

Elis Tjoa v United Overseas Bank
[2003] SGHC 1

Case Number : Suit 603/2002

Decision Date : 02 January 2003

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Tan Cheow Hin and Sheerin Ameen (Cheow Hin & Partners) for the Plaintiff; Hri Kumar and Gary Leonard Low (Drew & Napier LLC) for the Defendant

Parties : Elis Tjoa — United Overseas Bank

Banking – Duty of bank – Banker's books – Customer instructing bank to debit plaintiff's current account for purchase of shares – Plaintiff disputing instructions – Whether customer forging plaintiff's signatures on instructions

Contract – Contractual terms – Conditions – Clause requiring plaintiff to verify correctness of bank statement and to notify the defendants of any discrepancies – Whether clause was onerous and unreasonable – Whether defendants have taken sufficient steps to draw the plaintiff's attention to that clause

Tort – Negligence – Duty of care – Concurrent liability in contract and tort – Whether plaintiff can avoid exemption clause in agreement by claiming in tort

1 The Plaintiff Elis Tjoa ('Elis') is an Indonesian Chinese residing outside Medan, Indonesia. The Defendant United Overseas Bank Limited ('UOB') is a Singapore bank. At all material times, Elis was a customer of UOB's branch at MacPherson Road ('the MacPherson Branch'). Elis' claim is for payment by UOB of \$270,000 debited by UOB from her current account in two branches in March 2000. The debit was to pay for share purchases of her sister Tjoa Siu Ngo ('Ngo') and the monies were transferred from Elis' account to Ngo's.

2 In my judgment:

AEIC means Affidavit of Evidence-in-chief

AB means Agreed Bundle of Documents

NE means Notes of Evidence, followed by the page number

Background

3 Ngo and her husband Lie Kwek Pau ('Kwek Pau') had been a customer of Chung Khiaw Bank Limited before it was merged with UOB. They were known to a bank officer Lily Lim ('Lily'). They had been granted a housing loan by Chung Khiaw Bank Limited but that has been redeemed.

4 Elis is a businesswoman. At the time of the trial in November 2002, she had been in business for 15 years. During the trial, she gave evidence in Hokkien through an interpreter.

Opening of Elis' 'i' account

5 Apparently Elis and Ngo had come into some money from their father's estate.

6 On or about 19 April 1997, Ngo introduced Elis to Lily. At that time, Lily was and still is a First Vice - President and Regional Manager of UOB's Kallang Regional Centre ('KRC'). At that time, Lily was also the manager of the MacPherson Branch until February 1999. KRC is on the second floor of the same building as the MacPherson Branch which occupies the first floor. On that day, i.e 19 April 1997 Elis opened a current account called an 'i' account with UOB, i.e Account No 104-312-226-1. An 'i' account is a current account earning interest. It is not an investment account although pleaded as such in para 2(a) of the Amended Defence. Elis signed the relevant application form which states, inter alia, 'A copy of the Bank's Rules Governing Current and i-Account *set out overleaf has been furnished* to me/us and I/we have read and understood the same and agree to be bound thereby' [emphasis added]. I will refer to such rules as 'the Rules'. The bank officer attending to Elis for the opening of her 'i' account was Lee Chong Meng, a Customer Service Officer at the MacPherson Branch. In oral testimony, he said it was his standard practice to hand over a set of the Rules to a customer when an 'i' account is opened and he did do so to Elis before she signed the application form. However, this was not mentioned in his AEIC. Elis denied his oral evidence. So did her daughter Henty who was supposed to have accompanied her. However, the Rules are part of the application form i.e the application form is a document comprising four pages. The first page is where the particulars of the customer are stated and the customer signs. The second to fourth pages contain the Rules. Therefore, even if a set of the Rules was not handed to Elis then, the fact is that they are a part of the application form and the contract between Elis and UOB.

7 Elis said that no one had interpreted or explained the application form to her or the Rules. However, she admitted that she did have two accounts with banks in Indonesia for her business and she knew that such banks had their own terms and conditions. Also, she did not assert that she had asked for an interpretation or an explanation. Neither did she assert that she did not understand the nature of the document she was signing.

8 Both Elis and Ngo enjoyed a close relationship. In fact, when Elis opened her 'i' account, the home address she gave was the address of Ngo in Medan, Indonesia. Elis said that this was because it was uncertain whether she would receive mail where she stayed, which was some two hours away from Medan. This home address of Ngo was the same address given by Ngo when she opened her 'i' account two years earlier on 10 February 1995.

9 Statements of account in respect of Elis' 'i' account were initially sent to the Indonesian address

she had provided. Subsequently she gave instructions to change her address in UOB's records to a Singapore address i.e Block 5 Moi Hwan View #02-01 Golden Hill Condominium, Singapore 568290. In March 1998, she again gave instructions to change her address to Block 227 Bishan Street 23 #07-77, Singapore 570227.

10 In cross-examination, Elis said she had received the statements of account when they were sent to the Indonesian address but she decided to change her address because a domestic helper at Ngo's Indonesian address did not keep mail carefully. She had wanted UOB to keep her statements for her but was told by UOB that it could not accede to this request. She chose the addresses which I have mentioned because Ngo's son Moktar (or spelt as 'Muktar') was residing in Singapore at those addresses. She had arranged with him to bring her statements to her whenever he returned on holiday to Indonesia. She said that she had received the statements for her 'Y' account up to and including December 1999 but not thereafter.

11 In the circumstances, paragraph 10 of Elis' AEIC stating that she had provided a Singapore address at UOB's request was not true.

The fax instruction dated 11 December 1998

12 In December 1998, Ngo contacted Lily to say that her sister Elis had agreed to help her (Ngo) pay for her share purchase (of 100,000 Hotel Property shares). This would be done by debiting Elis' 'Y' account. Lily then caused a draft of a fax instruction to be prepared and forwarded this by fax to Ngo who then procured Elis to sign the fax and the signed fax was then sent back to UOB. The fax instruction was dated 11 December 1998. The amount debited was \$86,424.68 and payment was made in favour of UOB Securities Pte Ltd ('UOB Securities'). Elis does not dispute this fax instruction and UOB placed much reliance on it to show that such an instruction had been given before the two disputed instructions in 2000 which I shall come to later.

Opening of Elis' time deposit account

13 Soon thereafter, Elis opened a time deposit account with UOB on or about 24 December 1998. The descriptions 'time deposit' and 'fixed deposit' were used interchangeably during the trial. The account number of Elis' time deposit account is 104-411-748-2. She opened this account with a deposit of \$320,000 which was subsequently withdrawn. At that time, her time deposit account was not linked to the 'Y' account.

Elis' signing of a link form

14 On 29 October 1999, Elis went to the MacPherson Branch. She said she met up with Lee Chong Meng. Her 'i' account was in substantial credit and not particularly active and she sought Lee's views as to what she could do to get a higher return. Lee mentioned that UOB had various financial products and suggested that she discuss them with Lily. However, after Elis had gone upstairs to discuss with Lily, Elis decided that the financial products were too risky and came back down to see Lee to say she wanted to place \$300,000 into a fixed deposit.

15 Elis then issued a cheque for \$300,000 drawn on her 'i' account to place a time deposit for \$300,000 for three months and renewable every three months. She said that after this was done, she had about \$20,000 left in her 'i' account but this was not correct. The relevant statement of account (at AB 170) shows she had about \$4,000 left. The account number for this time deposit was the same as the first given to Elis in 1998 for her first time deposit of \$320,000.

16 It transpired that on that day, Elis had also signed a form to link her 'i' account to her time deposit account ('the link form'). Elis did not dispute that she had signed the link form. However, she claimed that no one had told her that she was signing an instruction to link both her accounts. Her intention was to keep her accounts separate. She alleged she told Lee this and that she wanted to 'lock in' her funds in the time deposit. Her daughter Henty corroborated her evidence.

17 However, Lee Chong Meng's evidence was different. He said that prior to 29 October 1999, Elis had been overdrawing her 'i' account from time to time. As she did not have an overdraft facility, approval had to be sought from Lily, who was and is a divisional head, each time Elis' 'i' account was overdrawn. Prior to 29 October 1999, Elis had contacted him to say that she wanted UOB to allow her to overdraw her 'i' account and he had suggested to her that she link her 'i' account with her time deposit account because at that time she had \$320,000 in the latter. Elis had agreed.

18 When Elis came to the branch on 29 October 1999 and had decided to place the \$300,000 in a time deposit and not to buy or invest in any financial products, Lee then brought her to see the branch manager in the manager's office. The branch manager was Oe Boon Hong. Lee then stepped out of Oe's office and brought in the link form for Elis to sign. Lee said he informed Elis that that was the form they had been talking about. Lee was happy that Elis had decided to place a time deposit because it could be linked to her 'i' account and resolve the point about her overdrawing her 'i' account from time to time (NE 211).

19 Although the background for Elis wanting to sign the link form was not specifically mentioned in Lee's AEIC, he had in his AEIC referred to Lily's AEIC. Paragraph 3(b) of Lily's AEIC did mention that as there were occasions when Elis' 'i' account was overdrawn, the bank had suggested to Elis to link her

two accounts so that the time deposit account would secure any excess (meaning any debit balance) in Elis' 'i' account.

20 As for what transpired in Oe's office on 29 October 1999, the elaboration was not given in Lee's AEIC but during his oral testimony. Also, no AEIC was procured from Oe until in the midst of the trial when Mr Hri Kumar, Counsel for UOB, applied to admit evidence from Oe. Mr Tan Cheow Hin, Counsel for Elis did not object to the application as he wanted to cross-examine Oe.

21 Oe's evidence corroborated what Lee had said as to what had transpired in Oe's office on 29 October 1999. Oe also said Henty was not in his office that day (although she might have been outside). Although Oe's evidence came late in the day, I saw no reason why he should fabricate his evidence. The point as to what transpired in his office was not so important as would cause both him and Lee to fabricate the evidence.

22 I am also satisfied from the demeanour of Lee and Oe that they were, generally speaking, truthful witnesses.

23 On the other hand, I note that on several occasions, Elis avoided answering Mr Kumar's questions directly and he had to repeat them. I have taken into account the fact that Elis is a lay person and that she is not fluent in English but it is clear to me that she was an evasive witness. As for her daughter Henty, I note that initially she appeared uncertain about events until her AEIC was drawn to her attention whereupon her memory approved dramatically (see, for example, NE 111 and 112). She was quick to confirm her mother's evidence unless she was caught saying something very different. Although young (being of the age of 22 at the time of the trial), she was adroit enough to try and explain away contradictions in her evidence. I do not find Henty a credible witness.

24 There are two other points on the issue about the link form.

25 First, the link form was initialled by two of UOB's officers. Jenny Chee initialled beside the words 'Attended By' and Lee Chong Meng initialled beside the words 'Verified & Approved By'. Mr Tan latched onto this discovery and suggested that it was Jenny Chee and not Lee who had attended to Elis when she signed the link form. Unfortunately for Mr Tan, he had not asked any question about the identity of the persons who had initialled until after Jenny Chee had given her evidence. As for Lee Chong Meng, he explained that Jenny Chee initialled not because she had attended to Elis but

because she had verified certain machine printed figures on the link form. In my view, if that was true, then Jenny should have signed beside the words 'Verified & Approved By' and Lee should have signed beside 'Attended By'. In any event, even Elis in her AEIC said she met Lee Chong Meng on 29 October 1999 and Elis did not mention Jenny's name. In cross-examination, she vacillated between not recalling as to who attended to her on that day and agreeing it was Lee. According to Henty, who claimed to be present, Elis was attended to by Lee on that day (NE 117). It seems to me likely that Jenny and Lee had each signed at the wrong place. It was Lee who attended to Elis, together with Oe, and Jenny had verified the machine printed figures.

26 The second other point is that from October 1999, there is a second page i.e page 2 of the monthly statements sent to Elis. Page 1 is the statement in respect of the 'i' account and page 2 is a statement in respect of the time deposit account with the words 'Linked Time Deposit Account No 104-411-748-2'. Elis said that although she did receive statements up to December 1999, she did not receive page 2. On the other hand, UOB's Sng Lian How, an Assistant Vice President in charge of UOB's General Services Unit, said that page 2 would be sent together with page 1. Sng's department was in charge of mass mailing of monthly statements of account and revised standard terms and conditions and other material for mass circulation to UOB's customers. I find that page 2 was sent as a matter of course with page 1 and that Elis must have received page 2 as well, when she received page 1.

27 I also find that when Elis signed the link form, she knew it was to allow her to overdraw her 'i' account to the limit of the amount she had in her time deposit and that her time deposit would be used to secure or set-off against any excess in her 'i' account. This consequence is also stated in Clause 33 of the Rules. Therefore I do not accept Elis' position that when she placed the time deposit of \$300,000, she wanted to keep it separate from the 'i' account or locked up. That would be contrary to the very reason for her signing the link form. The fact that she did not want to invest in any of the financial products sold by UOB does not mean that she did not want to link the time deposit account to the 'i' account.

The first disputed fax instruction (and letter) in early March 2000

28 On or about 1 March 2000, Lily received a call from Ngo who informed her that Elis had again agreed to help Ngo pay for her share purchases (of 180,000 Asia Food and Properties shares). This was to be done by transferring \$120,000 from Elis' 'i' account to Ngo's 'i' account. Apparently, there were standing instructions from Ngo to debit her 'i' account for share purchases made through UOB Securities. Ngo had told Lily that Elis would be going over to her place and had asked for a draft transfer instruction to be faxed to her (Ngo). Again Lily caused a draft fax instruction to be prepared and this was sent by fax to Ngo. Ngo then purportedly obtained Elis' signature thereon and the fax was then sent back to UOB but undated. On this occasion, Lily asked the remisier in UOB Securities whether payment could wait until the original was received through the post. Lily said she did this because the last time in December 1998, when she acted on only a fax instruction, this created an internal problem in UOB about some voucher. The remisier said payment could wait and UOB waited till

the original was received through the post whereupon on 6 March 2000, the transfer to Ngo's 'i' account was effected. This fax and letter is the first of two disputed instructions.

29 I would add that when the original of the instruction was sent through the post, it was accompanied by a letter in Chinese from Ngo thanking Lily for her help. However, in my view, nothing material turns on this letter although Mr Tan sought to make something out of it.

30 Jenny Chee, an Assistant Vice President of UOB at the MacPherson Branch, also gave evidence. She said that on this occasion when she received the fax and the original from KRC, she noticed that the instruction was to transfer monies from a customer's account to someone else's account. She tried to contact Elis on the telephone from the phone numbers stated on a specimen signature card but was unsuccessful. She then asked Lee Chong Meng what she should do and he said that since the instruction had come through Lily, Jenny could carry out the instruction.

31 I would add that Elis said that she did not provide UOB with any telephone number to contact her directly (NE 44 and 62). Even if this is true, I am of the view that the contact numbers on the specimen signature card must have been provided by Henty or Ngo but in her (Elis') presence.

The second disputed fax instruction (and letter) dated 22 March 2000

32 On 22 March 2000, Ngo again informed Lily that Elis had agreed to help her yet again. This time the instruction was to transfer \$150,000 from Elis' 'i' account to Ngo's. Again Lily went through the same process and a fax instruction purportedly signed by Elis was received by UOB. This fax was dated 22 March 2000. As there was some urgency, this transfer of monies was effected on 23 March 2000 without waiting for the original to be received through the post. According to Jenny Chee, the original was subsequently received but she could not locate it for the trial. I see no reason to disbelieve Jenny who impressed me with her generally steady testimony.

The continued sending of bank statements

33 For a while thereafter, nothing dramatic happened and Elis' bank statements continued to be sent to the Bishan address.

34 There was evidence from UOB's Sng Lian How, whom I have mentioned above, and one Toh Seng

Kang, an operations manager of Datapost Pte Ltd ('Datapost') as to how monthly statements of account are printed and packed by UOB and then picked up by Datapost. A copy of a summary report would also be given to Datapost when they collect the statements of account. Then Datapost folds the statements and inserts them into envelopes, seals them and delivers them to Singpost for posting. Datapost would produce a reconciliation report showing the total number of statements processed by them. The evidence of Sng and Toh was not challenged. However, in closing submission, Mr Tan submitted that UOB did not adduce direct evidence to prove that the statements for 2000 for Elis' 'i' account were in fact posted to the Bishan address (paragraph 131 of his closing submission). Yet he did not elaborate as to what he meant by direct evidence. The statements were standard statements of UOB which are placed in an envelope, sealed and then delivered to Singpost for posting. Surely, Mr Tan could not be serious in suggesting that there should be someone who could testify that he or she remembered putting the particular statement for Elis' 'i' account into an envelope each month and then delivering it to Singpost, even though there must be hundreds, if not thousands, of such statements.

35 In addition, Elis had accepted that she had received statements prior to 2000 which were sent to the Bishan address.

36 Accordingly, the only logical inference I can draw is that the statements for Elis' 'i' account for, at least up to July 2000, were sent to the Bishan address. I mention the month of July 2000 as a possible cut-off date because I notice that in Lee Chong Meng's AEIC, he mentioned that there was another written notice from Elis to change her address to one in Ang Mo Kio and, presumably, future statements from August 2000 were sent to the Ang Mo Kio address. However, Elis denied the authenticity of this written notice. As neither side made any further reference to this written notice or the likelihood that the statements from August 2000 were probably sent to the Ang Mo Kio address, I need say no more about it especially since the critical statement would be for the month of March 2000 when the two disputed instructions were implemented.

37 Although Elis claims not to have received her statements since the beginning of 2000, she did not complain about this to UOB at that time or at any other time until she allegedly discovered the disputed instructions.

38 Elis' evidence as to why she had not received the statements from 2000 was unsatisfactory. She said that when she had previously received the statements, she would check them to see that the entries were correct (NE 28). This was also Henty's evidence as Henty said that at times her mother would ask her to explain the statements to her (NE 119).

39 As I have mentioned, Elis had said that she changed her address in UOB's records to one in Singapore because she claimed a domestic helper at Ngo's Medan address had misplaced her statements. She also agreed that she was very concerned about receiving her statements (NE 29).

40 Elis said that Moktar and his younger sister were staying at the address at Golden Hill and then at Bishan. She initially alleged that from January 2000, Moktar was not residing at the Bishan address but his sister was (NE 37). She said that after Moktar left, she did not make any arrangement for someone else to bring the statements from Singapore to her (NE 38) and then changed her evidence to say that she had asked Moktar's sister to bring the statements to her (NE 39). She said she did not check with Moktar's sister as she (Elis) did not come to Singapore and she did not know her telephone number (NE 39). She could not explain satisfactorily why she did not ask Ngo for her daughter's number. All she could say was that she did not meet Ngo (NE 39).

41 Elis then gave the explanation that she was not concerned about not receiving the statements from 2000 because she had not operated the 'i' account after end 1999. When it was pointed out to her that this was not true as there were some withdrawals in January 2000, she said that she already knew, from her December 1999 statement, how much she would have left as at end January 2000 after the withdrawals in January 2000 i.e a debit balance of about \$6,900. Yet in paragraph 32 of her AEIC, she said that when she went to the MacPherson Branch on 15 May 2001 and was told by a bank officer that her 'i' account was in overdraft, she denied that she had any overdraft. According to Elis, she did not authorise any transaction on her 'i' account after January 2000. In my view, if she knew that as at January 2000, she had an overdraft of \$6,900, she must also have known that the overdraft still remained as at May 2001.

42 Elis also initially said that Moktar's sister had stayed at the Bishan address for the whole of 2000 (NE 42). She then changed her evidence and said she did not know (NE 43).

43 I will say more about Elis' position that she did not receive any statement from 2000 when I come to other aspects of her evidence.

Alleged discovery of disputed instructions

44 Elis said that on 14 May 2001, she decided to come to Singapore to seek medical treatment and to renew her time deposit and use the interest from it for her medical fees.

45 Elis said that on 15 May 2001, she and her daughter went to the MacPherson Branch and was told by a bank officer that her 'i' account was in overdraft although her time deposit had accumulated interest of more than \$10,000. She denied any overdraft on her 'i' account. I have mentioned this denial above. She was then brought to see the branch manager Oe Boon Hong who called for her file. Oe informed her about the two instructions in March 2000 to transfer a total of \$270,000 from her 'i' account to Ngo's 'i' account and it was then that she learned about them. She disputed the instructions and alleged that the signatures thereon were forged. She claimed that Oe had informed her that UOB would investigate the matter and if she was correct, UOB would return the money to her as it was insured. Oe's version was that he had said that UOB would investigate and may have to refer the matter to its insurers and decide whether this was a suitable case for compensation. He did not assure Elis that she would be compensated.

46 Elis said that she then concluded that Ngo had forged her signature on the two faxes because the signature on these documents were not hers and she saw Ngo's name on the faxes. Also, Oe had told her that the monies were used by Ngo to buy bullion and shares (NE 68). She did not suspect anyone else (NE 67). Yet she did not confront Ngo immediately after this sudden discovery until two days later, which I shall elaborate on below. Her explanation initially was that UOB already knew her position. She then said Oe had told her UOB would settle the matter and did not ask her to look for Ngo. She was evasive as to whether she would have confronted Ngo in any event. At NE 81 to 82, she said:

'Q Put: Your story that you chose to wait 2 days to confront your sister about the fax instructions is incredible.

A Because I am of the view that I did not sign them. I already told Mr Oe of the bank about it. The bank knew.

Q If you genuinely suspected the forgery, you would have confronted her immediately?

A I am of the view that I did not give her the money. It was the bank.

Q Are you saying that you were not angry with your sister at all when you found out about the fax instructions on 15 May 2001?

A I was angry.

Q Put: If you were genuinely angry, you would have confronted your sister immediately and not wait 2 days.

A Mr Oe was aware. He said he would settle. The bank did not ask me to look for my sister.

Q Are you saying that if the bank had settled the matter immediately on 15 May 2001, you would have not spoken to your sister about it?

A Mr Oe told me he would settle. I felt at ease. The bank would assume the responsibility.

Q [Repeats question.] You would not have confronted your sister?

A If the bank settles the matter, that is the bank's matter. The bank was careless.

Q [Repeats question.]

A If my money is there, I wouldn't have asked.

Q Your position is so long as the bank settles the matter, you don't care that your sister in fact forged your signature?

A If the bank settled the matter and called my sister, then I would have scolded her.

Q If the bank settles and does not call your sister?

A I would ask her why she did such a thing.'

Visit to Lily Lim on 16 May 2001

47 Elis said that in the evening of 15 May 2001, Ngo called her at Hotel Asia where she was staying. Ngo told her that she had fixed an appointment to see Lily Lim the next day at 2pm. Elis did not say anything about the disputed instructions to Ngo. Elis said she deliberately refrained from asking Ngo for the purpose of the meeting as she suspected that 'they' wanted to see her on account of the disputed instructions. She wanted to see what kind of show 'they' would put up (see her AEIC paragraphs 38 and 39). In oral testimony, she said that by 'they', she was referring to Ngo and Lily.

48 On 16 May 2001, Ngo and Elis went to see Lily. Oe was not in. Elis said that on 16 May 2001, she continued with her pretension. She claimed that Lily had asked Ngo, 'Have you told your sister already' and Ngo had replied, 'Yes, yes'.

49 Lily's evidence was that Elis wanted to use the interest from her time deposit to open a savings account and also wanted to clear the overdraft in her 'i' account. However, Lily was led to believe that the overdraft was only \$6,963.07 and not in excess of \$270,000 because Elis handed Lily the original statement of account for her 'i' account as at February 2000 (the month before the disputed transactions) showing the overdraft to be \$6,963.07. Lily said she did not realise that this statement was not current and brought the two sisters down to carry out the intended transactions. The necessary forms were signed and the instructions were carried out. It was only after the sisters left that Lily realised that the statement of account she had been handed was for February 2000 and that the overdraft was not \$6,963.07 but in excess of \$270,000. Lily's evidence was not clear as to whether she discovered the mistake or a staff had brought the mistake to her attention (NE 181 and

182). Lily then immediately contacted Ngo to arrange a meeting with the two sisters. Up till then, Lily said she was not aware that Elis had disputed the fax instructions of March 2000 as Oe did not tell her this prior to Lily's meeting with the two sisters on 16 May 2001. This was corroborated by Oe.

50 Elis did not assert that she had told Lily on 16 May 2001 that she disputed the instructions of March 2000. In my view, if she had done so, Lily would have checked and realised that the overdraft in Elis' account was more than \$6,963.07. However, Elis did assert that she did not hand over the original of the February 2000 statement of account to Lily.

Next meeting after 16 May 2001

51 Lily said that both the sisters then came to see her on 17 or 18 May 2001. The meeting was in her room. At this meeting, she explained why the 'i' account could not be closed whereupon Elis said that Oe had shown her two faxes but the signatures thereon were not hers. Lily said Ngo informed Elis that she had forgotten what she had signed. Lily had asked Ngo whether she had explained to Elis that she had borrowed money from Elis and Ngo said, 'Yes'. The sisters then quarreled and eventually left (NE 184 and 185 and 187).

Meeting at Hotel Asia

52 Apparently there was also another meeting at Hotel Asia, where Elis and her daughter were staying, on 17 or 18 May 2001. The meeting was attended by Elis, her daughter Henty, Ngo, her daughter July and Lily. The two sisters quarreled and Ngo purportedly admitted that she had forged Elis' signature on the disputed instructions. Elis said she was under the impression that UOB would look to Ngo to resolve the matter whereas Lily said that eventually she told the two sisters that if they could not resolve the matter, a police report should be made.

27 July 2001

53 Elis apparently returned to Indonesia and subsequently came back to Singapore on 27 July 2001. She went to the MacPherson Branch and again said she did not sign the disputed instructions. She accepted that in the interim period until 27 July 2001, she did not check with Ngo or UOB as to whether the matter had been settled by payment from Ngo. She was advised by Oe to report the matter to the police. She did so on the same day.

54 I will now deal with the various issues.

Were the signatures on the disputed instructions forged or authorised by Elis?

55 In *Yogambikai Nagarajah v Indian Overseas Bank* [1997] 1 SLR 258, the Court of Appeal said at p 269, para 39, that the burden of proof was on the party alleging the forgery. At p 271, para 44, it said that the burden of proof was more onerous than the ordinary civil standard where fraud or forgery was concerned.

56 Aside from Ngo's admission, Elis' solicitors sought the opinion of an expert regarding the authenticity of the disputed signatures. The expert was Ms Lee Gek Kwee, a Consultant Forensic Scientist and Head of the Document Examination Laboratory with the Centre for Forensic Science of The Health Sciences Authority, Singapore ('HSA'). Ms Lee gave a report in respect of each of the two disputed signatures.

57 In her first report dated 23 August 2002 regarding the first disputed signature on the undated fax to UOB, she concluded:

'5 On examination, I noted differences in the fluency, formation and relative height and spacing of strokes between the questioned signature in "Q" and the specimen signatures in "S1" to "S3". (Please see the Comparison Chart attached). In view of the differences noted, I am of the opinion that there is no evidence to show that the questioned signature in "Q" was written by Mdm Elis Tjoa whose specimen signatures are said to appear in "S1" to "S3".'

58 In her supplementary report dated 11 November 2002 regarding the second disputed signature on the fax dated 22 March 2002 to UOB, she concluded:

'3 On examination, despite the broken and jagged appearance of the strokes in the questioned signature in "Q1", I noted differences in the slant, formation and relative height and spacing of strokes between the questioned signature in "Q1" and the specimen signatures in "S1" to "S3". (Please see the Comparison Chart attached). In view of the differences noted, I am of the opinion that there is no evidence to suggest that the questioned signature as shown in "Q1" was written by Mdm Elis Tjoa whose specimen signatures are said to appear in "S1" to "S3".'

59 During the trial, Ms Lee produced a set of explanatory notes on conclusions used in document examination reports by HSA (Exhibit P1). There are seven types of opinion in the explanatory notes and hers was the sixth type. For easy reference, I set out the fifth, sixth and seventh types of opinion:

'5. "The evidence is inconclusive."

- The questioned writing may be disguised or too small in quantity and totally uncharacteristic, or a useful comparison is not possible because of unsuitable specimen writing. Another reason could be that a simulated signature is being compared with its forger's normal writing.

6. "There is no evidence to indicate"

- This is used in situations where one cannot be sure that the difference noted between the questioned writing and the suspect's specimen writing are not the result of one person writing in two different styles or change of writing habit, or the result of disguise especially if there is only a limited amount of writing.

7. "In my opinion, this was not written by the writer of that."

- This conclusion is used when the document examiner is satisfied that the differences between the questioned writing and the suspect's specimen writing are sufficient and significant enough to exclude him.'

60 Ms Lee said that she could not be certain that the disputed signatures were those of Elis because of the limited number of genuine signatures sent to her to compare with the disputed signatures. In addition, some of the genuine signatures were signatures made after the event for the purpose of obtaining an opinion from her. Ms Lee agreed that it was possible for a person to attempt to change or disguise subsequent signatures but she did not go so far as to say that that was what Elis in fact did. At the end of the day, she did not change her opinion in her reports.

61 Henty also gave evidence regarding the alleged forgery. She claimed that when the two faxes were produced on 15 May 2001 to Elis, she (Henty) could tell that the disputed signatures were forgeries. She asserted that as her mother's daughter, she was familiar with Elis' signature. When I produced a sheet of paper with three signatures, taken from a page of one of Ms Lee's opinions, (Exhibit C1), Henty immediately identified the signature on the left as the forgery. This was one of the disputed signatures.

62 As for UOB, it did not adduce any evidence from an expert about the disputed signatures. I should mention that Mr Tan submitted that an inference should be drawn that UOB did obtain the opinion of an expert but did not reveal that opinion (paragraph 71 of his submission). However, this was never suggested to any of UOB's witnesses. It is one thing to assert that UOB did not obtain the opinion of an expert and another to assert that it did do so but did not reveal that opinion. In my view, it was not open to Mr Tan to make the submission that he did when he did not even suggest this to UOB's witnesses.

63 I am of the view that Henty's evidence was not credible. I do not believe that although she and her mother, Elis, were allegedly surprised by the production of the two disputed faxes on 15 May 2001, and without the benefit of comparing the signatures on the two disputed faxes with undisputed signatures, she could so quickly conclude that the disputed signatures were not her mother's, especially when Ms Lee, the expert herself, could not be absolutely certain. Although Henty was able to identify the disputed signature as a forgery from Exhibit C1, she did so far too quickly in my view. She must have recognised that Exhibit C1 was taken from a comparison chart in one of Ms Lee's reports.

64 That leaves me with the evidence of the expert Ms Lee and the evidence of Elis. After taking into account Elis' omission to confront Ngo immediately and Elis' evidence about her not having received statements from 2000, I find that even if the signatures on the disputed instructions were not Elis', the signatures were appended to those instructions with her authority either before each instruction was sent or thereafter. That is why Elis did not confront Ngo immediately after her 'discovery'. Also, when Elis and Ngo purportedly argued before Lily on 17 or 18 May 2001 in her office and at Hotel Asia, this was, in my view, probably a sham to bolster a claim later on against UOB. That is also why Elis did not bother to check between 18 May and 27 July 2001 whether Ngo had repaid the monies. I do not accept her evidence that she omitted to do so because she believed UOB would pay her if the signatures were not hers. No bank officer, let alone a branch manager, would take it upon himself to give such a definite assurance.

65 I also find that she did receive the bank statements from 2000 although not immediately since she resides in Indonesia.

66 I also find that it was she who handed the original of the February 2000 statement to Lily on 16 May 2001. Although she denied this, her Counsel Mr Tan did not challenge Lily on it. It is too late for Mr Tan to suggest in his closing submission (paragraph 102(ii)) that this statement might have been intercepted by Ngo and it was Ngo who handed it to Lily on or before 16 May 2001 when this suggestion was not made to Lily on the witness stand. Besides, even if it was Ngo who handed the original February 2000 statement to Lily, this would have been done in the presence of Elis.

67 In Mr Tan's closing submission (paragraph 98), he also submitted that perhaps Lily and Ngo had worked out between themselves that it was only fair for Elis to be liable for an overdraft balance of \$6,693.07 but again this suggestion was not made to Lily. Moreover, if that was the arrangement, Lily would not have immediately called Ngo to ask that the two sisters meet her when she realised that the overdraft in Elis' 'i' account was more than \$270,000.

68 It seems to me that Elis and Ngo had sought to deceive Lily into thinking that Elis' overdraft in her 'i' account as at 16 May 2001 was only \$6,963.07 when both of them knew it was more. When their plan did not work, it was they who put on a show for Lily's benefit by pretending to argue among themselves.

69 However, for completeness, I will also address the issue as to whether the Rules or certain new rules are binding on Elis and the effect thereof even if the signatures were forgeries and had been appended without Elis' authority.

Whether the Rules and the new rules are binding on Elis?

70 I have already stated that when Elis signed the form to open the 'i' account, the Rules were part of that form. In my view, Elis was bound by the Rules henceforth.

71 In *Stephan Machinery Singapore Pte Ltd v Oversea-Chinese Banking Corporation Ltd* [2000] 2 SLR 191, the customer was a company. The account opening form was signed by its managing director Mr Reeg and another director Mr Lim Tiong Beng. That form had a similar declaration as the one before me. That form said,

'I/We have received and read a copy of the Bank's Terms and Conditions relating to the Account(s) and I/We jointly and severally agree to abide by and be bound by them and any amendments, alterations and additions thereto as may from time to time be made'

72. Justice Lai Kew Chai said at paragraph 6:

'6 I concluded that it was impermissible for the plaintiffs to disavow any knowledge of the terms in the Application Form or in the Terms and Conditions relating to the accounts. The signatures of both Mr Reeg and Mr Lim Tiong Beng, the other director of the plaintiffs, bound the plaintiffs to what they had acknowledged and what they had agreed to abide. They did so at the time they opened the current account for the plaintiffs. Mr Reeg came through as very good in his field of work, ie marketing, but he was the sort of person who did not pay sufficient attention to printed words. Though he denied ever receiving and reading the Terms and Conditions, I have to say that I formed the view that he was honestly mistaken over this issue. He must have received it but read them without registering the full effect of the terms. Well, that did not mean that he or the plaintiffs was or were not aware of the Terms and Condition. There was no evidence from Mr Lim. They were content to sign the

acknowledgements of having received and read the Terms and Conditions and the agreement to be bound. The plaintiffs could not be heard to say otherwise.'

73 In *Consmat Singapore Pte Ltd v Bank of America National Trust & Savings Association* [1992] SLR 828, Justice L P Thean said, at p 838 at G, '... the plaintiffs signed the general agreement. Having signed it, they must be taken to have read and understood the terms thereof'.

74 On the other hand, Mr Tan submitted that as the Rules were not brought to the notice of Elis, they were not binding on her. He cited the following passage from Chitty on Contracts, 28th Edition, Volume 1, paragraph 12-010:

'The conditions must be brought to the notice of the party to be bound before or at the time when the contract is made. If they are not communicated to them until after the contract is concluded, they will be of no effect.'

75 However, that passage was cited out of context by Mr Tan. It pertains to situations where the exemption clause is not part of the contract which is signed and is found elsewhere, for example, on a notice in a bedroom or at a pillar after the contract has been entered into. In such cases, sometimes referred to as the car park cases, of which *Thornton v Shoe Lane Parking Ltd* [1977] 2 QB 163 is perhaps the most well-known, the exemption clause must be brought to the notice of the other contracting party before or at the time the contract is entered into. Indeed, Mr Tan had quoted only part of paragraph 12-010 from Chitty on Contracts. The entire paragraph states:

'Time of notice. The conditions must be brought to the notice of the party to be bound before or at the time when the contract is made. If they are not communicated to him until after the contract is concluded, they will be of no effect. In *Olley v. Marlborough Court Ltd* certain property of the plaintiff was stolen from his hotel bedroom owing to the negligence of the hotel management. On arrival at the hotel he had signed the hotel register which contained no mention of any exemption clauses, but in the bedroom there was a notice disclaiming liability for articles lost or stolen. It was held that the notice was ineffective as he had not been made aware of it until after the contract was made.'

76 In the present case, the form for the 'i' account states that a copy of the Rules has been furnished. Moreover the Rules are part of the document which Elis had signed. In my view, Elis cannot deny that she received a copy of the Rules. In any event, she is bound by them.

77 UOB also relied on a new set of rules which it had sent to its customers in 1998 ('the new Rules'). They were effective from October 1998. On the other hand, Mr Tan argued (paragraph 118) that the new Rules are inapplicable because they were made after the contract was entered into.

78 In my view, Mr Tan's argument is not valid. Although the new Rules were made after the contract was entered into, they were made pursuant to an enabling provision under the Rules i.e Clause 27. The new Rules are therefore applicable provided they were sent.

79 According to Sng Lian How, the new Rules were sent via mass mail with a cover letter dated 1 September 1998 to every customer stating that the new Rules would come into effect on 1 October 1998. These documents would have been sent with the statement of account for August 1998 in accordance with the usual procedure he had described for mailing of statements of account to customers. He was not challenged on this evidence and I see no reason to reject it.

80 Since Elis accepted that she did receive the statements of account up to the end of 1999, I am of the view that she must have received the cover letter and the new Rules as well.

81 I would add that Elis cannot escape the application of the Rules by saying that she did not read them or understand them. Indeed, Mr Tan did not submit any case-law authority for such a proposition. This is not a case whereby the customer does not even understand or has mistaken the nature of the document that is signed. In such a case, the plea of non est factum may come into play. In the case before me, Elis fully understood the nature of the document she signed i.e a form to open the 'i' account. She is a businesswoman with considerable experience and has two accounts with banks in Indonesia. She herself said she was aware that these banks have their own terms and conditions. She chose not to ask for an explanation of the Rules.

82 I would add that just before the disputed instruction of March 2000, Elis had acceded to Kwek Pau's request for her to provide security against a guarantee which UOB was issuing to the Inland Revenue for Kwek Pau's potential tax liability. Elis agreed and \$25,000 was debited from her 'i' account in January 2000 and placed in a time deposit which was pledged to UOB. For this exercise, Elis had obtained a vehicle logbook as some security from Kwek Pau (NE 54). This shows that she was capable of looking after her own interest and was aware of risks. The latter was also demonstrated when she declined to invest in UOB's financial products.

Clause 13 of the Rules and Clause 13 of the new Rules

83 Clause 13 of the Rules states:

'Clause 13 Statements and Verifications

13(a) Statements of account ("Statement of Account") in such form as the Bank may deem appropriate will be despatched to the Account Holder on such periodic basis as the Bank may from time to time determine or on such other periodic basis as may be requested by the Account Holder and agreed by the Bank. The Account holder shall promptly notify the Bank in writing if the Account Holder does not receive the Statement of Account within 7 days of the expected date of receipt thereof.

(b) The Account Holder is under a duty to:

(i) monitor the balance of the Account at all times;

(ii) examine all entries in the Statement of Account;

(iii) within fourteen (14) days of the date of the Statement of Account notify the Bank in writing of any omission from or debits/credits wrongly made or made without authority or inaccurate entries in such Statement of Account; and

(iv) sign and return any confirmation slip, including any required for audit purposes (if requested to do so).

(c) If the Bank does not receive any written notification pursuant to Clause 4(b)(iii) within 21 days from the date of the Statement of Account, then, at the end of the said 21 days, the Account as kept by the Bank shall be conclusive evidence, without any further proof, that, except as to any alleged errors so notified, the Accounts contains all credits that should be contained therein and no debits that should not be contained therein and all the entries therein are correct and further the Account Holder shall be bound by such entries in the Account and the Bank shall be free from all claims in respect of the Account. Notwithstanding the foregoing, the Bank reserves the right upon giving notice to the Account Holder to add to and/or alter the entries in the Account in the event of missing and/or incorrect entries or amounts stated therein.'

84 There was a hiccup regarding Clause 13. Clause 13(c) refers to Clause 4(b)(iii) but there is no such provision in the Rules. Mr Tan sought to gain some mileage from Lee Chong Meng's evidence on this point. It will be recalled that Lee was, at the material time, a Customer Services Officer of the MacPherson Branch who had attended to Elis. During cross-examination, his attention was drawn to the reference to Clause 4(b)(iii) and he could not find such a provision in the Rules. He then agreed with Mr Tan that Clause 13(c) was incomprehensible. However, during re-examination, he was able to explain the effect of Clause 13(c) and 13(b) and he no longer maintained that Clause 13(c) was incomprehensible.

85 In my view, Lee was caught off-guard when he realised that the reference to Clause 4(b)(iii) was to a non-existent provision and his evidence about Clause 13(c) being incomprehensible should be considered in that context. It is clear to me that the reference to Clause 4(b)(iii) arose from an inadvertent error and the reference should instead be to Clause 13(b)(iii). In my view, anyone minded

to read and understand the Rules would have understood that it is the customer's duty to examine the entries in each statement of account and to notify UOB in writing within fourteen days of the date of the statement of any debit wrongly made or made without authority. If UOB does not receive such a notification within 21 days of the date of the statement, the account shall be conclusive evidence that it is correct and the customer shall be bound by it.

86 Accordingly, I also do not accept Mr Tan's argument (in his paragraph 114) that there is confusion between the 14 day period mentioned in Clause 13(b)(iii) and the 21 day period mentioned in Clause 13(c). Besides, it is not as if Elis had given notice of dispute within 21 days of the statement for March 2000 and UOB was saying she was out of time.

87 UOB also relied on Clause 13 of the new Rules which states:

'Clause 13 Statements and Verifications

(a) Statements of account may be sent by ordinary post at monthly intervals or such other intervals as the Bank may deem fit. If there is no movement in the Account, no statement will be sent. *The Account Holder is under a duty:-*

(i) *to check all entries in the statement of account;*

(ii) *to report promptly to the Bank any omission, error, unauthorized transaction or inaccurate/incorrect entries therein;*

(iii) *to sign and return any confirmation slips, including those for auditing purposes; and*

(iv) *to promptly notify the Bank in writing if he does not receive any statement that is due to him.*

(b) The Bank has the right to adjust the Account to correct any erroneous entry or omission.

(c) If the Bank does not receive from the Account Holder a written objection as to the contents of any statement of account within fourteen (14) days of the statement date:-

(i) the Account Holder shall be deemed conclusively: - (aa) to have accepted, and shall be bound by, the validity, correctness and accuracy of the transaction(s)/entries and the balance set out in the statement; and (bb) to have ratified or confirmed each and every one of the transactions represented by the entries set out therein;

(ii) the statement shall be deemed conclusive evidence of the Account Holder's authorization to the Bank to effect the transaction(s)/entries set out therein; and

(iii) the Account Holder shall have no claim against the Bank howsoever arising from, in connection with or as a result of any transaction/entry referred to therein.'

The main part of Clause 13(a) of the new Rules is emphasised.

88 For present purposes, Clause 13 of the new Rules is similar to Clause 13 of the old Rules but (a) without the incorrect reference to Clause 4(b)(iii) which I have mentioned and (b) the written objection from the customer is to be received by UOB within 14 days instead of 21 days (under the Rules). I will treat Clause 13 of the Rules and of the new Rules together and refer to both simply as 'Clause 13' for convenience.

89 Mr Kumar referred to three cases to support his submission that Clause 13 is clear and wide enough to exclude liability on the part of UOB even if the signatures on the disputed instructions were forgeries and were not appended with Elis' approval, since Elis did not give any notice to dispute the debit entries. The three cases are:

(a) *Consmat Singapore (Pte) Ltd v Bank of America National Trust & Savings Association* [1992] SLR 828 (a decision by Justice L P Thean)

(b) *Ri Jong Son v Development Bank of Singapore Ltd* [1998] 3 SLR 64 (a decision by Justice Kan Ting Chiu)

(c) *Stephan Machinery Singapore Pte Ltd v Oversea Chinese Banking Corporation Ltd* [2000] 2 SLR 191 (a decision by Justice Lai Kew Chai)

90 However, in the case of *Ri Jong Son*, Kan J did not reach a conclusion as to whether the provision there, which he called the presumption clause, was wide enough to exempt the bank from liability as the bank had failed to prove that the statements in question were posted.

91 As for the other two cases, the provisions therein were not identical to Clause 13 (of the Rules or the new Rules) but sufficiently similar to make the decisions there highly persuasive. I am likewise of the view that Clause 13 is clear and wide enough to exclude UOB from liability in the circumstances even if the signatures were forgeries and had not been appended with Elis' approval.

Is Clause 13 reasonable?

92 Mr Tan submitted that Clause 13 is onerous and unreasonable although he did not specifically refer to the question of unreasonableness under the Unfair Contract Terms Act ('UCTA'). I will assume that he had intended to do so. One reason Mr Tan gave was that, according to the evidence of Toh Seng Kang of Datapost, some statements may not be delivered to Singpost for posting until the fifth day of the next month. There was therefore no reasonable opportunity for customers to check each statement. In the light of the evidence of Toh Seng Kang, and the fact that UOB must have customers resident outside Singapore, UOB may want to re-consider whether the period for the customers' notice of dispute to be received by UOB should be revised back to 21 days. However, in the case before me, Elis did not even attempt to send a notice of dispute and there was no evidence before me as to how long it would have taken her to check each statement and to revert with any dispute, bearing in mind she did not have many transactions every month.

93 In *Consmat*, Thean J found the provision concerned to be fair and reasonable. At p 837 at C, he said:

'.... Forgeries of cheques are extremely difficult for a bank to detect. The defendants as a bank would only be able to detect them by verifying the signatures on the cheques against the specimen signatures provided by their customers. They have therefore adopted a practice of returning to their customers monthly the original cheques drawn or purported to have been drawn by their customers which have been cleared and paid and these are sent together with the monthly statements of accounts of the previous month.'

94 In that case, the claim was about forged cheques and the bank concerned did return the original cheques and send monthly statements of account to the customer which was a commercial entity. In the case before me, UOB did not return original cheques which is in any event irrelevant. Even then, I am of the view that Thean J's observation about the difficulty of detecting forgeries applies equally to instructions by fax or letter.

95 I would add that even if most or every other bank would insist on having a similar provision, the restriction or absence of choice for the customer does not make the provision unreasonable. Fraud and forgery are, unfortunately, not rare occurrences. In addition, the wrongful act is often facilitated by the misplaced trust or negligence of the customer himself. I do not consider it unreasonable therefore that a customer should be required to check his statement when it is sent to his designated address and to notify the bank promptly of any unauthorised transaction reflected on his statement. After all, that is one of the very purposes of sending the statement to him in the first place.

96 In my view, Clause 13 is reasonable irrespective of whether UOB was negligent or not. I do not

accept Mr Tan's submission (in his paragraph 136) that such a clause would be upheld only if the bank is found out to be at fault. That applies to clause 27(a) of the new Rules which I shall come to, but not to clause 13. However, this is not to say that if UOB had inadvertently and unilaterally made a wrong debit without any purported instruction whatsoever, it would still be entitled to rely on Clause 13. In such a situation, it may be against public policy or may be unreasonable to allow UOB to rely on Clause 13. However, I need say no more on this.

Negligence, estoppel and clause 27(a) of the new Rules

97 Paragraph 4 of the Reply pleads negligence on the part of UOB. However, I accept Mr Kumar's submission that Elis cannot avoid Clause 13 by founding her claim in tort. In *Management Corporation Strata Title Plan No 1166 v Chubb Singapore Pte Ltd* [1999] 3 SLR 540, Justice Selvam said, at para 44:

'44 It is a given that liability in tort and contract may co-exist. However, it is also well-settled that by founding a cause of action in tort one cannot avoid the exemptions and limitations imposed by contract between the parties. This position was affirmed in a later decision of the House of Lords: *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 (HL). In the result the true proposition is that unless there is a definite advantage in founding a claim in tort, it would be unwise to infuse it into what is essentially a claim in contract.'

98 In *The Jian He* [2000] 1 SLR 8, Chao Hick Tin JA said at para 26:

'26 Equally pertinent is the following observation of Oliver J in *Midland Bank Trust Co Ltd v Hett, Stubbs and Camp* [1979] CH 384, which observation was approved by the House of Lord in *Henderson v Merrett Syndicates Ltd & Ors* [1994] 3 WLR 761:

A concurrent or alternative liability in tort will not be admitted if its effect would be to permit the plaintiff to circumvent or escape a contractual exclusion or limitation of liability for the act or omission that would constitute the tort. Subject to this qualification, where concurrent liability in tort and contract exists the plaintiff has the right to assert the cause of action that appears to be the most advantageous to him in respect of any particular legal consequence.'

99 In the circumstances, it is academic whether UOB was negligent. However, for completeness, I will deal with the allegations of negligence.

100 Under paragraph 10 of the Statement of Claim, it was asserted that there was a failure to verify the signatures. This is not true as Jenny had verified the signature on each of the two disputed

instructions.

101 There were also two other assertions under the said paragraph 10 but they were general assertions and unhelpful:

'(ii) Failing to take adequate or effective measures to ensure that the transfer of funds is authorised by the Plaintiff.

(iii) Causing or permitting the transfer of the said moneys when the signature in the written instruction did not belong to the Plaintiff.' (this is not even an assertion of negligence).

102 In the Reply, there were eighteen sub-paragraphs of particulars of negligence and breach of contract but these sub-paragraphs merely set out the background facts and did not specifically identify the act of negligence (or breach of contract). For example, an assertion in sub-paragraph (xv) that by acting on the disputed instructions, UOB had caused Elis' 'Y' account to go into an unprecedented substantial overdraft of about \$270,000 is a mere allegation of fact, which is also inaccurate as her account was already in overdraft by about \$6,900 before the disputed instructions were implemented.

103 It was only during the trial that Mr Tan suggested to Lily that she should have requested Ngo to ask Elis to call Lily direct when Lily learned from Ngo, in respect of the first disputed instruction, that Elis was coming over to Ngo's place to sign the fax instruction.

104 On the other hand, I have taken into account the fact that instructions were given by Ngo and not by Elis in the past, for example, the undisputed fax instruction in December 1998 originated from an oral instruction from Ngo. Secondly, Jenny did attempt to call Elis for the first disputed instruction but was unsuccessful. She was not asked why she did not attempt to call Elis again in respect of the second disputed instruction but even if she had made the attempt, I am of the view that it is likely that she would not have reached Elis because Elis said the phone numbers on the specimen signature card were not hers.

105 While it is true that the second disputed instruction was implemented without waiting for the original, the original did reach UOB subsequently.

106 Mr Tan also submitted that Lily should have asked Ngo to inform Elis to issue a cheque instead of sending a fax instruction. While that is an alternative, I do not see why acting on a written instruction which is not a cheque is necessarily negligent.

107 I accept that a bank should not be lulled into complacency because of a cosy or familiar relationship with a customer. Also, where a customer is giving instructions about another person's account, a bank should be more careful even though written instructions are received from the other person. However, that is not to say that on the facts before me, UOB was negligent.

108 Ultimately, Elis must take the responsibility for the situation which has arisen. At no time did she give UOB an address independent of Ngo or her children to which bank statements should be sent. Secondly, she did not give UOB her contact numbers in case UOB would wish to contact her. Thirdly, she had in the past allowed Ngo to give oral instructions first which were followed by her (Elis') written instructions. It may be that this was because Elis does not speak English fluently but she could have asked for the name of a bank officer who could speak Hokkien when she first opened her 'i' account. Fourthly, if indeed it was true that she did not receive the bank statements from 2000, she did not follow up on this.

109 In the circumstances, I am also of the view that there was no fault by UOB and UOB would also have been entitled to rely on Clause 27(a) of the new Rules to avoid liability. Clause 27(a) states:

'27 General Exclusion of Liability

Without prejudice to the generality of the other clauses herein, the Bank shall not be liable for any loss damage or expense suffered or incurred by the Account Holder arising from any cause whatsoever through no fault of the Bank, including without limitation the following:-

(a) alteration of instructions and/or forgery of the Account Holder's or any authorised signatory's signature;'

110 As for estoppel, the pleadings did not show how UOB is estopped from relying on clause 13. Mere negligence or breach of contract does not constitute estoppel.

Summary

111 I therefore dismiss Elis' claim with costs to be paid by Elis to UOB, such costs to be agreed or taxed.