IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 143

Originating Summons No 873 of 2017

Between

AL Shams Global Ltd

… Plaintiff

And

BNP Paribas

… Defendant

GROUNDS OF DECISION

[Contract] — [Breach]
[Contract] — [Consideration] — [Promissory estoppel]
[Equity] — [Fiduciary relationships] — [When arising]
[Tort] — [Negligence] — [Duty of care]
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v
BNP Paribas

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Kannan Ramesh J
5 February 2018

19 June 2018

Kannan Ramesh J:

1 By Originating Summons No 873 of 2017 ("the Application"), the plaintiff, AL Shams Global Ltd ("ASGL"), sought six declarations in respect of actions taken by BNP Paribas Wealth Management ("the Bank"), in refusing to accept a payment into ASGL's account with the Bank ("the Account"). The Bank merged with the defendant, BNP Paribas, on 1 October 2016, with all account relationships of the former transferred to the latter by operation of law. For present purposes, I shall refer to both the Bank and the defendant as "the Bank" given that no distinction needs to be made between the two entities. Having heard the parties on 5 February 2018, I dismissed the Application and provided brief oral grounds. As ASGL has appealed, I now give my full reasons.

The facts

The parties

2 ASGL is a company incorporated in the British Virgin Islands ("the BVI") on 23 November 2005. Jayesh Hasmukh Shah ("Shah") is a director of ASGL. Shah is a permanent resident of Zimbabwe.

3 The managing director of the Bank's wealth management division is Shamju Parakatil ("Parakatil"). He was the principal point of contact in the Bank for Shah and ASGL. Ernest Leung ("Leung") is also in the wealth management division and his title is "Head of Core Clients APAC". Shah and ASGL also dealt with Leung.

4 Several other entities are relevant though they are not parties to the Application. The first is AL Shams Building Materials Trading LLC ("AL Shams Building"), which was incorporated in Dubai on 26 March 1996. Shah's evidence was that 51% of the shares in AL Shams Building were held by a Dubai local, while the remaining 49% of the shares were held by another company, Saturn Trading and Investments Ltd ("Saturn"). Saturn was incorporated in the BVI in the late 1990s with Shah holding 100% of its shares. Shah deposed that Saturn held its 49% shareholding in AL Shams Building for the benefit of his family, including his brother, one Kalpesh Hasmukh Shah.

5 Separately, in 2003, AL Shams Building purchased shares in a Zimbabwean company named Ariston Holdings Limited ("Ariston"). Shah deposed that Ariston was listed and its shares quoted on the Zimbabwe Stock Exchange.

6 I noted Shah's evidence that he was at all times the legal and beneficial owner of ASGL, AL Shams Building and Saturn. I harboured some doubt as to the accuracy of this claim in respect of AL Shams Building. In particular, Shah deposed that (1) Saturn supposedly held the 49% stake in AL Shams Building for the benefit of the family, which suggested that the beneficial interest in those shares was not entirely his (see above at [4]); and (2) in any event, being only a 49% stake in AL Shams Building, it was not immediately clear how it could be said that Shah was the "owner", legal or beneficial, of AL Shams Building even assuming the shares in Saturn were Shah's. Nonetheless, as this point was not material to the Application, I say no more on it.

Background to the dispute

Opening of the Account

7 On 22 June 2010, Parakatil approached Shah and asked if ASGL would be interested in opening an account with the Bank. Sometime in August 2010, the Account was formally opened. Parakatil was the relationship manager for ASGL, and the Bank communicated with and took instructions from Shah, who was the authorised signatory for the Account.

8 Shah also deposed that prior to the opening of the Account, the Bank had carried out its "Know Your Clients" compliance checks ("KYC Checks") on, *inter alia*, Shah and ASGL. These KYC Checks continued even after the opening of the Account. Among other things, the KYC Checks included the Bank procuring details of AL Shams Building and its links with ASGL, as well as posing queries on Shah's accounts, including specific transactions. Further, Shah said that there were regular visits to Zimbabwe by Parakatil. Shah's evidence was that throughout the KYC Checks, the Bank never indicated that

Shah or ASGL was non-compliant or uncooperative. This was not disputed by the Bank.

9 At the time that the Account was opened, the applicable terms were the 2010 edition of the Terms and Conditions ("the 2010 Terms and Conditions"). It was not disputed that the 2010 Terms and Conditions were sent by the Bank to Shah on 18 August 2010, which was at or before the time the Account was opened. Further, as part of the account opening documents for the Account, Shah, in a document titled "Mandate for Limited Company Account(s)", certified that ASGL had, at a meeting duly convened and held on 16 July 2010, resolved:

> 5. That
>
> (A) the Bank's Terms and Conditions for Accounts … having been read, understood and considered at the meeting, be and are hereby (subject to any amendment or variation to or substitution thereof, notified to the Company) noted, approved and adopted for each account opened or to be opened by the Company with the Bank from time to time;
>
> …

10 Three clauses in the 2010 Terms and Conditions were of significance. They are:

> **3.5 Deposits**
>
> …
>
> (D) Deposits in cash will be subject to such limits as the Bank may, from time to time, decide. *The Bank shall be entitled at its sole discretion to refuse to accept any deposit* (whether by cash deposit, telegraphic transfer or any other payment method whatsoever) in any account at the Bank *for any reason whatsoever*. In particular but without limitation it *may refuse* to accept any such deposit *if any information or documentation for which it may request, relating to the origin of any such cash, is not provided or, in the opinion of the Bank is insufficient or unsatisfactory*.

…

3.10 Closing of Account(s)

The Bank may, at any time, without giving any reason, close any account of the Customer by one month's written notice sent by post to the Customer's last known address notified to the Bank in writing. The Customer shall be deemed to have received such notice in accordance with these Conditions and the relevant account shall be closed with effect from the close of business on the date stipulated in such notice (the "Closure Date"). *With effect from the Closure Date, the Bank shall be released from any further obligations to the Customer in respect of such account*, and may refuse payment of any instrument drawn by the Customer and presented after the Closure Date without liability to the Bank. The Customer may collect the balance standing to the credit of such account, if any, from the Bank during the Bank's normal business hours; alternatively, at the Bank's option, the balance may be sent by way of a cashier order by post to the last known address of the Customer. All unused cheques and/or other instruments (as appropriate) in respect of any account(s) in the name of the Customer which are closed, whether by the Bank pursuant to this Clause or otherwise, shall upon such closure, become the property of the Bank and shall be returned by the Customer on demand.

…

8.21 Change of Terms and Conditions and Information

(A) The Bank may vary these Conditions at any time upon notice to the Customer and, if the Customer fails to notify the Bank before the stated or prescribed effective date of the variation that such variation is unacceptable, the Customer shall be deemed to have accepted the same.

[emphasis added]

11 Parakatil deposed that the Account was governed by the Bank's terms "as applicable from time to time". Although he did not provide any basis for this statement, it appeared that the basis was cl 8.21(A) which entitled the Bank to vary the applicable terms upon notice to its customer. Parakatil also deposed that a new set of terms applied between June 2014 to September 2016 and a further set of terms applied at the time he deposed his affidavit, *ie*, 8 November 2017. However, for present purposes, it sufficed to take the 2010 Terms and

Conditions as the applicable terms given that there were no material changes to cll 3.5(D), 3.10 and 8.21(A) in any of the subsequent sets of terms.

The Afrifresh Sale

12 I pause at this juncture to introduce a transaction that I shall refer to as "the Afrifresh Sale". The Afrifresh Sale sets much of the context for the Application. As the Bank was not involved in the Afrifresh Sale other than as the recipient of certain payments pursuant to the transaction, the evidence in this regard was provided entirely by Shah.

13 Shah's evidence on the Afrifresh Sale was as follows:

(a) On 12 April 2012, AL Shams Building agreed to sell all of its shares in Ariston to Afrifresh Group (Pty) Ltd ("Afrifresh") for a sum of US$2.5 million, plus interest for any delayed payments under a Sale of Shares Agreement ("the SSA"). Afrifresh is a company incorporated in the Republic of South Africa.

(b) Under the SSA, it was agreed that the sum of US$2.5 million would be paid in instalments over a period of five years, commencing in 2012 and ending in 2016. Specifically, each instalment would be paid on 17 April of each year. Notably, although the vendor of the Ariston shares under the SSA was AL Shams Building, the SSA provided that Afrifresh should procure that all payments be made to the Account. As stated earlier (at [1]), the Account was in the name of ASGL, not AL Shams Building.

(c) On 16 April 2012, Shah notified Parakatil that the Ariston shares had been sold and the first instalment would be credited into the

Account. On the next day, 17 April 2012, the first instalment under the SSA was credited into the Account. This first instalment was paid by an entity named Origin Global Holdings ("Origin Global") on behalf of Afrifresh.

(d) On 12 June 2013, the second instalment under the SSA was credited into the Account. This too was paid by Origin Global on behalf of Afrifresh.

(e) The third instalment under the SSA was paid in three smaller payments over 2014. The first of the three payments was paid by Origin Global while the later two payments were paid by an entity named Origin Fruits Direct B.V. Rotterdam ("Origin Fruits").

(f) The fourth instalment under the SSA was paid in six smaller payments over the course of 2015. All of these payments were by Origin Fruits.

14 The fifth instalment involving a sum of US$71,947 ("the Payment") lay at the heart of the Application. Origin Fruits attempted to make the Payment in the midst of the closure of the Account by the Bank.

Closing of the Account

15 By a letter dated 22 March 2016, the Bank gave ASGL notice of its decision to close the Account. The letter stated as follows:

> Unfortunately, we regret to advise you of our decision to close your Account(s) due to a realignment of our business strategy. [The Bank] will now focus its marketing and development activities on some selected number of countries, mainly In [*sic*] Asia, and will cease to service relationships in countries where we may not have a local presence.

> …
>
> In accordance with the Terms and Conditions governing the Account(s), we are writing to inform you that we intend to close the Account(s).
>
> …
>
> Please be informed that from the date of this letter, other than transactions relating to the Unwinding and/or Cancellation mentioned above, no further transactions in the Account(s) will be permitted. For the avoidance of doubt, any inward remittance to the Account(s) not related to the Unwinding and/or Cancellation will be returned to the sender.

16 By an email dated 30 March 2016 to Parakatil, Shah confirmed receipt of the Bank's letter. Shah suggested that Parakatil and he discuss the closure of the Account at a meeting on 4 April 2016.

17 On 4 April 2016, Shah and Parakatil met. At the meeting, Shah indicated that he would prefer if gradual steps were taken in closing the Account as he was expecting further payments into the Account from various sources in 2016. Parakatil's evidence was that he did not tell Shah that the Bank would accept all incoming payments until the end of 2016. Instead, he only told Shah that the Bank would consider if it could accept each incoming payment on a case by case basis, subject at all times to the approval of senior management and the Bank's compliance team.

18 Shah also met Leung on 4 April 2016. The events of this meeting are disputed. According to Shah, he asked Leung where ASGL was expected to deposit its receivables if the Bank refused to accept payments into the Account as the Account was ASGL's only bank account outside of Zimbabwe. Leung then assured Shah that the Bank would act reasonably and not abandon ASGL. Shah assured Leung that he would also act reasonably and comply with the Bank' wishes to close two other accounts. Supposedly, in consideration of Shah

acting reasonably and agreeing to close the said other two accounts, Leung agreed to grant ASGL a minimum nine-month period, until December 2016, to close the Account.

19 Leung disputed this account of the meeting. According to Leung, the discussions with Shah were general in nature, and it was agreed that the Bank would work with Shah to close the Account amicably. While Shah had requested that ASGL be given adequate time to close the Account, Leung merely mentioned that the Bank would act reasonably and handle the Account in a manner that would facilitate an amicable closure. Leung's evidence was that nothing specific was promised. The matter of incoming payments to the Account was not discussed in detail. Shah merely informed Leung of possible incoming funds and stated that he would be transparent and co-operative with regard to providing such documents as the Bank might require. Again, Leung emphasised that he did not reach any specific agreement with Shah that the Bank would continue to accept any or all future incoming payments, but merely said that the Bank would act reasonably. Finally, Leung did not stipulate a fixed deadline for closure of the Account. While Leung indicated that the Bank would aim for closure by the end of 2016, he did not agree that the Bank would grant a minimum nine-month period to close the Account.

20 On 13 April 2016, Shah and Parakatil met again. Shah reiterated that he was still expecting incoming payments from various sources. In response, Parakatil asked Shah to provide the Bank with a list of such payments. Parakatil's evidence was that he did not provide any indication or assurance to Shah that any incoming payments would be accepted. Shortly after the meeting, Shah sent Parakatil a list of expected incoming payments.

21 On 14 April 2016, Shah sent an email to Parakatil enclosing a copy of the remittance instruction for the Payment. In response, Parakatil requested Shah to provide various documents, including the shareholding of Origin Fruits and Afrifresh. Parakatil also sought clarification on whether Standard Chartered Bank was a shareholder of either Origin Fruits or Afrifresh.

22 On 18 April 2016, Shah replied by forwarding to Parakatil an email from Afrifresh which set out the shareholding of Afrifresh, Origin Global and Origin Fruits. Essentially, it stated that Standard Chartered Bank was a 45.1% shareholder of Afrifresh which in turn held 100% of the shares in Origin Global. Origin Global indirectly held 73% of the shares in another entity named OFD Holdings BV which in turn held 73% of the shares in Origin Fruits.

23 Parakatil replied on the same day stating that the Bank would "require documentary evidence of the shareholding". In a subsequent email dated 20 April 2016, Parakatil followed up on that request and explained that the Bank was "awaiting these shareholding documents, in order to understand who owns the company that is sending funds to [the Bank] and its link with [ASGL]". By a further email on 21 April 2016, Parakatil explained to Shah that the Bank would "have to return the funds" if the documents were not received by 25 April 2016. As this particular email is of significance below (at [68] and [70]), I set out the relevant portion as follows:

> In view of your active cooperation and your current exceptional circumstances, my Management has allowed for an exception to our strict rule of 5 business days, and gave approval to keep the funds until Monday 6pm (singapore time).
>
> *We will still need to review the documents by then.*
>
> Unfortunately, *we will have to return the funds* at end of business day on Monday [*ie*, 25 April 2016] *if appropriate documents are not received by then.*
>
> [emphasis added]

It was evident from the text of this email that: (1) any documents received would be subject to review and satisfaction by the Bank, and (2) the Bank would return the Payment if it did not receive by the stipulated deadline documents that it considered satisfactory. It is pertinent that the Bank did not state that it would not reject the Payment and not proceed with the closure of the Account if it received satisfactory documents.

24 Shah subsequently arranged for one Paul Searson (whose email signature indicated that he was the Group Legal Counsel of Afrifresh) to email Parakatil the remaining documents that were requested. Paul Searson emailed Parakatil the documents on 21 April 2016. The email reiterated that Afrifresh owned 100% of the shares in Origin Global. It also stated that Origin Fruits was Afrifresh's marketing agent and was paying ASGL on Origin Global's behalf as Origin Fruits was a debtor of Afrifresh. An organogram of Origin Global was also attached to the email.

25 By an email dated 21 April 2016, Parakatil informed Shah that he had submitted the documents for review, but added that the Bank needed documents which showed who owned AL Shams Building. Shah replied by an email on 23 April 2016 attaching various documents which he considered adequate to show the link between AL Shams Building and himself. Those documents included, *inter alia*, the following:

(a) AL Shams Building's commercial licence dated 26 March 1996;

(b) AL Shams Building's Memorandum of Association dated 29 May 2001 confirming that Saturn held 49% of the shares in the company;

(c) Saturn's Certificate of Incorporation;

(d) Saturn's Certificate of Good Standing dated 5 September 2005;

(e) A share certificate dated 5 April 2001 issued by Saturn stating that Shah was a registered shareholder of 49% of its shares;

(f) An application form dated 11 May 2002 for Saturn to open an account with HSBC Geneva; and

(g) A form dated 11 May 2002 declaring that the beneficial owner of Saturn was Shah.

26 It appeared that these documents were not sufficient to satisfy the Bank. By an email dated 26 April 2016, Parakatil informed Shah that "due to internal policy reasons, the Bank is unable to process the incoming funds transfer to the Account, despite the additional documentation provided". Parakatil went on to state that the Bank required recent documents confirming the shareholding in AL Shams Building and Saturn. Parakatil also confirmed that all documents on Origin Fruits had been received and were in good order.

27 Shah replied on the same day and explained that as both Saturn and AL Shams Building were closed sometime in 2005 or 2006, it was not possible to provide documents as recent as those requested by the Bank. Shah also indicated surprise at the Bank's request given that he had previously provided a copy of the SSA to the Bank and the Bank had accepted funds from Origin Global.

28 I pause to note that it was strange for Shah to say that AL Shams Building and Saturn were closed in 2005 or 2006 when the SSA was entered into by AL Shams Building on 12 April 2012. Shah himself had described the

Afrifresh Sale as involving AL Shams Building in 2012. Further, it was puzzling why Shah, in response to Parakatil's request for information on who held shares in AL Shams Building, gave information on Saturn's shareholding when Saturn, according to him, was closed; one would have expected Shah to provide updated information on who owned AL Shams Building.

29 The Payment was eventually returned by the Bank on 26 April 2016. According to the Bank, this was "due to internal policy". On the same day, Parakatil responded to Shah's email of 26 April 2016 (see above at [27]), stating that his email was "duly noted" and that the Bank was "preparing a complete reply" to his email.

30 On 28 April 2016, Shah emailed Leung stating that he had offered Parakatil a "simple solution" of amending the SSA from AL Shams Building to ASGL. He explained that such an amendment was permitted by the SSA. The Bank did not reply to this email.

31 By a letter dated 25 May 2016, the Bank informed ASGL that "on an exceptional one-off basis", the Bank had decided to accept four specific payments that were not relevant for present purposes. The Bank also stated that it was unable to accept any further incoming transfers of funds from Origin Fruits, unless such transfers related to the unwinding and/or cancellation of the Account.

32 Nearly a year later, by a letter dated 2 April 2017, Shah once more raised with Parakatil various matters in relation to the closure of the Account. These were, *inter alia*, requests that the Bank (1) state the legal basis for the Bank's various requests for documents and information in relation to the Payment; (2) provide details of the "internal policy" relied on by the Bank as a basis for

refusing to accept the Payment; and (3) clarify whether Suspicious Transactions Reports had been filed in respect of the Payment. The letter also stated that Shah was awaiting the Bank's formal response, referring to Parakatil's email on 26 April 2016 where he had said that the Bank was preparing a "complete reply" (see above at [29]).

33 The Bank replied by a letter dated 18 May 2017 reiterating that its decision to close the Account was in accordance with the Bank's terms and that it was as a result of re-alignment of its business strategy. The Bank gave notice that with effect from 30 June 2017, the Account would be closed. As for Shah's various requests, the Bank stated that the information that it had sought was for "legitimate operational reasons" and "not for personal reasons of any employee or agent". The Bank also stated that it did not make information on its internal policy, suspicious transaction reporting and/or KYC processes available to any of its clients.

The parties' cases

34 ASGL sought declarations that:

> 1. … [the Bank] is in breach of contract and/or in breach of a duty of care and/or a fiduciary duty owed to [ASGL] by [the Bank] by refusing to accept and/or returning [the Payment] on or about 26.4.2016 and/or refusing to accept subsequent payments; and/or
>
> 2. … [the Bank] is in breach of contract and/or in breach of a duty of care and/or a fiduciary duty owed to [ASGL] by [the Bank] by not giving [ASGL] any reason and/or any satisfactory reason and/or any genuine reason for the refusal to accept [the Payment] on or about 26.4.2016 and/or subsequent payments save for merely stating "bank internal policy"; and/or
>
> 3. … [the Bank] is in breach of contract and or its undertaking for not giving a complete reply contrary to [the Bank's] email of 26.4.2016 @ 11.30 am wherein [the Bank] represented and/or promised and/or undertook that they will give a complete reply to [ASGL's] queries on the facts and/or

> circumstances surrounding [the Bank's] action to return [the Payment] on or about 26.4.2016; and/or
>
> 4. … [the Bank] is and/or was estopped from returning [the Payment] on or about 26.4.2016 notwithstanding [ASGL] providing all reasonable documents requested for by [the Bank] within the time limit [i.e. end of business day on Monday 25.4.2016] set by [the Bank] in their email of 21.4.2016 @ 8.53 am;
>
> 5. … [the Bank] is and/or was at all material times not bound by [the Bank's] alleged "internal policies" as [the Bank] had not disclosed the said "internal policies" at all material times to [ASGL] and/or [ASGL] had not consented to be bound by [the Bank's] alleged "internal policies" for, inter alia, refusing to accept and/or returning [the Payment] on or about 26.4.2016 and/or refusing to accept subsequent payments; and/or
>
> 6. … [the Bank] ought to have referred the matter to and/or sought the consent of the Relevant Authorities in Singapore before refusing to accept and/or returning [the Payment] on or about 26.4.2016 and/or refusing to accept subsequent payments;
>
> …

I shall refer to these declarations as "Declaration 1" to "Declaration 6" respectively.

35 In support of these declarations, ASGL made the following submissions:

(a) In respect of Declaration 1:

(i) ASGL had a reasonable expectation that the Bank would accept the Payment if ASGL provided the appropriate documents within the timeframe given by the Bank, which ASGL did.

(ii) It was "trite" that a banker owed a duty of care to its customer and the Bank had no "reasonable grounds or legal justification" to refuse to accept the Payment.

(iii) It was "established practice" that good faith was an essential ingredient of any contract and the contradictory conduct by the Bank indicated its lack of good faith.

(b) The Bank did not give any satisfactory reason for its refusal to accept the Payment as the Bank had never alleged that (1) ASGL was involved in money laundering or other illegal activities, (2) the Payment was a suspicious transaction or (3) the documents provided by ASGL were insufficient or unsatisfactory.

(c) The Bank undertook to give a complete reply in Parakatil's email on 26 April 2016, to give a complete reply and it was "undisputed" that the Bank failed to do so.

(d) The Bank represented to ASGL that it would return the Payment on 25 April 2016 if appropriate documents were not received by then. In reliance on the Bank's representation, Shah, as ASGL's representative, sent all requested documents and information to the Bank on 23 April 2016.

(e) ASGL could not be bound by the Bank's internal policy given that such policy had not been disclosed and/or consented to by ASGL.

(f) The Bank was statutorily required under s 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("the CDSA") and s 8 of the Terrorism (Suppression of Financing) Act (Cap 325, 2003 Rev Ed) ("the TSFA") to disclose to the relevant authorities should it become suspicious of impropriety in any transaction. Given that the Bank had failed to make

such disclosure as regards the Payment, there was no reason for the Bank to have refused to accept it.

36 In response, the Bank submitted that:

(a) There was no meaningful or practical purpose which would be served by granting the declarations sought by ASGL.

(b) In respect of Declaration 1:

(i) Clause 3.5(D) of the 2010 Terms and Conditions provided that the Bank was entitled at its sole discretion to refuse to accept the Payment. There was no evidence to show that the Bank had exercised this discretion improperly.

(ii) There was no evidence on how a separate duty of care in tort owed by the Bank arose to accept the Payment or any other subsequent payments.

(iii) There was no evidence on why the banker-customer relationship gave rise to a fiduciary duty to accept the Payment or any other subsequent payments.

(c) The Bank did not owe any contractual obligation to ASGL to give reasons for its decision not to accept the Payment.

(d) The Bank did not make any representation or enforceable promise, or give any undertaking that it would provide any reply by virtue of Parakatil's email on 26 April 2016.

(e) The Bank did not make a clear or unequivocal representation that it would accept the Payment when it requested ASGL to provide supporting documentation.

(f) The Bank did not assert that ASGL was bound by its internal policies; this was merely the reason that the Bank had provided to ASGL for its refusal to accept the Payment.

(g) Any duty to refer suspicious transactions to the relevant authorities was not owed to ASGL.

Issues to be determined

37 Having considered the declarations sought and the submissions made by the parties, I took the view that the following issues arose for determination:

(a) Whether the Bank was under any obligation to accept the Payment;

(b) Whether the Bank was under any obligation to provide reasons for its refusal to accept the Payment;

(c) Whether the Bank was under any obligation to give a "complete reply", and if so, whether it had failed to do so;

(d) Whether the Bank was estopped from returning the Payment, *ie*, whether the Bank had to keep the Payment by virtue of its representation that it would have to return the Payment if appropriate documentation was not received;

(e) Whether ASGL was wrongly "bound" by the Bank's internal policies;

(f) Whether ASGL had the *locus standi* to question the Bank's compliance with its statutory duties, *ie*, whether the Bank ought to have reported the Payment as a suspicious transaction.

38 In my judgment, the answer to all of these issues was "no". Accordingly, I dismissed the Application. I now address each of these issues in turn.

Whether the Bank had any obligation to accept the Payment

39 Given the manner in which ASGL framed Declaration 1, three sub-issues arose out of this issue: whether the Bank owed an obligation in contract to accept the Payment, whether the Bank owed a duty of care to ASGL in respect of accepting the Payment and whether the Bank owed a fiduciary duty to ASGL to accept the Payment. I answered all the sub-issues in the negative and found that the Bank owed no obligation to accept the Payment.

Contractual obligation

40 For present purposes, the relationship between ASGL and the Bank was governed by the 2010 Terms and Conditions. As I have mentioned above (at [10]), the significant clauses for present purposes were cll 3.5(D) and 3.10. These clauses were in the 2010 Terms and Conditions, which was the relevant set of terms at the time ASGL opened its Account with the Bank, and remained materially unchanged at the time the Payment was remitted and declined by the Bank.

41 Clause 3.10 did not relate specifically to the Bank's obligation (or lack thereof) to accept payments into the Account. Clause 3.10 allowed the Bank to close the Account by one month's written notice to ASGL. This was what the Bank did by its letter dated 22 March 2016 notifying ASGL of the Bank's

decision to close the Account (see above at [15]). Clause 3.10 also went on to provide that with effect from the date stipulated on such notice (defined as the "Closure Date"), the Bank would be released from any further obligations to ASGL in respect of the Account. This is a broad term that must mean that the Bank did not have any obligation to its customer, including the receipt of any payment after the Closure Date. On the facts, cl 3.10 did not assist the Bank. The issue of the Payment arose on 14 April 2016, nearly three weeks after notice of closure of the Account had been given on 22 March 2016. In line with the requirement in cl 3.10 that the Closure Date be at least one month after notice of closure had been given, the Closure Date would have been, at earliest, 21 April 2016. The issue of the Payment arose before the Closure Date. Consequently, cl 3.10 could not have operated to release the Bank from any obligation that it might have had to accept the Payment.

42 Clause 3.5(D) applied specifically in relation to how the Bank ought to handle any payments into the Account. Put simply, it provided that the Bank had the "sole discretion" to refuse to accept any incoming payment for any reason. Without limiting the generality of the Bank's discretion, cl 3.5(D) listed certain grounds upon which the Bank might refuse to accept any incoming payment, including, *inter alia*, that any documentation requested relating to the origin of such payment was insufficient or unsatisfactory in the opinion of the Bank. The grounds listed were clearly not exhaustive. On any reading therefore, I found it difficult not to conclude that cl 3.5(D) conferred upon the Bank the sole discretion to refuse to accept any incoming payment, including of course the Payment. This was only subject to the Bank exercising such discretion in good faith and not in an arbitrary, capricious or perverse manner. This I shall now address.

43 Notably, ASGL did not appear to dispute that cl 3.5(D) applied. At outset of the hearing, I brought cl 3.5(D) to the attention of counsel for ASGL. The response was not that cl 3.5(D) (and cl 3.10) did not apply; rather, it was submitted that cll 3.5(D) and 3.10 involved an exercise of discretion, and the exercise of such discretion by the Bank in rejecting the Payment was arbitrary and not in good faith. No real evidential basis was offered to sustain both assertions. I did not accept the submission.

44 The Bank accepted that in clauses which conferred on a contracting party the "sole discretion" to make certain decisions, such as cl 3.5(D), the party was nonetheless constrained to exercise the discretion properly. In particular, it was accepted that the discretion must not be exercised in an arbitrary, capricious or perverse manner: *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 ("*MGA International*") at [102]–[106]; *Edwards Jason Glenn v Australia and New Zealand Banking Group Ltd* [2012] SGHC 61 ("*Edwards Jason Glenn*") at [100]–[101].

45 The Bank was right to agree that cl 3.5(D) did not confer on it an unfettered discretion. This is borne out by the decisions cited, namely *MGA International* and *Edwards Jason Glenn*. In *MGA International*, Belinda Ang Saw Ean J, after surveying the authorities, stated that (at [106]):

> The courts will not intervene so long as the contractual "discretion is exercised honestly and in good faith for the purposes for which it was conferred, and provided also that it was a true exercise of discretion in the sense that it was not capricious or arbitrary or so outrageous in its defiance of reason that it can be properly categorised as perverse" (see *Ludgate Insurance Co Ltd v Citibank* [1998] Lloyd's Rep IP 221 at [35] …)

46 In *Edwards Jason Glenn*, Tay Yong Kwang J (as he then was) endorsed the above extract from *MGA International* and concluded that the bank in

question therefore did not have "untrammelled discretion" (at [101]). He went on to hold that the exercise of discretion by that bank was, however, "not arbitrary or capricious or perverse" (at [101]).

47 Applying these principles to the present facts, it is clear that the Bank did not have an untrammelled discretion to refuse to accept payments into the Account under cl 3.5(D) (indeed the Bank did not argue otherwise). Nonetheless, this limitation did not assist ASGL. As noted earlier (see above at [43]), there was nothing in the evidence to support in the slightest a finding that the Bank had exercised its discretion in an arbitrary, capricious or perverse manner, or in bad faith. ASGL submitted that the Bank's exercise of discretion was arbitrary because the Bank had "conceded that the documents [were] in order" in relation to Origin Fruits in Parakatil's email on 26 April 2016 (see above at [26]). However, this submission was misconceived. In the first place, Origin Fruits was just one of the entities that the Bank had sought further documentation on; that the documentation in respect of Origin Fruits alone was in good order said nothing about the Bank's perception as to the adequacy of documentation received in respect of the *other* entities involved in the Afrifresh Sale, *eg*, AL Shams Building (see above at [25] and [26] above). Further, and perhaps more importantly, ASGL was relying on the last sentence in cl 3.5(D) which only provided an *example* of a ground for the Bank refusing to accept an incoming payment; it was clear that this was not an exhaustive list and was not intended to be a limitation on the discretion of the Bank. To that extent, the fact that documentation in respect of Origin Fruits was expressed to be satisfactory did not preclude the Bank from having other reasons for refusing to accept the Payment. It should be noted that under cl 3.5(D), the Bank could exercise its discretion for "*any reason whatsoever*". Indeed, it seemed clear that the Bank wanted to satisfy itself as to the relationship between ASGL, the holder of the

Account, and AL Shams Building, the vendor under the SSA. The Bank's concerns were perhaps increased by the observations I have made above (see [28]). There was simply no evidence to show that the Bank had acted arbitrarily or capriciously in refusing to accept the Payment. It was ASGL's burden to prove this and it failed to do so.

48 In gist, cl 3.5(D) gave the Bank the sole discretion to refuse to accept the Payment. The Bank decided not to accept the Payment and there was nothing to impugn its exercise of discretion. Consequently, I was of the view that the Bank was well within its contractual rights not to accept the Payment.

49 For completeness, I note also that ASGL raised the argument that good faith is an essential ingredient in any contract and that the Bank's arbitrary and inconsistent conduct indicated a lack of good faith. I did not accept this submission. As I did not accept that the Bank had acted arbitrarily or capriciously, there was no factual basis for ASGL's submission that the Bank had failed to act in good faith. More fundamentally however, the suggestion that good faith is an "essential ingredient" in any contract is far from being a correct statement of the law. To the contrary, the Court of Appeal in *Ng Giap Hon v Westcomb Securities Pte Ltd and others* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*") firmly rejected the notion of a term relating to the general doctrine of good faith being implied in law (see *Ng Giap Hon* at [44]). More recently, the Court of Appeal in *The One Suites Pte Ltd v Pacific Motor Credit (Pte) Ltd* [2015] 3 SLR 695 reiterated that "the law in this particular sphere (*viz*, good faith) continues to be in a state of flux" (at [44]). In the absence of such a general doctrine of good faith, parties to a contract retain the freedom to perform their obligations in their own self-interest and in a manner which maximises their benefit, subject only to the limits imposed by the general law and the terms of their bargain (*AREIF (Singapore I) Pte Ltd v NTUC Fairprice Co-operative Ltd and another*

matter [2015] 2 SLR 630 at [64]). This is of course not to say that there cannot be contracts which encompass a duty of good faith. It is, for instance, well-established that contracts of insurance are contracts of utmost good faith (see, *eg*, *Tay Eng Chuan v Ace Insurance Ltd* [2008] 4 SLR(R) 95 at [30] and [32]). However, a contract between a bank and a customer is not a recognised class of contracts in which the doctrine of good faith applies. This is underscored by my observation below (at [54]) that a contract between a bank and a customer generally creates no fiduciary relationship.

Duty of care

50 ASGL also advanced the alternative submission based on a duty of care that a bank owes to its customer. ASGL submitted that the Bank had no "reasonable grounds or legal justification to refuse to accept" the Payment. I did not accept this submission.

51 Properly analysed, this was not a submission premised on negligent conduct on the part of the Bank in refusing to accept the Payment. ASGL's point was that the Bank did not have reasonable grounds or legal justification for refusing to accept the Payment. This was in substance an allegation that the Bank acted arbitrarily or capriciously in exercising its discretion not to accept the Payment and *not* that it did so negligently. This was a complaint that the intentional and deliberate conduct of the Bank in rejecting the Payment was without reasonable basis or justification. It therefore did not raise the issue of negligence. Accordingly, putting aside the question of whether a duty of care arose in the circumstances, it seemed quite evident that the fundamental element of the tort of negligence (*ie*, negligence) was conspicuously missing. I should add that the Bank's action in refusing to accept the Payment was a deliberate choice on the part of the Bank, drawn out in extensive correspondence with

ASGL. It was difficult to see how this could be said to be negligent in any way.

52 In these circumstances, as stated above, the real question (and what I understood to be ASGL's real complaint) was whether the Bank, in making this choice to reject the Payment, exercised its discretion arbitrarily or capriciously. This I have already addressed above (at [47]), albeit in the context of why the Bank could not be said to have exercised its contractual discretion arbitrarily or capriciously.

Fiduciary duty

53 ASGL also submitted that the Bank had breached a fiduciary duty owed to ASGL by refusing to accept the Payment. This submission was a non-starter as I was not satisfied that there was even a fiduciary relationship that existed between the Bank and ASGL in the first place with regard to accepting payments. The parties' duties and responsibilities on receipt of payment into the Account was contractual within the parameters of cl 3.5(D).

54 It is well-established that a bank does not ordinarily owe fiduciary duties to its customer given that the relationship between a bank and its customer is contractual and lacks the fundamental element of the bank undertaking, expressly or impliedly, to act as a fiduciary *vis-à-vis* the customer, *ie*, to put the customer's interests ahead of its own (see *First Asia Capital Investments Ltd v Société Générale Bank & Trust and another* [2017] SGHC 78 at [77]; *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 ("*Deutsche Bank*") at [110]). Further, Philip Pillai J in *Deutsche Bank* observed that banks generally are not regarded as owing fiduciary duties to its customers, stating at [106]–[107] as follows:

> 106 However, I note that beyond contract and the established categories, the court will find a fiduciary relationship to have arisen only where the circumstances are regarded to be sufficiently exceptional.
>
> 107 In *Governor and Company of the Bank of Scotland v A Ltd* [2001] 1 WLR 751, Lord Woolf CJ outlined the rationale behind why courts do not ordinarily consider banks as fiduciaries (at [25]):
>
> > These submissions call for some explanation since on the face of it *the relationship between a bank and its customer is not a fiduciary relationship. It is a commercial relationship founded in contract into which the intrusion of equitable doctrines* such as constructive notice *may result in* the well known words of Lindley LJ in *Manchester Trust v Furness* [1895] 2 QB 539, 545, in 'doing infinite mischief and paralysing the trade of the country'. *The need for certainty in commercial transactions underpinned many of the submissions … made* on behalf of the defendants. [emphasis added]
>
> [emphasis in original]

It should be noted that Pillai J's view on this issue was not appealed against, and the Court of Appeal accordingly did not comment on this. This view also dovetails with my observation above (at [49]) that a contract between a bank and its customer is not a recognised class of contracts to which the doctrine of good faith applies.

55 Given this, ASGL's submission was without substance. Accordingly, for the above reasons, I disallowed Declaration 1.

Whether the Bank had any obligation to give reasons

56 The issue of whether the Bank had any obligation to give reasons for refusing to accept the Payment relates to Declaration 2. Similar to Declaration 1, ASGL raised obligations founded in contract, tort and fiduciary duties.

57 Insofar as the claim is founded upon the existence of a fiduciary relationship between the Bank and ASGL, I dismissed it for the same reasons as above (at [54]). There was nothing raised by ASGL which would justify the finding of a fiduciary relationship between the Bank and ASGL or, more specifically, a fiduciary duty to give reasons for refusing to accept incoming payments.

58 As for the claim that there was a tortious duty of care owed by the Bank to ASGL, the above analysis (at [51]) is similarly applicable. It was difficult to see how the failure of the Bank to provide reasons could be construed as negligence when it was quite clearly a deliberate decision on the part of the Bank as to how much information was provided to ASGL. Accordingly, putting aside the question of whether a duty of care arose in the first place, it was evident that conduct which could be described as negligent was not there. I should further add that the question of whether the refusal to provide reasons could be regarded as arbitrary or capricious did not even arise in this context. There was no contractual provision that stipulated that the Bank had the discretion to provide reasons for refusing to accept a payment. Accordingly, the question of whether there was an arbitrary or capricious exercise of discretion in this regard did not arise.

59 The absence of any contractual obligation to provide reasons for refusing to accept a payment also meant that ASGL's claim that the Bank was in breach of contract in not providing reasons for refusing to accept the Payment when it exercised its discretion under cl 3.5(D) failed. It was clear from the face of cl 3.5(D) that it did not create any such obligation. ASGL was unable to point to any provision that imposed such an obligation. There was therefore no legal basis for Declaration 2 insofar as it concerned a claim for breach of contract.

60 For completeness, there was also no factual basis for ASGL to say that the Bank had failed to provide any reason for its refusal to accept the Payment. As stated above (at [35(b)]), ASGL made three points to support its submission – (1) the Bank had never alleged that ASGL and/or the other companies related to the Afrifresh Sale were involved in money laundering or other illegal activities; (2) the Bank had never alleged that the Payment was a suspicious transaction; and (3) the Bank had never alleged that the documents provided by ASGL were insufficient or unsatisfactory. However, even if all these allegations were true, it did not follow that the Bank had not provided any reasons for its refusal to accept the Payment. Instead, the Bank had in fact given a reason for its refusal to accept the Payment. By Parakatil's email on 26 April 2016, the Bank informed Shah that it was not accepting the Payment "due to internal policy reasons" (see above at [26]).

61 Furthermore, I was not convinced that the third of the three points relied upon by ASGL was even accurate. The Bank *did* indicate that the documents provided by ASGL in response to its queries were insufficient. Even after Shah had provided various documents purportedly showing the link between AL Shams Building and himself (see above at [25]), Parakatil informed Shah by his email dated 26 April 2016 that the Bank required additional documents. These were the two other "recent document[s]" to confirm the shareholdings of AL Shams Building and Saturn (see above at [26]). Clearly if the documents previously provided were sufficient, the Bank would not have needed further documents. Further, in the same email, Parakatil informed Shah that the Bank was unable to process the Payment despite the documentation that Shah had previously provided. Although this was not an outright assertion that the documents were insufficient, it at least implied as much. Even when given the further opportunity to produce the two "recent" documents, Shah did not do so

and replied that it was not possible to obtain such documentation (see above at [26]–[27]). Even if the Bank did not expressly allege that the documents provided were insufficient, at the very least, it must have been clear to ASGL (and Shah) that that was in fact the case.

62 For these reasons, I was satisfied that there was no obligation on the part of the Bank to provide reasons for refusing to accept the Payment. In any event, the Bank did provide a reason. Consequently, I disallowed Declaration 2.

Whether the Bank had any obligation to give a "complete reply"

63 As regards Declaration 3, ASGL asserted that the Bank was "in breach of contract or its undertaking" by giving a complete reply. The breach was premised on the alleged failure by the Bank to keep to the statement in Parakatil's email dated 26 April 2016 that the Bank was "preparing a complete reply" to Shah's email (see above at [29]).

64 For a start, if there was no contractual obligation to give reasons for refusing to accept the Payment, as I had concluded above (at [59]), it is difficult to see how a claim for breach of contract for not giving a complete reply can arise. Further, it was difficult to understand how the statement in the email could be elevated to that of a contractual obligation. I did not understand ASGL to draw any distinction between a contract and an undertaking. It was readily apparent that the statement in and of itself did not possess any of the elements of a contractual bargain. It was made simply as part of a chain of communication between Shah and Parakatil on the Payment. Accordingly, unless there was a contractual term that supported an obligation to provide reasons, ASGL's point submission had no traction. As there was none, the claim in contract failed.

ASGL's reliance on Parakatil's email as a source of such obligation was misconceived.

65 ASGL's assertion suffered from another fundamental problem. It was unclear exactly what was meant by "a complete reply". If the breadth of the words was not ascertainable, it was difficult to say whether there had been a breach assuming there was even a contractual obligation to begin with. Let me explain.

66 I noted that the Bank did, on two subsequent occasions, write to ASGL. The first was its letter dated 25 May 2016, where it explained, *inter alia*, that it would be unable to accept any further incoming transfers of funds from Origin Fruits (see above at [31]). The second was its letter dated 18 May 2017, where the Bank reiterated that its decision to close the Account was in accordance with the Bank's terms, and stated that it did not make information on internal policy, suspicious transaction reporting and/or KYC processes available to any of its clients (see above at [33]). Although neither of these replies expressly referred to the statement in Parakatil's email, it could not be said that each of these was not a "complete reply" or meant by the Bank as such. Did a "complete reply" require a response to each and every query or request by Shah? Or did it simply require a comprehensive response? This uncertainty illustrates the difficulty posed by what exactly was meant by "a complete reply".

67 For the above reasons, I disallowed Declaration 3.

Whether the Bank was estopped from returning the Payment

68 By Declaration 4, ASGL claimed that the Bank was estopped from returning the Payment. This was premised on Parakatil's email dated 21 April 2016 where he stated that the Bank would have to return the Payment if the

"appropriate documents" were not received by 25 April 2016 (see above at [23]). It was said that in reliance on this representation, ASGL, through Shah, sent the requested documents to the Bank by 23 April 2016 – this was a reference to the email dated 23 April 2016 where Shah attached various documents purportedly showing the link between AL Shams Building and himself (see above at [25]).

69 At the outset, I highlight that ASGL did not make clear what type of estoppel it was relying on. There were at least two distinct possibilities, namely promissory estoppel or estoppel by representation. Both of these types of estoppel involve the elements of representation followed by subsequent reliance (see *Aero-Gate Pte Ltd v Engen Marine Engineering Pte Ltd* [2013] 4 SLR 409 at [37] in respect of promissory estoppel; *United Overseas Bank Ltd v Bank of China* [2006] 1 SLR(R) 57 at [18] in respect of estoppel by representation). While the two estoppels are similar, they are of course distinct given that the representation with which each type of estoppel is concerned is different – in the case of estoppel by representation, the representation is one of existing fact whereas in the case promissory estoppel, the representation is one of the promisor's intention as regards its future conduct (see *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 4.101). In the present context, it appeared that ASGL's case was that the Bank's representation was with regard to its *future* conduct, *ie*, that it would not refuse to accept the Payment if appropriate documents were received. Consequently, I understood ASGL's case to be one based on promissory estoppel.

70 Regardless, I found that ASGL's claim in this regard was without merit. In the first place, it was premised on an incorrect understanding as to the meaning of the statement in the email relied upon by ASGL, *ie*, that the Bank

would "have to return the funds … if appropriate documents [were] not received by [25 April 2016]" (see above at [23]). To found its case on estoppel, ASGL effectively read this to mean that the receipt of appropriate documents was the *only condition* for the Bank to accept the Payment. Put another way, the Bank effectively promised to accept the Payment upon the receipt of appropriate documents without further regard or consideration. This, however, raised two separate points of difficulty for ASGL's case.

71 First, as noted above (at [23]), Parakatil did not state that the Bank would accept the Payment without any further consideration upon the receipt of appropriate documents. To the contrary, he stated expressly that the Bank would "still need to review the documents". At a more fundamental level, the statement that the Bank would return the Payment if appropriate documents were not received by the stipulated time did not mean that the Payment would be accepted if such documents were received. Parakatil did not state that receipt of documents considered satisfactory would mean that the Bank would not reject the Payment. All that Parakatil's email meant was that the receipt of appropriate documents by the stipulated time was a necessary but not a sufficient nor the only condition for the Bank to accept the Payment. To this extent, ASGL could not assert a claim of promissory estoppel, as Bank did not represent or promise that it would accept the Payment simply upon the receipt of appropriate documents by the stipulated deadline.

72 Second, as I have found above (at [61]), I was not satisfied that the Bank considered the documents received to be appropriate or satisfactory. This too disposed of the factual basis upon which ASGL claimed promissory estoppel insofar as the promise by the Bank was that it would accept the Payment *upon receipt of appropriate documents*. If this condition was not fulfilled, the

argument that the Bank was estopped from returning the Payment is a non-starter. That was the case here.

73 For these reasons, I disallowed Declaration 4.

Whether ASGL was wrongly "bound" by the Bank's internal policies

74 As regards Declaration 5, ASGL submitted that by relying on "internal policy reasons" (see above at [26] and [29]) for refusing to accept the Payment, the Bank "bound" ASGL to its internal policies. It was contended that the Bank had no basis to do so as the internal policies had never been made known to ASGL, nor had ASGL consented to be bound by them.

75 I found no merit in this submission. The Bank never sought to have ASGL "bound" by its internal policies. It was simply a reason that the Bank gave as to why it was not accepting the Payment in the exercise of its discretion under cl 3.5(D) of the 2010 Terms and Conditions. If it is accepted, as I have found above (at [42]), that the Bank could exercise its discretion on any ground as long as such exercise was not arbitrary, capricious or in bad faith, it is difficult to see how reliance by the Bank on its internal policies as a ground would be impermissible. There was nothing to suggest that such reliance was arbitrary, capricious or in bad faith. Indeed, that argument was not even made by ASGL.

76 I therefore disallowed Declaration 5.

Whether ASGL had the *locus standi* to question the Bank's compliance with statutory duties

77 Finally, in Declaration 6, ASGL claimed that the Bank ought to have referred the matter of the Payment to a Suspicious Transaction Reporting Officer under the CDSA or the Commissioner of Police under the TSFA. In

dismissing this submission, I did not find it necessary to pronounce on the circumstances under which a bank ought to refer transactions to either of the abovementioned authorities. Instead, I dismissed it on the basis that ASGL had no *locus standi* to seek Declaration 6.

78 It is settled law that a plaintiff who asks for declaratory relief must have the *locus standi* to bring the action and there must be a real controversy for the court to resolve (see *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*") at [14]). The Court of Appeal in *Karaha Bodas* observed as follows (at [15]):

> 15 In considering whether the above requirements had been satisfied in this case, we were chiefly concerned with the fourth requirement, that of *locus standi*. As far as an action for a declaration is concerned, the requirement that the plaintiff must have the *locus standi* required to bring the action is the equivalent of requiring a plaintiff in an action for substantive relief to have a cause of action. This is because in order to have the necessary standing, *the plaintiff must be asserting the recognition of a "right" that is personal to him*.
>
> …
>
> Lord Diplock elaborated on the basis of this principle in [*Gouriet v Union of Post Office Workers* [1978] AC 435] at 501 as follows:
>
> > The only kinds of rights with which courts of justice are concerned are legal rights; and a court of civil jurisdiction is concerned with legal rights only when the aid of the court is invoked by one party claiming a right against another party, to protect or enforce the right or to provide a remedy against that other party for infringement of it, or is invoked by either party to settle a dispute between them as to the existence or nature of the right claimed. So *for the court to have jurisdiction to declare any legal right it must be one which is claimed by one of the parties as enforceable against an adverse party* to the litigation, either as a subsisting right or as one which may come into existence in the future conditionally on the happening of an event.
>
> [emphasis added]

79 It is clear from the extract above that a plaintiff only has *locus standi* where it asserts a personal right. A corollary of this is that the right asserted must be enforceable against the adverse party to the litigation and not some third party, otherwise the plaintiff would have no right against the adverse party at all. Therein was the difficulty with ASGL's case.

80 In my view, ASGL had no basis to seek Declaration 6. While the CDSA and the TSFA might have imposed obligations on the Bank to report certain transactions to the relevant authorities, these obligations were owed to the relevant authorities and not ASGL. Nothing in either in the CDSA or the TSFA indicated that *customers* of a bank had a statutory right or claim against the bank for breach of such reporting obligations. Instead, both statutes prescribed offences for failure to make disclosures in stipulated circumstances: see s 8(3) of the TSFA and s 39(2) of the CDSA. It was apparent that ASGL did not have a right against the Bank in respect of any obligation the Bank might have had to report the Payment. ASGL therefore had no *locus standi* to seek Declaration 6.

81 Separately, I would also observe that even if there was such a right, ASGL had simply no factual basis to found its application for Declaration 6. In the first place, there was no evidence that the Bank had *not* in fact referred the matter of the Payment to the relevant authorities. ASGL appeared to have assumed that the Payment had not been referred because it had not heard from the authorities. Further, there was also no evidence to show that the Payment was a transaction that ought to have been referred to the relevant authorities under either s 8 of the TSFA (*ie*, a transaction in respect of any property belonging to a terrorist or terrorist entity) or s 39 of the CDSA (*ie*, a transaction involving property which represented the proceeds of, or was used or was intended to be used in connection with drug dealing or criminal conduct). ASGL's argument assumes that the Bank must have considered the Payment to

have contravened either s 8 of the TSFA or s 39 of the CDSA because of its refusal to accept it. The Bank was accordingly obliged to report the Payment to the relevant authorities. Two points arise here. First, the assumption might not be correct. The Bank could have refused to accept the Payment for any other reason within the broadly stated "internal policy reasons". Second, even if the assumption were true, it is difficult to understand how it furthers ASGL's case. If the Payment was a "reportable transaction", it must mean that there was a sound basis for the exercise of discretion by the Bank to refuse to accept it. The fact that there was no reporting would not make rejection of the Payment on this basis any less sound.

82 For these reasons, I disallowed Declaration 6.

Conclusion

83 In sum, I dismissed the Application in its entirety. There was little merit to any of the declarations sought by ASGL.

84 On the matter of costs, the Bank rightly relied on cll 8.2(A) and 8.9(A) of the 2010 Terms and Conditions which stated as follows:

> **8.2 Charges and Expenses**
>
> (A) The Bank shall be entitled to impose and levy charges at its prevailing prescribed rate for any services provided by it. In addition, the Customer shall be obliged to and *shall indemnity the Bank against any legal fees* and costs (*on a full indemnity basis*) incurred by the Bank in enforcing or protecting its rights to or in resolving any disputes relating to the accounts and/or any monies standing to the credit thereof or owing in connection therewith whether by judicial proceedings or otherwise.
>
> …
>
> **8.9 Indemnity, Compliance with Law and Liability of the Bank**
>
> (A) The Customer shall fully indemnify fully indemnify and keep indemnified the Bank … against any and all losses, damages, reasonable costs and expenses (*including but not limited to legal costs on a full indemnity basis*), charges, actions, suits, proceedings, orders, warrants, injunctions, claims or demands which may be brought against any of them or which any of them may suffer or incur in connection with or arising from (i) the provision of any services or facilities pursuant to these Conditions, or (ii) any transaction referable to, involving or relating to the Customer or the Customer's account(s) with the Bank or its Affiliates …
>
> [emphasis added]

85 It was quite clear that cll 8.2(A) and 8.9(A) entitled the Bank to costs on an indemnity basis and counsel for ASGL accepted as much at the hearing before me. Consequently, I ordered costs of the Application to the Bank fixed at $15,000 and disbursements of $2,000.

Kannan Ramesh
Judge

Muthukrishnan Nedumaran (M Nedumaran & Co.) for the plaintiff;
Vincent Leow and Mak Sushan Melissa (Allen & Gledhill LLP) for the defendant.