IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 89

Originating Summons No 1139 of 2020 (Registrar's Appeal No 30 of 2022)

Between

La Dolce Vita Fine Dining Company Limited

… *Plaintiff*

And

(1) Zhang Lan
(2) Grand Lan Holdings Group (BVI) Limited
(3) Qiao Jiang Lan Development Limited
(4) Success Elegant Trading Limited

… *Defendants*

JUDGMENT

[Civil Procedure — Discovery of documents — Banker's books]
[Banking — Secrecy — Exceptions]

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v
Zhang Lan and others

[2022] SGHC 89

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Philip Jeyaretnam J
17 February 2022, 14 March 2022

21 April 2022 Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Where a party to litigation seeks discovery of documents in the possession of the other party's banker, such discovery is limited to "entries in a banker's book" and anything beyond this remains protected by banking secrecy. In recent decades, the amount of information that banks must obtain and retain concerning their customers has been greatly expanded under "Know Your Client" or KYC regulations. Where previously banks only needed to identify the legal holder of the account, today they need to know who the ultimate beneficial owner is. When, if at all, would information held by a bank concerning the identity of the ultimate beneficial owner be considered an entry in a banker's book?

2 The answer is that such information is an entry in a banker's book only when it forms part of the transactional record pertaining to the bank's customer. Where the information is to be found for example in questions asked of a customer at a meeting or in general correspondence, this cannot be considered an entry in a banker's book. However, banks require a declaration of beneficial ownership for the purpose of regulatory compliance, and this is recorded by the bank as part of its identification of its customer with whom it transacts. The bank's recording of such declarations is an entry in a banker's book.

3 In this judgment I explain my reasons for this conclusion.

Facts

The parties and brief procedural history

4 This is an appeal against a decision of the assistant registrar to grant the plaintiff discovery orders concerning documents in the possession of the fourth defendant's bankers.

5 The plaintiff is La Dolce Vita Fine Dining Company Limited, a company incorporated in the Cayman Islands. I shall refer to it as LDV.

6 LDV is a judgment creditor of the first, second and third defendants under a Hong Kong judgment dated 20 May 2020 (the "HK Judgment").[1] The HK Judgment recognised and enforced a partial award on liability and quantum rendered by the China International Economic and Trade Arbitration Commission on 28 April 2019 ("Partial Award No. 0591").[2]

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1 2nd Affidavit of Cosimo Borrelli dated 26 February 2021 ("2 CB") at paras 7–11.

2 2 CB at para 11.

7 The first defendant is Mdm Zhang Lan, a citizen of St Kitts and Nevis ("Mdm Zhang"). The second defendant is Grand Lan Holdings Group (BVI) Limited, a company incorporated in the British Virgin Islands that is wholly owned by Mdm Zhang.[3] The third defendant, Qiao Jiang Lan Development Limited, is also a company incorporated in the British Virgin Islands wholly owned by Mdm Zhang.[4]

8 LDV commenced this originating summons on 10 November 2020 seeking to register the HK Judgment, and obtained a registration order on 11 November 2020.[5]

9 The fourth defendant sought to intervene and by consent was added as a defendant on 16 September 2021. The fourth defendant is Success Elegant Trading Limited, a company incorporated in the British Virgin Islands. I shall refer to it as SETL.

10 The fourth defendant intervened even though it is not a judgment debtor to LDV because LDV had filed an application pursuant to the registration order seeking the appointment of receivers to receive monies and securities in two bank accounts held in the name of SETL, one with Credit Suisse AG ("CS") and one with Deutsche Bank AG ("DB") (collectively the "Bank Accounts") (the "receivership application"). Both CS and DB are well-known multinational financial institutions. The basis of the receivership application, which remains

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3 1st Affidavit of Cosimo Borrelli dated 10 November 2020 ("1 CB") at para 9.

4 1 CB at para 10.

5 2 CB at paras 13–14.

to be determined, is that the monies and securities in the Bank Accounts are beneficially owned by Mdm Zhang.[6]

11 Many years prior to this originating summons, LDV had obtained a freezing order in Singapore on 2 March 2015 in support of its then intended claim against Mdm Zhang in arbitration. The freezing order was directed only against Mdm Zhang. Nonetheless, when it was served on CS and DB, they froze the Bank Accounts apparently because they considered Mdm Zhang to be the beneficial owner of them. LDV then sought pre-action discovery against CS and DB seeking, among other things, the account opening forms and other related documents for the Bank Accounts. Discovery was ordered by the assistant registrar (see *La Dolce Vita Fine Dining Co Ltd and another v Deutsch Bank AG and another and another matter* [2016] SGHCR 3) and this was upheld on appeal by Andrew Ang SJ in *Success Elegant Trading Ltd v La Dolce Vita Fine Dining Co Ltd and others and another appeal* [2016] 4 SLR 1392 ("*SETL No 1*"). CS and DB duly provided account opening forms and other related documents identifying Mdm Zhang as beneficial owner and sole authorised signatory of the Bank Accounts. CS provided an account application form dated 11 February 2014 while DB provided a form dated 7 March 2014 documenting the identity of the beneficial owner of the Bank Accounts.[7] It appears that no one contended in those proceedings that the documents sought were protected by banking secrecy on the basis that they did not contain entries in bankers' books.

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6 Summons to Appoint Receiver dated 9 June 2021.

7 7th Affidavit of Cosimo Borrelli dated 10 December 2021 ("7 CB") at para 17.

12 Against this backdrop, LDV sought discovery in this originating summons against each of CS and DB for documents relating to the beneficial ownership of the Bank Accounts that formed the basis of the respective bank's belief that the account held with it was subject to the freezing order against Mdm Zhang ("the discovery application").

13 Neither CS nor DB opposed the discovery application, leaving it to the court. SETL did oppose it, and when the discovery application was granted by the assistant registrar, appealed.

14 In response to my questions in the course of the appeal hearing, the issues narrowed and the submissions sharpened. After the further round of submissions that I allowed, LDV changed its request to two categories, namely:

(a) correspondence between the banks and either SETL or Mdm Zhang recording transactions with respect to the Bank Accounts (the "First Category"); and

(b) forms, declarations and correspondence between the banks and either SETL or Mdm Zhang identifying the beneficial owner of the Bank Accounts (the "Second Category").

15 However, the First Category was not a refinement or limitation of the discovery application, but a new and differently framed category that was not clearly linked to ultimate beneficial ownership of the Bank Accounts. It is not fair or right to expand the discovery sought in the course of an appeal, and in this judgment I will only consider the Second Category.

16 In addition, I invited CS and DB to make submissions despite their having taken no position on the discovery application, given that their views as bankers would be potentially helpful and clarifying of what today falls within the category of bankers' books and entries therein. I record my appreciation to DB, who availed themselves of this opportunity.

Issue to be determined

17 By the end of the oral hearing, objections raised by SETL of relevance, necessity, the need for a *prima facie* case of wrongdoing on SETL's part and absence of clean hands had largely faded. Nonetheless for completeness, I record that I do not accept any of these objections. The documents sought are both relevant to and necessary for the fair disposal of the application for receivership. There is no need for LDV to establish a proprietary claim against the monies and securities in the Bank Accounts because the basis for the receivership application is that the monies and securities in the Bank Accounts belong beneficially to the judgment debtor. Thus, they seek recourse to those assets as to any other assets of a judgment debtor. Lastly, LDV is not disentitled from seeking discovery even if, as SETL alleges, it has relied on documents previously disclosed by CS and DB without seeking prior leave of court to do so. Quite apart from any disclosure of documents, there has been a fact visible to all since CS and DB stepped up and said they would freeze the Bank Accounts, namely that CS and DB are in possession of information showing that Mdm Zhang is (or at least was) beneficial owner of the Bank Accounts. Given that CS and DB are banks, it is a simple inference that such information is recorded in documents.

18 Thus, the issue on appeal reduces to whether the documents sought are protected by banking secrecy or fall within the exception of entries in bankers' books.

19 I will proceed in the following order:

(a) the legislative structure of banking secrecy and the exception for entries in a banker's book;

(b) the approach of the Singapore Courts;

(c) recent decisions of other jurisdictions;

(d) the parties' submissions; and

(e) conclusion on the law.

The legislative structure of banking secrecy and the exception for entries in a banker's book

20 Banking secrecy was first legislated in Singapore in 1970 through s 47 of the Banking Act 1970 (the "BA"). Section 47 was repealed and replaced by a new provision in 2002. Section 47(1) now provides:

> **Privacy of customer information**
>
> **47.**—(1) Customer information must not, in any way, be disclosed by a bank in Singapore or any of its officers to any other person except as expressly provided in this Act.

The exceptions to the above rule are set out in the Third Schedule of the BA. The exception that is relevant in this case is contained in para 7 of Part 1 to the Third Schedule. It provides that customer information may be disclosed where:

> Disclosure is necessary for compliance with an order of the Supreme Court or a Judge sitting in the Supreme Court pursuant to the powers conferred under Part 4 of the Evidence Act 1893.

Paragraph 7 further provides that such customer information may be disclosed to:

> All persons to whom the disclosure is required to be made under the court order.

The court's power to order disclosure referred to in para 7 is contained in Evidence Act 1893 (the "EA") s 175(1):

> On the application of any party to a legal proceeding, the court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.

Bankers' books are defined in s 170 EA to include:

> … ledgers, day books, cash books, account books and all other books used in the ordinary business of the bank

21 While bankers' books are no longer leather-bound tomes, some of their names live on, such as the day book, albeit applied to an electronic and automated equivalent. The discovery sought in this case would be of entries in "all other books used in the ordinary business of the bank", if at all.

22 For completeness, I should add that the duty of confidentiality between banker and customer is exclusively governed by s 47 of the BA, and thus the exceptions to banking secrecy listed in the Third Schedule are comprehensive. This means that there is no room for common law exceptions to banking secrecy to operate: per the Court of Appeal in *Susilawati v American Express Bank Ltd* [2009] 2 SLR(R) 737 at [67].

23 Importantly, the same category of entries in a banker's book not only defines an exception to banking secrecy but also delineates what may be received as *prima facie* evidence "of the matters, transactions and accounts therein recorded" under s 171 EA. Thus, where a party to legal proceedings establishes that documents in the possession of the banker to the other party are relevant and necessary in those proceedings, he may only obtain discovery of such documents from that banker if they are banker's books, or contain what can fairly be described as an entry in such a book. If they are, then upon production of copies of such documents, they may be received as *prima facie* evidence of the truth of their contents, without any bank officer being called to testify.

The approach of the Singapore Courts

24 The leading case on what constitutes a banker's book is *Wee Soon Kim Anthony v UBS AG* [2003] 2 SLR(R) 91 ("*Anthony Wee*"), a decision of the Court of Appeal. How the expression "other books" in s 170 EA should be interpreted in relation to modern banking practice was explained at [36] as follows:

> In any event, we are of the opinion that in interpreting the expression "other books" in the definition we should take a purposive approach and recognise the changes effected in the practices of bankers. Any form of permanent record maintained by a bank in relation to the *transactions* of a customer should be viewed as falling within the scope of that expression. Correspondence between a bank and a customer which records a transaction clearly formed an integral part of the account of that customer and there is no good reason why it should be excluded. Otherwise, the object behind the enactment of Part IV of the Act would be undermined and banks would be troubled to have to come to court with the documents, including correspondence, relating to the account(s) of each customer. Thus, we agree with the approach taken in *Williams v Williams*. However, such records should be contrasted with notes taken

> by bank officers of meetings with customers and such notes cannot be regarded as entries in books kept by the bank for the purpose of its ordinary business within the meaning of "bankers' books" (*Re Howglen Ltd* [2001] 1 All ER 376).
>
> [emphasis in original]

25 The limitation that the entry must relate to the transactions of the bank is critical. The bank's record of transactions establishes the customer's position with the bank, and in particular the extent to which he is in credit or debit. It is this position between banker and customer recorded by the bank that is amenable to proof on a *prima facie* basis by copies of documents without the attendance of a bank officer. There will be many other documents kept by a bank which record information concerning its customers that are of much less certain evidential value and thus not apt to fall within a class of documents defined for the dual purpose of discovery and *prima facie* proof by production of copies.

26 In *Anthony Wee* at [31], the Court of Appeal also explained that on a purposive interpretation of s 170 EA, the permanent record of the bank could take the form of any method made available by modern technology.

27 I add that in *SETL No 1,* Andrew Ang SJ ordered disclosure of account opening forms. These would not of themselves be traditionally considered to be part of a bank's transactional record. However, the point was not taken then nor was argument specifically made on it. There was no appeal.

Recent decisions of other jurisdictions

28 The Malaysian Court of Appeal (Putrajaya) recently considered the scope of banker's books in their substantially equivalent statutes in the case of

Tey Por Yee & Anor v Protasco Bhd and other appeals [2021] 1 MLJ 76 ("*Protasco* (CA)").

29 In the decision under appeal, the High Court (Kuala Lumpur) in *Protasco Bhd v PT Anglo Slavic Utama and others* [2019] 9 MLJ 417 ("*Protasco* (HC)") had come to the view, at [38], that there were two categories of documents falling with the definition of "banker's books":

> In my view, in order to come within the definition of 'banker's books', a document:
>
> a) must comprise any transaction record that is generated by the bank; or
>
> b) must be a document which the bank maintains,
>
> for the purposes of accounting, audit, reconciliation or reporting.

30 Documents generated or maintained for the purpose of reporting would go well beyond the bank's recording of its transactional position with its customer. It would potentially include all documents that the bank might generate itself or obtain from its customer for the purpose of regulatory compliance and reporting to regulators. Notably, however, this extended meaning does not appear to have been specifically addressed in *Protasco* (CA) as the appeal was allowed on other grounds. Thus, the proposition that a document maintained for "reporting" would come within the definition of "banker's books" was not endorsed or supported. In fact, references in *Protasco* (CA) such as that at [100] to how "banker's books…permanently [record] transactions in the ordinary business of the bank" support only the first identified purpose of accounting.

31 *Protasco* (HC) was discussed in the English High Court case of *Meng v HSBC Bank Plc and others* [2021] EWHC 342 (QB) ("*Meng*"). In *Meng*, the

Chief Financial Officer of Huawei Technologies Co Ltd, then the world's largest telecommunications equipment company, sought access to bank documents held by UK-based subsidiaries of the HSBC Group, a multinational financial institution. They were sought for use in her defence to extradition proceedings then taking place in Canada in connection with criminal proceedings in the US. The applicant relied on *Protasco* (HC) (without apparently citing *Protasco* (CA)) in support of the argument that banker's books included records maintained for regulatory compliance. This argument was rejected. Fordham J gave a number of reasons for doing so, including that the Bankers' Books Evidence Act 1879 facilitates the proof of what he described as "concrete banking actions" at [23], and that the traditional focus in the English case law was on transactions at [24]. He also noted that the decision in *Anthony Wee* shared that same transactional focus.

32 Most pertinent are Fordham J's observations at [26] concerning the difficulty of even identifying what documents are maintained for regulatory compliance, and whether the contents of such documents are amenable to proof in the way that the statute mandates for entries in bankers' books, given their likely evaluative and subjective nature:

> It is surely the case that some records of meetings, or notes of conversations, are required by regulators to be maintained by banks. Due diligence exercises, such as 'know your customer' and money laundering would require communications with a customer or potential customer. The courts would need to be asking this question: is there any regulatory requirement that the bank conduct such a meeting or communication and maintain records for regulatory oversight? Such a question appears nowhere within the authorities so far discussed. Then there is this problem. How would the Court go about identifying what records are maintained by the bank (i) for its own internal purposes and (ii) for the purposes of regulatory compliance. That could be a difficult question to answer.
>
> …

> Whether a transaction has been undertaken – when, by whom for whom, involving what amount and what account, and so on – are transactional facts readily evidenced by a banker's record. Of course, other relevant evidentiary content may be found within notes of meetings, or communications with customers or potential customers, or internal memoranda. But these are far more likely to be evaluative, discursive, subjective and requiring explanation.

Parties' submissions

33 LDV submits that the court in *Anthony Wee* did not limit "other books" to a bank's transactional records. LDV submits that under *Anthony Wee,* a document is an entry in a banker's book as long as:[8]

(a) it was inherently probative, and not subjective and requiring explanation;

(b) it was properly sorted and filed; and

(c) it was integral to the customer's bank account.

The documents in both the First Category and the Second Category possess these qualities and are therefore entries in bankers' books.

34 SETL submits that bankers' books refer only to records relating to financial transactions. To widen the scope of bankers' books beyond transactional records, or to include records that only have a tangential relation to transactions, would be contrary to the legislative approaches of the BA and the EA.[9]

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8 LDV's Written Submissions dated 3 March 2022 at paras 11 and 14.

9 SETL's Written Submissions dated 14 March 2022 at paras 8 and 13.

35 DB makes two alternative submissions. The first and broader submission is that *Anthony Wee* did not limit banker's books to transactional records but extended to any form of permanent record that was integral to the account of a customer.[10] The second submission is that documents need only relate to transactions in that they affect transactions, whether existing or future, in an account, and need not specifically record a particular transaction.[11]

36 DB's submissions on either basis would justify the making of the discovery orders sought, as well as justify the orders made by Andrew Ang SJ in *SETL No 1*.

Conclusion on the law

37 In my view, banker's books are limited to transactional records concerning a customer. That is what was decided in *Anthony Wee*. *Meng* adopted the same approach, and, as I understand it, *Petrasco* (CA) did not depart from this approach.

38 The next question is, what constitutes the transactional record? The expansion of the range and types of information concerning their customers that banks gather and record as a result of regulatory obligations does not of itself mean that such information is entered in the bank's transactional records. Documents that a bank may generate or obtain whether for its own purposes (such as checking on the creditworthiness of a customer) or for regulatory compliance (such as identification documents for an individual customer or

10 DB's Written Submissions dated 10 March 2022 at para 8.

11 DB's Written Submissions dated 10 March 2022 at para 10.

incorporation documents of a corporate customer) do not, without more, form part of their transactional records.

39 However, it is certainly not the case that only records of specific transactions constitute transactional records. There is one item of information that has necessarily been part of the transactional record of the bank, namely the name of the account holder. As Fordham J noted in the passage cited at [35] above:

> Whether a transaction has been undertaken – when, *by whom for whom*, involving what amount and what account, and so on – these transactional facts are readily evidenced by a banker's record.
>
> [emphasis added]

In line with Fordham J's remarks, the beneficial party to a transaction is also a transactional fact. Today, a bank does not just limit itself to recording the identity of the named customer. It also records the identity of the beneficial owner of the account. A declaration of beneficial ownership is required at the time of account opening and periodically rechecked. This is required of banks by the Monetary Authority of Singapore ("MAS"), to combat money laundering and other illegal activities such as terrorism financing: *PP v Tang You Liang Andruew and another* [2021] SGDC 266 at [83] and MAS Notice 626 at paras 6.13–6.14. In my view, the bank's record of the beneficial owner of an account is a record of a transactional fact, and therefore forms part of its transactional records despite not recording a particular transaction. Thus, the declaration of beneficial ownership is an entry in a banker's book, as interpreted by the Court of Appeal in *Anthony Wee*. The documents in the Second Category are therefore in principle entries in a banker's book, subject to refinement that I consider in the final section of this judgment.

40 It is also clear from *Anthony Wee* that correspondence may form part of the transactional record. This would be the case where a communication to the bank effects a transaction such as a transfer of funds and is then filed by the bank as part of its permanent record. Thus, if documents in the First Category had been sought in the original application, they would have potentially been discoverable.

41 For completeness, I make two further observations. First, in my view, both DB's primary and alternative submissions extend the category of banker's books too far. By this I mean that while in substance there is force in their submission that entries in banker's books are not limited just to debits and credits on the account, the formulations put forward by DB are too broad. The focus must remain on transactions and the information that a bank enters into its permanent record concerning transactions. Where in the past as far as the identity of the customer was concerned the record did not go beyond the name of the account holder, today this information includes the identity of the beneficial owner on whose behalf the transactions are made. Also, I do not accept that any document that bears upon or affects an existing or future transaction forms part of the transactional record of the bank. Thus, account opening forms would not *per* se form part of the transactional record of a bank. It is not sufficient that without an account opening form coming into existence there would be no account and so no transactions to record. To put it another way, the simple fact that account opening forms enable or facilitate future transactions does not bring them within banker's books. This leads me to my second observation. While account opening forms do not of themselves come within the category of banker's books, it is the declaration of beneficial ownership that such a form may contain that, upon entry into the bank's permanent transactional record, stands as an entry in a banker's book. Thus,

while the order made in *SETL No 1* may have been worded too broadly (and I reiterate that no point appears to have been taken by SETL at that time concerning this question), it turns out that what was disclosed by CS and DB, namely declarations of beneficial ownership, were entries in a banker's book.

Framing of the order

42 On the law outlined in the preceding section, the documents that are now sought as set out in [14] above are potentially entries in a banker's book if filed as part of the bank's permanent transactional record. They thus fall within s 175(1) EA and accordingly the exception to s 74 of the BA. I dismiss SETL's appeal but vary the order made below to order discovery of the following:

> Any form, declaration or written communication sorted and filed by CS or DB in relation to the respective bank account that records the identity of the ultimate beneficial owner of that account or of the monies in it.

43 I will hear parties on costs.

Philip Jeyaretnam
Judge of the High Court

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