to ascertain the proper party to be credited with any unclaimed sum, especially one of the magnitude of the plaintiff's deposit in the 9246 account. I am satisfied that the defendant would not simply have left the plaintiff's funds to languish indefinitely in the unclaimed balance general ledger.

Deliberate dishonesty by bank staff or third party

92 It was also put to the defendant's witnesses that on the 13th day of a particular month between May 1983 and January 1984, a teller deliberately failed to record that the plaintiff's funds were rolled over on fixed deposit in the 9246 account but, at the same time, took the money in order to prevent any excess of funds from appearing in the defendant's records. The defendant's evidence was that this was very unlikely to happen as two, and possibly three, branch officers would have to authorise the teller's actions. In addition, these branch officers would have taken extra care in authorising a transaction on a large value account like the 9246 account.

93 I am further satisfied that the defendant's systems and procedures designed to ensure that only the account holder was permitted to close a fixed deposit account and receive its proceeds means that it must have been the plaintiff who closed the account in or before 1985.

Conclusion

94 I accept the defendant's evidence that all of the specific alternatives examined above are

highly unlikely. I therefore find that the inferential chain from the absence of any trace of the 9246 account in the defendant's available records to the conclusion that the 9246 account must have been closed in or before 1985 is a sufficiently strong one to discharge the defendant's burden of proof.

Defendant's searches for documents was thorough

95 The plaintiff submitted that no inference can safely be drawn from the absence of the 9246 account in the defendant's available records because the defendant's searches for the relevant documents were insufficient. The plaintiff relies on the fact that Ms Christine Tan, who supervised the search, failed to mention any search for batch control sheets, batch control reports or indemnity forms. [note: 36] This according to the plaintiff suggests that she did not understand the processes of the defendant and her search was not thorough enough.

96 I reject this submission. The defendant's search for records has been exhaustive. Ms Tan estimates that the defendant spent 1,228 man hours on the document search. That effort has meant that the defendant has been able to find and produce a remarkable and unexpectedly significant number of documents from 1983 to 1985.

The plaintiff's inconsistent treatment of his half-yearly statements

97 I have found on the balance of probabilities that that the plaintiff closed the 9246 account in or before 1985. That is sufficient, in itself, to dispose of the plaintiff's claim. I nevertheless go on to consider briefly the second category of circumstantial evidence on which the defendant relies: the plaintiff's conduct over the years. A consideration of this evidence shows that the plaintiff's behaviour was curious to say the least. But I find that it is not, in itself, sufficiently cogent to discharge the defendant's burden of proof.

98 The plaintiff's case is that, apart from the original fixed deposit receipt for the 9246 account issued to him on 13 March 1983, he received no fixed deposit receipts for the 9246 account for 29 years from 1983 to 2012. He accepts, though, that he knew throughout this period that fixed deposit receipts for the 9246 account ought to have been issued to him upon automatic renewal every month. [note: 37] He was aware that fixed deposit receipts are important documents because they evidence the terms of the deposit. It was also his evidence that he had not forgotten about the 9246 account from 1983 to 2012. Indeed, the plaintiff went further and testified that he made a conscious decision to allow the principal and interest to roll over automatically during the intervening 29 years.

99 During this period, the plaintiff continued to receive account statements for his other accounts with the defendant. Because he had instructed the defendant not to send correspondence to him, the defendant collected these statements, at the very least, when he visited the bank between 1989 and 1995. [note: 38] He also received half-yearly statements for the 9756 account, at the very least, in 1999 and 2000. [note: 39]

100 Despite all this, he never queried why he was not issued any fixed deposit receipts or statements for the 9246 account. In particular, he never queried why the defendant was issuing him statements for the 9756 account but not for the 9246 account. In cross-examination, he explained that he thought this was because the 9756 account was linked to his safe deposit box. [note: 40] I find this hard to understand. It appears to me that a reasonable man, let alone a shrewd businessman such as the plaintiff, would expect two fixed deposit accounts, opened around the same time at the same branch of the same bank subject to these same terms and conditions to be treated the same. The fact that one is security for a safe deposit box does not change the fact that both are fixed

deposit accounts and therefore fundamentally alike.

101 All of this is certainly curious. The plaintiff's apparent lack of interest for 29 years in such a large sum of money placed with the defendant does invite an inference that he did not consider the 9246 account to be a live obligation of the defendant to him over those years. I am prepared to draw that inference to the extent that it supports the finding which I have already made that the plaintiff closed the 9246 account in or before 1985. But I do not consider that this inference is sufficiently strong to establish independently, on the balance of probabilities, that the plaintiff had closed the 9246 account in or before 1985. To my mind, there are too many alternative explanations for the defendant's conduct which cannot be excluded on the balance of probabilities. That renders the inferential chain leading from this evidence to the defendant's desired conclusion too weak to carry the full weight of the defendant's burden of proof.

No presumption of payment

102 The defendant prays in aid on the evidence what it calls a presumption of payment. This presumption is said to arise when a customer of a bank fails to make a claim for repayment of a debt owed by the bank after a long lapse of time. The defendant argues that its defence should succeed because the plaintiff has failed to rebut this presumption.

103 To establish the existence of this presumption, the defendant relies on the case of *Douglass v Lloyds Bank, Ltd* (1929) 34 Com Cas 263 ("*Douglass*") cited in Professor Poh Chu Chai, *Law of Banker and Customer* (LexisNexis, 4th Ed, 1999). In his book, Professor Poh Chu Chai says (at p 79):

> When a customer who deposits money with a bank is issued with a receipt by the bank, the receipt constitutes *prima facie* evidence against the bank that a debt is owing to the customer. Equally, if no claim is made by a customer for the repayment of the debt after a considerable lapse of time, a presumption that the debt has been repaid may arise. In *Douglass v. Lloyds Bank Ltd*., it was decided by Roche J. that a presumption that a deposit had been repaid by a bank arose after a lapse of some 61 years.

104 In *Douglass*, an executor of a depositor who had died in 1893 found amongst his possession in 1927 a deposit receipt issued in 1866. The executor made a claim against the bank for the debt represented by the receipt. The earliest relevant records that the bank was able to locate were ledgers which dated back to 1873 but which made no reference to the deposit in question, even though the ledgers did make references to deposits placed earlier than 1866. Roche J admitted the ledgers in evidence under s 3 of the English Bankers' Books Evidence Act 1879 (c 11) (UK). That provision is, in substance and effect, identical to s 171 of our Evidence Act.

105 Roche J began his analysis by noting that, where a bank's customer is able to produce a deposit receipt, there is a presumption in favour of the customer that the money is still due. The result of that is to place the burden on the bank to show that the debt has been repaid. I have made a holding to the same effect in the present case. He concludes by finding that the bank had discharged its burden and rebutted the presumption in the circumstances of the case before him. His reasoning is of application to the present case:

> On the facts, I recognise to the full the strength of the fact that the plaintiff produces this deposit receipt, but I cannot ignore what experience tells me, and the evidence in this case shows, that people lose or mislay their deposit receipts at the time when they want to get their money back, and that money is paid over, if they are respectable persons and are willing to give the necessary indemnity or receipt, without production of the deposit receipt; indeed, otherwise

life would be intolerable and business impossible. Many people have the misfortune to mislay these documents from time to time, and they afterward find them. Accordingly, the production of the deposit receipt is, in the light of those facts, not conclusive in this case, and there is no ground for saying it is a presumption of law which cannot be rebutted. In my judgment, that presumption is rebutted by the circumstances of this case.

106 I make two points about *Douglass*. First, the only presumption that Roche J mentions is a presumption in favour of a depositor who produces an original deposit receipt which must ordinarily be surrendered in order to withdraw the deposit reflected in it. There is no mention of any presumption in favour of the bank that the debt represented by the deposit receipt has been paid, whether arising from a long lapse of time or otherwise. Second, although the outcome in *Douglass* was a finding that the deposit had been paid to the customer, that was a positive finding on the facts and not the result of the application of any presumption. Roche J held that there were three possibilities which could explain the presence of the original receipt in the hands of the depositor's executor: (i) that the depositor had placed the funds on deposit and had consciously left them there over the decades until his death; (ii) that the depositor had placed the funds on deposit and had forgotten having done so; and (iii) that the bank had permitted the depositor to withdraw the deposit without producing or surrendering the original deposit receipt in accordance with the bank's procedures. On the evidence before him both about the depositor and about the bank's systems and procedures, Roche J found as a fact that the latter possibility was the most likely. He therefore dismissed the executor's claim.

107 I therefore do not consider that any presumption of repayment exists as submitted by the defendant. I have relied on no such presumption in coming to my decision. Like Roche J in *Douglass*, I have considered the possibilities and the probabilities on the evidence before me both on the defendant's side and on the plaintiff's side. Having done so, like Roche J, I consider that the most likely explanation is that the plaintiff withdrew the funds on deposit in the 9246 account without producing an original receipt, in accordance with the defendant's standard procedures.

108 I am conscious that this conclusion involves rejecting the plaintiff's categorical denial that he had ever closed the 9246 account. Despite that, I do not consider him to have been dishonest, either in his evidence on this point or overall in making this claim. Although not all aspects of the plaintiff's evidence were entirely satisfactory, I consider him to have been a largely honest witness. It is not, of course, necessary for me to reconcile the plaintiff's evidence with what I have found to be the facts. Even though I cannot do so with any certainty, and even though the plaintiff rejected such a conclusion in cross-examination, it appears to me that the plaintiff must have closed the 9246 account somewhere between 13 May 1983 and 13 February 1984 and forgotten that he did so.

Legal defences

109 The defendant also raised two legal defences to the plaintiff's claim. Given my finding in favour of the defendant on the facts, it is not necessary for me to consider in any great depth these defences on the law. I shall therefore deal with them briefly.

Estoppel

110 The first defence which the defendant raises on the law is that the plaintiff is precluded by estoppel from bringing the present claim. The estoppel is said to arise, on the assumption that the 9246 account was never closed, from his unreasonable conduct in not informing the defendant that he had stopped receiving any correspondence at all, including fixed deposit receipts, in respect of the 9246 account from 1983 to the present day. This, it is argued, led the defendant to destroy the records it would otherwise have to bolster its case, thereby estopping the plaintiff from bringing the

present claim.

111 I have no hesitation in rejecting this defence. Quite apart from anything else, the defendant has failed to prove that it relied on the plaintiff's silence in making its decision to destroy the records relating to the 9246 account. Those documents were destroyed in accordance with the bank's document retention policy and not in reliance on any action or inaction by the plaintiff. It is not to the point for the defendant to argue that it would not have destroyed its records if the plaintiff had made its claim earlier.

112 Further, I am far from satisfied that it would be unconscionable, on these facts, to require the defendant to repay its debt to the plaintiff with interest. If the defendant received the plaintiff's money and has had the use of it for these past 29 years, which is what this defence assumes, it seems to me far from unconscionable to require the defendant to repay it.

Limitation

113 The second defence which the defendant raises on the law is the defence of limitation and laches.

114 First, the defendant argues that the 6-year limitation period prescribed in s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act") for a claim in debt or under s 6(2) for a claim for an account runs from the date on which the 9246 account was closed rather than the date on which the plaintiff demanded repayment of the debt. For this submission, the defendant relies on the English decision of *In re Russian Commercial and Industrial Bank* [1955] 1 Ch 148 ("*Russian Commercial and Industrial Bank*") and the Malaysian case of *Proven Development Sdn Bhd v Hongkong and Shanghai Banking Corp* [1998] 6 MLJ 150 ("*Proven Development*") which cites it. Since the evidence shows that the 9246 account had been closed at the latest by February 1984, the defendant submits, the relevant limitation period expired in February 1990 at the very latest.

115 The defendant also argues that even if the Limitation Act does not bar the plaintiff's claim, the doctrine of laches applies to do so. There was, according to the defendant, a considerable lapse of time with circumstances which made it inequitable for the plaintiff to enforce its claim.

116 I must also reject this defence. *Russian Commercial and Industrial Bank* was not a limitation case. It was an insolvency case. The bank in that case was dissolved as a legal entity in Russia in 1917 or 1918. Its English branch, however, carried on business in England until it was put into liquidation by the English court with effect from 1922. The English branch owed a debt to a depositor which was repayable on demand and which was denominated in roubles. The question for determination by Wynn-Parry J was whether the depositor's proof of debt in the English liquidation should be converted into sterling at the exchange rate which prevailed in 1918 (when the bank was dissolved in Russia) or at the exchange rate which prevailed in 1922 (when the English liquidation commenced). Wynn-Parry J held: (i) that the depositor's debt should be converted into sterling at the exchange rate which prevailed when the debt became due; (ii) that, even though the depositor had made no demand for payment, the debt became due when the relationship of banker and customer ceased; (iii) that that relationship had ceased when the bank was dissolved in Russia; but (iv) if the depositor wished to participate in the English liquidation and prove for his debt, he must convert his debt at the exchange rate which prevailed when the English liquidation commenced.

117 *Proven Development* is a limitation case. It cites *Russian Commercial and Industrial Bank* for the proposition that a bank's debt to its customer can become due when the relationship of banker and customer ceases. But that holding was not necessary for Arifin Zakaria J's decision in that case.

He held that whether he took the date on which the customer demanded payment or the date on which the account was closed, thereby bringing the relationship of banker and customer to an end, the customer's action was not time-barred.

118 Neither case cited by the defendant is therefore authority for the proposition that a limitation period can run from the date on which a customer closes an account. At the very most, the cases are authority for the proposition that a bank's debt to a customer becomes due when the bank, by its unilateral act, closes the customer's account and the customer is aware of that fact. That is not what I have found happened in the present case. If the defendant had been unable to prove that the plaintiff's account had been closed in or before 1985, the defendant's debt to the plaintiff would have become due to the plaintiff only when the plaintiff demanded payment in 2012. The plaintiff's claim would not, on this hypothesis, be time-barred.

Conclusion

119 I have found on the balance of probabilities that the plaintiff closed the 9246 account in or before 1985. The defendant no longer owes the plaintiff a debt arising from that account. I have therefore dismissed the plaintiff's claim with costs.

[note: 1] Christine Tan's AEIC, paragraph 30(3).

[note: 2] Christine Tan's AEIC, paragraph 30(2).

[note: 3] AB volume 1, page 1.

[note: 4] AB volume 1, page 1.

[note: 5] 1AB1.

[note: 6] David Chua's AEIC paragraph 4(d).

[note: 7] 2AB879.

[note: 8] 2AB944–945.

[note: 9] David Chua's AEIC at paragraph 12.

[note: 10] David Chua's AEIC at paragraph 13.

[note: 11] 2AB947.

[note: 12] 2AB948.

[note: 13] 2AB952–953.

[note: 14] 2AB899.

[note: 15] 2AB928.

[note: 16] Defence (Amendment No. 2) dated 30 April 2014, paragraph 3(4).

[note: 17] Defence (Amendment No. 2) dated 30 April 2014, paragraphs 3(1), 11(1), 15(1) and 20(1).

[note: 18] See letter from DBS Bank Ltd (AB volume 2, page 928) second paragraph.

[note: 19] Christine Tan's AEIC at paragraph 29.

[note: 20] Defence (Amendment No. 2) dated 30 April 2014, paragraphs 3(1), 11(1), 15(1) and 20(1).

[note: 21] Defendant's closing submissions at paragraph 4(4).

[note: 22] Cecilia Chia's AEIC at paragraph 14.

[note: 23] Cecilia Chia's AEIC at paragraph 12.

[note: 24] Cecilia Chia's AEIC at paragraph 20.

[note: 25] Cecilia Chia's AEIC at paragraphs 21 – 25.

[note: 26] NE 04/09/2014 at page 103 lines 16 – 24.

[note: 27] NE 04/09/2014 at page 65 lines 6 – 17.

[note: 28] Cecilia Chia's AEIC at paragraph 37.

[note: 29] Cecilia Chia's AEIC at paragraph 29.

[note: 30] Christine Tan's AEIC at paragraph 13.

[note: 31] Christine Tan's AEIC, paragraph 7.

[note: 32] NE 04/09/2014 at page 82 lines 16 – 20.

[note: 33] AB volume 2 pages 628 – 658 and 659 – 757.

[note: 34] Christine Tan's AEIC at paragraph 14.

[note: 35] Cecilia Chia's AEIC at paragraphs 8 – 10.

[note: 36] Plaintiff's closing submissions at paragraph 173.

[note: 37] NE 03/09/2014 at page 55 lines 18 – 19.

[note: 38] AB volume 2 pages 758 – 766.

[note: 39] NE 03/09/2014 at page 79 lines 26 – 31.

[note: 40] NE 03/09/2014 at page 91 lines 8 – 12.