Development Bank of Singapore Ltd v Bok Chee Seng Construction Pte Ltd [2002] SGCA 37

Case Number	: CA 4/2001
Decision Date	: 12 August 2002
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s)	: Deborah Barker SC and Chan Kia Pheng (Khattar Wong & Partners) for the appellants; Tan Cheng Yew (Tan Jin Hwee, Eunice & Lim Choo Eng) for the respondents
Parties	: Development Bank of Singapore Ltd — Bok Chee Seng Construction Pte Ltd

Civil Procedure – Pleadings – Adequacy of pleadings – Whether necessary to plead questions or presumptions of law

Companies – Capacity – Indoor management rule – Rule in Turquand's case – Applicability of rule

Judgment

GROUNDS OF DECISION

1 This was an appeal brought by the Development Bank of Singapore (DBS), against a decision of the High Court which reversed a judgment of the District Court dismissing the claim of the plaintiffs, Bok Chee Seng Construction Pte Ltd (BCS), to recover a sum of $186,938.38 from DBS. We heard the appeal on 22 July 2002 and allowed it, reinstating the judgment of the District Court. We now give our reasons.

The facts

2 BCS was a private limited company with two shareholders, Mr Peh Chee Chuan (Peh) and Mr Phua Ah Pok (Phua), who were also its directors. On 22 February 1997, BCS opened a current account (the account) with the Eunos Station Branch of DBS and furnished the latter with the following documents indicating how the account was to be operated:-

> (i) a document of resolutions of the board of directors of BCS dated 7 January 1997, in DBS standard form, signed by Peh, its Chairman, and one Ms The Mui Ngo, its Secretary.
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> (ii) a copy of the minutes of the board dated 27 January 1991 wherein it was recorded that a resolution was passed empowering the bank to honour all cheques signed on behalf of BCS by its directors, Peh and Phua, jointly.
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> These documents will be referred to as the "original mandate".

3 In the resolution document of 7 January 1997, there were several resolutions of the board of BCS and two of them, resolutions (F) and (G), which were more pertinent to the action read as follows:-

> (F) That the Secretary of the Company be, and hereby is, authorised to certify to the Bank the name of the present officers of the Company and other persons authorised in terms of this resolution and offices respectively held by them, together with specimens of their signatures. In the event of the Company appointing another person/s in place of authorised person/s the Company shall notify the Bank that a Resolution has been passed to that effect, whereupon the

said contents of this Resolution shall apply to such substituted signatories.

(G) And that a copy of any resolution of the Board if purporting to be certified as correct by the Chairman of the meeting and by the Company Secretary or another Director shall as between the Bank and the Company be conclusive evidence of the passing of the resolution so certified.

4 On or about 23 July 1997, DBS received an undated notification of a resolution of BCS, in DBS standard form for a change in authorised signatories, signed by Phua as Chairman of the board of directors' meeting and one Chua Thong Jiang Andrew (Andrew Chua), as Company Secretary, rescinding the original mandate set out in the resolution of 27 January 1997, and in its place, authorised Phua to operate the account by his sole signature. At the same time DBS also received from BCS:-

(i) a copy of Form 49 (under the Companies Act) dated 22 July 1997, showing that Andrew Chua had, on 22 July 1997, taken over as the Company Secretary of BCS in place of The Mui Ngo, who had resigned;

(ii) a copy of BCS's extraction of resolution passed by the board of directors on 23 July 1997 altering the mandate to operate the account and which extract was certified by Phua and Andrew Chua to be a true copy of the resolution passed.

These documents will be referred to as the new mandate.

5 Thereafter, DBS honoured all cheques drawn on the account in accordance with the new mandate. Some two months later, on 3 October 1997, M/s Ng Yap & Partners (NYP), as solicitors for Peh, wrote a letter to DBS informing the latter that a dispute (without identifying nature) had arisen between the directors of BCS, namely, Peh and Phua, and asking DBS to freeze the account. On 6 October 1997, Ramdas & Wong, acting for BCS, asked DBS not to act as requested by Peh. On 7 October 1997 Peh wrote, referring to his solicitors' letter of 3 October 1997 and asking for certain statements of account. On 13 October 1997, DBS informed NYP that the bank were unable to freeze the account without a directors' resolution or a court order. No court order was forthcoming from Peh.

6 On 17 October 1997, NYP wrote asking for copies of the statements of account as well as informing DBS that Phua "has purported to remove" Peh as a cheque signatory and replace him by another person.

7 On 5 November 1997, Andrew Chua, writing in his capacity as Company Secretary, told DBS that the resolution of 23 July 1997, effecting a change in signatories for the account, was made pursuant to Article 100 of the Articles of Association by all the directors present in Singapore. Andrew Chua also stated that the company had no objection to DBS releasing the statements of account requested by Peh.

8 It was about a year later that Peh instituted Originating Summons No. 1306/1998 under s 216 of the Companies Act on the ground of oppression. On 11 December 1998 the court granted him the reliefs prayed for including a declaration that, *inter alia*, the resolution of 23 July 1997 was null and void. This order was only served on DBS on 5 January 1999.

9 The present action was instituted by BCS in the District Court to recover the sum of $186,938.38, being the sum total of the cheques drawn on the account with Phua as the sole signatory, which Peh complained DBS should not have honoured.

10 In their Defence filed, DBS raised two defences. First, that they acted in accordance with the new mandate. Second, that the order of court of 11 December 1998 (December 1998 order) could not have "retroactively or otherwise" rendered void the 23 July 1997 resolution as far as DBS were concerned.

Decision below

11 The district judge found that the December 1998 order declaring the 23 July resolution "null and void" had retrospective effect. However she held that that order determined only the rights of the parties to that proceeding (OS 1306/1998) and it did not follow that a third party would be bound by that order in the same way, and to the same extent, as the parties thereto. The new mandate received by DBS from BCS complied with the terms of the contract between DBS and BCS, and that DBS had acted properly in reliance on the new mandate. She also held that by virtue of the rule in *The Royal British Bank v Turquand* 5 EL & BL 248, BCS were bound by the cheques which DBS had honoured.

12 On appeal to the High Court, the Judge took the view that a conclusive evidence clause like resolution (G) must be interpreted strictly because the effect of such a clause was to oust the court's jurisdiction to consider all relevant facts before coming to a conclusion. To invoke this clause it must be shown that the certification came from a director and a person who was properly appointed the Company Secretary. In this case, there was no proper appointment of Andrew Chua as the new Company Secretary.

13 However, the main basis upon which the Judge below held that BCS were entitled to recover the sum claimed was one of pleading. She pointed out that the pleaded defence was that DBS acted in accordance with the new mandate and had not breached any terms of the contractual arrangements between them. DBS did not plead that if the new mandate was not valid, they were still entitled to rely on it because of the rule in *Turquand's* case. That being the position, once it was shown that the new mandate was not valid, the defence failed. She recognised that although the new mandate was established to be invalid, it did not follow that a third party who had acted on it was automatically liable but that the third party should plead the further ground(s) upon which it relied to contend it was not liable. In this case, DBS had not so pleaded. Accordingly, this additional defence was not an issue in the action. Neither did BCS have the opportunity to address it. While appreciating that the *Turquand's* rule is a rule of law, she nevertheless felt that, to invoke that rule, facts had to be pleaded and established, and this was not done in the instant case.

Issues

14 Before us three broad issues were raised by DBS. First, what was the nature, effect and ambit of the December 1998 order? Second, whether by reason of the *Turquand* rule and/or resolution (G), DBS were entitled to rely on the new mandate, regardless of whether the new mandate was valid or otherwise. Thirdly, whether the judge below was correct to have found that on account of the inadequate pleadings, DBS were not entitled to rely on resolution (G) and the *Turquand* rule. Of these three issues, the emphasis of DBS was on the second and third issues.

December 1998 Order

15 In OS 1306/1998, Peh commenced action against Phua and another, Chew Boon Cheng, for oppression under s 216 of the Companies Act and sought various reliefs, including a declaration that the resolution passed on 23 July 1997 was null and void. BCS was not a party to that proceeding and neither did Peh sue for and on behalf of BCS. Peh did not allege that Phua's action had caused any

loss or damage to the company. Peh only alleged prejudice suffered by himself. On the basis of the prayers formulated by Peh in the OS, the court granted the reliefs in terms, one of which was that the 23 July 1997 resolution was "null and void and/or rescinded."

16 However, nothing in that order decided anything as between BCS and DBS; neither did it decide that DBS had acted in breach of the mandate given to them when they honoured the cheques. For reasons which would become apparent later, we do not think it would be meaningful for us to dwell on this point further.

Were the pleadings adequate?

17 We shall consider the third issue before the second. DBS contended that they had sufficiently pleaded the facts to enable them to rely on the defence that the change of mandate made by BCS on 23 July 1997 was effective and valid as between DBS and BCS by reason of the rule in *Turquand's* case and resolution (G) of 7 January. Furthermore, BCS never took this pleading point during the trial. Neither did they do so in their closing submissions, nor in their Case in the District Court Appeal. BCS only raised it for the first time at the hearing of the District Court appeal before the Judge.

18 It is necessary for us, at this juncture, to set out the relevant paragraphs of the defence filed by DBS to see what were the facts pleaded:-

> "4. The Defendants aver that from 23 July 1997 onwards, the Plaintiffs' only authorised signatory was Phua Ah Pok, and in this regard, the Defendants shall rely on two documents signed and executed by Phua Ah Pok as the Plaintiffs' director and chairman of a Board of Directors
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> meeting on 23 July 1997, and by Chua Thong Jiang Andrew as the Plaintiffs' company secretary, and given to the Defendants ;
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> 8. In respect of paragraph 8 of the Statement of Claim, it is denied that by the matters as pleaded in the Statement of Claim or at all, the mandate evidenced by the Mandate Document is invalid and/or null and/or void and/or of no effect. It is averred that at all material times, the Defendants acted with authority and in accordance with the terms of the relevant mandate as evidenced by the Mandate Documents.
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> 9. … The Mandate Documents reveal that the relevant mandate as evidenced by the same was lawfully complied with by the Defendants when the Defendants duly honoured the cheques signed by Phua Ah Pok, who was the duly authorised sole signatory at the material times. The defendants further aver that the service of the Order of Court dated 11 December 1998 on them by Messrs Tan Cheng Yew & Partners by their letter dated 5 January 1999 does not retrospectively or otherwise render the acts of the Defendants in honouring the said cheques issued in the aforesaid period unauthorised and/or in breach of the relevant mandate as aforesaid.

19 DBS had pleaded the pertinent facts. Paragraph 8 where DBS averred that "at all material times, (DBS) acted with authority and in accordance with the terms of the relevant mandate as evidenced by the Mandate Documents" and paragraph 9 where it was stated that the December 1998 order "does not retrospectively or otherwise render the acts of (DBS) in honouring the said cheques …

unauthorised and/or in breach of the relevant mandate" were particularly relevant to the question of the applicability of the *Turquand* rule. While it was true that DBS, in their defence, did not expressly refer to the *Turquand* rule, or the terms of resolution (G), as will be shown later, whether on those facts the *Turquand* rule or resolution (G) would apply was a question of law and it was not necessary that propositions or inferences of law be expressly pleaded. We accept that it could be pleaded. But it is altogether another thing to say that failure to do so would be fatal.

20 It is important to note that in BCS' Reply, BCS alleged facts to show that DBS were not entitled to the benefit of the *Turquand* rule.

(i) on 3 October 1997 NYP, writing on behalf of Peh, had asked DBS to freeze the account but DBS refused;

(ii) on 7 October 1997 Peh wrote referring to the letter of 3 October 1997 from his solicitors, NYP and asked for copies of certain statements relating to the account;

(iii) on 17 October 1997 NYP informed DBS of the dispute between Peh and Phua and asked DBS not to honour cheques signed by Phua solely. DBS did not respond to this letter and continued to honour cheques signed by Phua alone;

(iv) in spite of the above notices, DBS negligently or otherwise continued to honour cheques signed by Phua alone.

All these allegations were made to demonstrate that DBS had notice of the irregularities and thus the rule in *Turquand* should not be held to apply in the circumstances.

21 With respect, we were of the opinion that the Judge below had erred when she held that DBS had not pleaded facts giving rise to the rule in *Turquand*. She had similarly erred in holding that BCS did not, as a result, plead the steps taken by Peh to notify DBS of the irregularities, which would disentitle DBS from invoking the protection accorded under the *Turquand* rule.

22 DBS had clearly pleaded that they acted on the basis of the documents evidencing the new mandate. It might well be, as declared in the December 1998 order, that as between Peh and Phua, all the resolutions were invalid and of no effect. Peh could, as a result, claim against Phua for all the losses he suffered. But as between BCS and their bankers, the issue was whether the new mandate nevertheless binds BCS. It is in this connection, that the *Turquand* rule comes in and determines whether, as between BCS and DBS, the new mandate was nevertheless valid and effective, as far as transactions effected prior to the December 1998 order were concerned.

23 The case *County of Gloucester Bank v Rudry Merthyr Steam & House Coal Colliery Co* [1895] 1 Ch 629 illustrates the distinct position of a third party succinctly. There the directors of a joint stock company, pursuant to powers conferred under the Articles, by resolution fixed the quorum of the board of directors at three. At the meeting where only two directors were present, a resolution was passed authorising the secretary to affix the company's seal to a mortgage. The English Court of Appeal, applying the *Turquand* rule, held that as between the company and the mortgagee bank, who was a third party, the execution of the mortgage deed was valid and that it was a valid mortgage. The court effectively treated the resolution as valid which a third party like the bank could rely upon.

24 It is settled law that only material facts need be pleaded, not propositions or inferences of law. This is illustrated and enunciated eloquently in three cases decided by Lord Denning. In *Karsales (Harrow) Ltd v Wallis* (1956) 2 All ER 866, Denning LJ stated:-

"The only real difficulty that I have felt in the case is whether this point is put with sufficient clarity in the pleadings. Nevertheless, I have always understood in modern times that it is sufficient for a pleader to plead the material facts. He need not plead the legal consequences which flow from them. Even although he has stated the legal consequences inaccurately or incompletely, that does not shut him out from arguing points of law which arise on the facts pleaded. Looking at this defence, it is quite plain that the defence pleaded all the material facts which I have mentioned, and it is, I think, sufficient."

25 In *Re Vandervall's Trust (No. 2)* [1974] 3 All ER 205, Lord Denning MR gave short shrift to such a technical argument when he said:-

"Counsel for the executors stressed that the points taken by counsel for the trustee were not covered by the pleadings. He said time and again: 'This way of putting the case was not pleaded'; 'No such trust was pleaded'. And so forth. The more he argued, the more technical he became. I began to think we were back in the bad old days before the Common Law Procedure Acts when pleadings had to state the legal result; and a case could be lost by the omission of a single averment … All that has been swept away. It is sufficient for the pleader to state the material facts …"

26 The third instructive case is *Drane v Evangelou* [1978] 2 All ER 437, where a tenant sued a landlord for breach of covenant on quiet enjoyment. The County Court judge, in his own volition, held that the facts were sufficient to found a claim in trespass, even though that was not the pleaded claim, and awarded exemplary damages of 1,000 to the tenant-plaintiff. The defendants appealed contending that the plaintiff was not entitled to exemplary damages as he did not plead a claim in trespass. Lord Denning said (at p.440):-

The first point taken on behalf of the landlord was a pleading point. The particulars of claim alleged that the landlord 'had interfered with the right of the [tenant] and his de facto wife Ann Watts to quiet enjoyment of the said premises by unlawfully evicting them from the said premises on Tuesday 14th October 1975'. Counsel for the landlord submitted that that claim was for breach of a covenant for quiet enjoyment. He cited a passage from Woodfall: 'Since the claim is in contract, punitive or exemplary damages cannot be awarded.' The judge at once said: 'What about trespass? Does the claim not be in trespass? Counsel for the landlord urged that trespass was not pleaded. The judge then said: 'The facts are alleged sufficiently so it does not matter what label you put on it.' The judge was right. The tenant in the particulars of claim gave details saying that three men broke the door, removed the tenant's belongings, bolted the door from the inside; and so forth. Those facts were clearly sufficient to warrant a claim for trespass. As we said in *Re Vandervells Trusts*:

> 'It is sufficient for the pleader to state material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequence of which the facts permit.'

27 Reverting to the pleadings in the present case, there was no doubt that all pertinent facts relating to the account had been pleaded. DBS averred that they had relied on and acted in accordance with the new mandate. Furthermore, paragraph 9 of their defence clearly stated that the December 1998 order did not render DBS' honouring of the cheques unauthorised. This statement necessarily raised the question of the applicability of the *Turquand* rule. It flowed naturally. The Reply filed by BCS unequivocally indicated that BCS knew the direction DBS were coming from. BCS had pleaded all the pertinent facts to show that DBS should not be allowed to rely on the *Turquand* rule.

BCS were not at all taken by surprise. They were not prejudiced because they did place everything before the trial court to show why the *Turquand* rule should not apply: see *John G Stein & Co Ltd v O'Hanlon* [1965] AC 890 at 900 and 901. No objection was taken by BCS at any stage of the trial. Neither was this technical point taken in BCS' Case, which was filed in the District Court appeal.

28 We were reminded that in *Banner Investments Pte Ltd v Hoe Seng Metal Fabrication & Engineers (S) Pte Ltd* [1997] SLR 461 at 468 this Court did point out that "it was not open for the trial judge to decide the case on the basis of a defence that was not pleaded." But it is important to note that the issue in question there was whether a liquidated damages clause was in fact a penalty clause. The court agreed with the appellants' argument that as the respondents had not pleaded this, the court was precluded from entertaining that point. Rajendran J held that the question whether a liquidated damages clause was valid because it was a genuine pre-estimate of damages and not a penalty clause, was a question of fact and law. There was a need for the party who made such a plea to aver to facts to demonstrate that the amount was fixed in the clause in terrorem. Thus, *Banner Investments* was clearly distinguishable, unlike here where all the pertinent facts were pleaded and led in evidence.

29 In any event, what was enunciated in *Turquand* was a presumption of regularity. *Walter Woon in Company Law (2nd Edn)* at p. 90 stated:-

> The rule in *Turquand's* case is a presumption of regularity. In other words, a person who deals with a company is entitled to assume that all procedural matters have been taken care of by the company.

We were unable to see why a presumption of law needed to be pleaded. The pertinent facts giving rise to the presumption were pleaded by DBS. The burden was on the company, and those who claimed under it, to show why in the particular circumstances the presumption should not apply. As mentioned before, BCS had so pleaded. With respect, we think that the Judge below fell into error when she held that on account of the December 1998 order, the burden was on third parties, like DBS, to "establish why they should not be held liable" for acting in accordance with the new mandate.

Were DBS entitled to rely on the *Turquand* rule?

30 Turning to the second issue, the Judge below did not rule that DBS were not entitled, in all the circumstances, to rely on the *Turquand* rule. She allowed the appeal on the technical ground that the pleadings were inadequate.

31 In *Turquand* a company borrowed money from a bank and when sued, it pleaded that a proper resolution of the company had not been passed to enable the company to obtain the loan. The Court held that the company was nevertheless bound by the loan as the bank, a third party, having only seen the company's deed which authorized it to borrow, was entitled to infer that when the company sought to borrow, all matters of internal management had been complied with.

32 The circumstances in which the rule in *Turquand* had been applied are illustrated in numerous cases. In *William Augustus Mahony v The Liquidator of the East Holyford Mining Co (Ltd)* (1875) LR 7 HL 869, it was held that bankers could lawfully honour the cheques issued by the directors of the company, signed according to a form sent by them to the bank, without being bound previously to inquire whether the persons pretending to sign as directors had been duly appointed to office, in conformity with the provisions of the memorandum and articles of association. There, one Wedge, started a company with some friends and invited subscription from others to become shareholders. Subscription moneys received were paid into an account at National Bank, Dublin. The bank received

a formal notice from a person, signed as the secretary of the company, stating that, in accordance with a resolution passed, the bank should honour cheques signed by "either two of the following three directors" and countersigned by the secretary. The moneys in the account were eventually drawn out completely and the company was ordered to be wound up. The liquidator of the company sued the bank. It would appear that there had never been a meeting of shareholders and no appointment as directors or secretary was ever made. The claim of the liquidator failed.

33 In *Duck v Tower Galvanising Co Ltd* [1901] 2 KB 314, the subject of dispute related to a debenture issued in proper form but, unknown to the claimant debenture holder, had been issued without proper authority. The contest was between the holder and the execution creditors of the company. The debenture, if valid, would create a charge on the assets of the company. Lord Alverstone CJ held that no informality would alter the rights possessed by a *bona fide* holder for value upon a document that purported to be in order.

34 We have earlier (in paragraph 23) referred to the case *County of Gloucester Bank* and we do not need to narrate it again.

35 What remained to be considered was whether had anything been shown by BCS which disentitled DBS from relying on the *Turquand* rule. As mentioned before, BCS had sought to do that. BCS relied essentially on NYP's notification of 17 October 1997 to DBS of the dispute between Peh and Phua and on DBS failure to act in accordance therewith. The district judge, after reviewing the evidence did not think that the conduct of DBS had, in any way, fallen short of the required standard of care. Some of the circumstances which she took into account were, first, that the documents tendered in relation to the new mandate were, on the face of it, in order. Second, the witness for BCS conceded that at the time no firm grounds were presented to DBS to enable the latter to freeze the account, other than stating that there was a dispute between Peh and Phua. Third, Peh was told what he should do before DBS could freeze the account and yet no such action was taken by Peh. He should have acted expeditiously to pursue the matter. The conclusion of the district judge was that, in all the circumstances, DBS were not in breach of their duty to take reasonable care and were entitled to rely on the conclusive evidence clause (resolution G), as well as the *Turquand* rule. She felt DBS acted according to "what they probably thought was best for BCS at the time."

36 In the grounds of decision of the Judge below, she pointed out that a resolution of the board must be certified by either two directors or one director and the company secretary. In this case, the certification was done by one director and Andrew Chua, but the latter was never properly appointed Company Secretary. Thus, the certified resolution was bad and could not be conclusive.

37 We do not propose to deal with the effect of resolution (G) but will confine ourselves only to the *Turquand* rule. It is precisely for such a situation that the *Turquand* rule comes to the aid of third parties who had relied in good faith on such a document from the company. DBS had no notice of any irregularity or impropriety in the appointment of Andrew Chua as the new Company Secretary. Neither did DBS know that only one director passed the resolution to appoint Andrew Chua as the Company Secretary. The letter of 17 October 1997 from NYP did not even mention the irregularity in the appointment of the Company Secretary. In addition, a copy of Form 49 was furnished to DBS.

38 In this regard, the following observations of this Court in *Yogambikai Nagarajah v Indian Overseas Bank* [1997] 1 SLR 258, delivered by Lai Kew Chai J, are on point (at 273 and 275):-

> The relationship between the bank and the deposit account holder is premised on the debtor-creditor relationship. It carries with it the obligation on the part of the bank to honour the customer's mandate as regards the payment of money from that account. The bank's duty to

pay on the demand of an account holder however coexists with a duty to take reasonable care in all the circumstances as agent of the account holder. The duty to take reasonable care in the discharge of its obligations under the contract between banker and customer includes withholding payment where there has been fraudulent conduct resulting in wrongful loss by a party. In *Bank of New South Wales v Goulburn Valley Butter Co Pty Ltd* [1902] AC 543, Lord Davey at p. 550 said: 'The law is well settled that in the absence of fraud or irregularity a banker is bound to honour his customer's cheque.' Of course, where somebody cries "Fraud", it is not always the case that the bank must withhold payment. The question in every case, including the present, is whether the bank behaved reasonably in view of all the circumstances and discharged its duty of care….."

39 We should further add that in determining whether a bank had exercised reasonable care, no reliance should be placed on hindsight. All that DBS was told on 3 October 1997 was that there was a dispute between the two directors. It was on 17 October 1997 that NYP advised DBS that Phua had "purported to remove Peh as a cheque signatory and to replace him with another person." But before then, DBS had already advised Peh that to freeze the account a new resolution or a court order was necessary. Peh could have come to court to obtain an appropriate order, perhaps even on an *ex parte* basis. He failed to do so and only acted some one year later. A bank cannot be expected to investigate the internal management or squabbles of a company. It can only act on the basis of mandates issued in accordance with the terms of the contract governing the account and the general law.

Sgd:

YONG PUNG HOW CHAO HICK TIN TAN LEE MENG

CHIEF JUSTICE JUDGE OF APPEAL JUDGE