Nitine Jantilal *v* BNP Paribas Wealth Management
[2012] SGHC 28

Case Number	: Suit No 1048 of 2009/D
Decision Date	: 07 February 2012
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Sureshan s/o T Kulasingam (Advocates Legal Chambers LLP) for the plaintiff; K Muralidharan Pillai, Sim Wei Na, Luo Qinghui and Ng Chun Ying (Rajah & Tann LLP) for the defendant.
Parties	: Nitine Jantilal — BNP Paribas Wealth Management

Banking – advice – negligent – customer claiming bank's advice breached regulatory scheme – whether such a breach constitutes a breach of the bank's duty of care

Banking – statement of account – verification clauses – bank claiming that customer's claim is barred by verification clause

7 February 2012 Judgment reserved.

Choo Han Teck J:

1 The plaintiff commenced this action against the defendant when he discovered that his account with the defendant bank had been reduced in value. He sought two remedies: first, an account of all transactions, investments, loans, purchases and sales on his account from its inception to the time the account was closed. Second, he prayed for damages for the losses, alleging that the defendant was in breach of various duties owed to him. The defendant bank is an exempt financial adviser and exempt specialised unit serving high net worth individuals under s 100(2) of the Financial Advisers Act (Cap 110, 2007 Rev Ed) ("FAA").

2 The plaintiff established an account with the defendant on 7 November 2002. The opening of the account required the plaintiff to execute various contractual documents:

(a) Client Information Form

(b) Mandate for Account

(c) Schedule to Mandate for Account

(d) 2002 Risk Disclosure Statement and Acknowledgment

(e) Specimen Signature Card

(f) 2002 Terms and Conditions

Subsequently, he also signed the 2004 Risk Disclosure Statement and Acknowledgment. I shall refer to the material clauses in these documents as the defendant's "standard clauses". The account had various authorised signatories. The plaintiff authorised his father and uncle, Damodar Gokani Jantilal ("Jantilal") and Gokani Baskar Damodar ("Baskar") respectively, to operate the Account singly in accordance with the mandate from the creation of the account to its closure. On 11 November 2003, the plaintiff added his cousin, Baskar Damodar Jayes ("Jayes"), as an authorised signatory as well. The plaintiff also placed the bank account under a hold mail arrangement during two periods: from 7 November 2002 to 24 February 2009, and then from 19 June 2009 to 21 July 2009. During these periods, correspondence were retained by the defendant and not despatched to the plaintiff. The hold mail clause governing the arrangement provided that the plaintiff was deemed to have notice of the contents of the correspondence, and if the plaintiff or his authorised signatories did not collect the correspondence within two years, the defendant would be entitled to destroy them.

3 Stefan Spielbichler ("Spielbichler") was the defendant's relationship manager to the plaintiff. He informed the plaintiff, an Indian citizen, about the Financial Investors' Scheme ("FIS") established by the Monetary Authority of Singapore ("MAS"). Under the FIS, eligible foreigners are provided with an expedited means of obtaining permanent residency in Singapore. Among the salient requirements, the applicant was required to deposit a sum of at least S$5m with a financial institution regulated by the MAS for a continuous period of five years commencing from the date of issuance of the entry permit ("the FIS terms and conditions"). The plaintiff heeded Spielbichler's advice and decided to apply for permanent residency under the FIS. Instead of setting up a new account, his existing account was designated as his FIS account ("FIS account") from 28 March 2006 onwards. Sixteen assets were transferred from the accounts of the plaintiff's family-owned businesses so that as of 31 March 2006, the FIS Account had US$3,379,313.97 (S$5,469,734.72) of assets. The plaintiff's application for permanent residency under the FIS was approved by the Immigration & Checkpoints Authority on 3 April 2006.

4 Subsequently, some transactions were made in relation to the FIS account. Eight transactions were made vis-à-vis four assets in the FIS account ("the specific asset transactions"). Of the signatories, Jayes was the most active in handling the FIS account and liaising with the defendant. He authorised most of these transactions. In addition, 13 swap transactions were made ("the swap transactions"). The plaintiff and his relatives owned a company, Intrading Ltd ("Intrading"), which was incorporated in the British Virgin Islands. Intrading also had an account with the defendant. This account faced a margin call, necessitating a cash injection. Ralph Lau (who took over from Spielbichler as the plaintiff's relationship manager between June 2006 to 2 May 2008) advised Jayes to swap assets between the FIS account and the Intrading account. Believing this would not offend the FIS terms, Jayes instructed the defendant to execute the swap transactions. Out of the 13 transactions, two were signed by Jayes and Baskar, two by Jayes and the plaintiff, and the rest by Jayes alone. The plaintiff contended that these transactions caused a reduction in the value of the FIS account. He subsequently amended the mandate given to Jayes on 16 May 2008 such that Jayes could not make any withdrawals from the FIS account by himself. In a letter to the defendant dated 4 March 2009, the plaintiff instructed that Jayes be removed as an authorised signatory of the FIS account with immediate effect. Nonetheless, in a letter dated 6 March 2009, the plaintiff authorised the defendant to disclose all information and documents in relation to the account to Jayes. The mandate the plaintiff gave to Jantilal and Baskar remained unchanged. Following the diminution in value of the FIS account, the plaintiff also cancelled the hold mail arrangement with immediate effect

from 19 February 2009, instructing all mail to be sent to him by email and post. Urgent matters that required his immediate attention were to be sent by fax and email to a different account. Then, on 10 April 2009, the plaintiff made a further change when he instructed the defendant that he would collect all bank statements, trade confirmations and advices at its premises on a monthly basis. Any other important letters or urgent matters were to be sent by fax and followed by courier to the plaintiff's office address. The defendant did not carry out these instructions, claiming that they lacked certainty. Therefore, the 19 February 2009 instructions prevailed until 19 June 2009 when new instructions were given that all mail were to be held by the defendant for the plaintiff's collection on a monthly basis.

5 Shortly after the plaintiff cancelled the hold mail arrangement on 19 February 2009, he sent a letter dated 26 February 2009 to the defendant, instructing it to transfer monies from the FIS Account to a new account ("the second FIS account"). The second FIS account was set up on 7 April 2009, with only the plaintiff and Baskar as authorised signatories. On 14 April 2009, the plaintiff instructed the defendant to transfer all the monies and assets from the original FIS account to the second FIS account. The plaintiff's instructions were executed on 7 July 2009, with both accounts coming under the FIS. Eventually, dissatisfied with the defendant, the plaintiff transferred all the monies and assets in the two accounts to another bank. The two accounts with the defendant were closed on 21 July 2009.

6 In asking for an account from the defendant and damages for the depletion in his FIS account, counsel for the plaintiff made three broad submissions. First, the defendant owed various duties to the plaintiff. These included, *inter alia*, fiduciary duties, duties as a trustee, a duty of care, skill and judgment, statutory obligations to keep the plaintiff informed and to evaluate the investments and a duty to ensure compliance with the FIS terms and conditions of MAS. Second, these duties had been breached by various acts or omissions on the part of the defendant. The defendant did not explain or inform the plaintiff about the transactions carried out and refused to explain the account's movements to him. In addition, the specific asset and swap transactions were made without his authorisation and in breach of the FIS terms and conditions. The transactions, the plaintiff further claimed, were made without a prior assessment of their suitability or his interests. Third, the defendant cannot rely on its standard clauses to limit its liability or deny the duties owed and the breach of these duties.

7 The defendant's case was first that the plaintiff did not owe any duty to the plaintiff in relation to the FIS account as alleged. Second, the plaintiff was barred from making a claim in relation to the FIS account because of the conclusive evidence clause in the defendant's standard clauses. Third, even if any such duty arose and the conclusive evidence clause did not apply, no breach had been committed. The defendant had acted on the proper instructions of the plaintiff, his authorised signatories or both. It had also complied with the hold mail arrangement and answered the queries of the plaintiff and his co-signatories.

8 There are four main issues before me. The first concerns which terms and conditions governed the bank-customer relationship. The second is whether the plaintiff was barred from making his claim. The third is to determine what, if any, duty was owed by the defendant to the plaintiff. If there were, I have to judge whether any of those duties were breached.

9 The defendant's counsel argued that several of the standard clauses had three effects. First, the plaintiff was barred from making his claim. Second, no duties were owed to the plaintiff. Third, in the alternative, there was no breach of any duty owed. The plaintiff argued that there were reasons why the standard clauses should not apply to the FIS account. He claimed that the FIS terms and conditions excluded the standard clauses and further submitted that the standard clauses do not form

part of the contractual relationship between the plaintiff and the defendant because the plaintiff was not told that an existing account would be designated as the FIS account and he did not understand the standard clauses which were not explained to him. The defendant's reply was that the FIS terms and conditions did not vary the bank-customer relationship at all. The parties' submissions raise two questions. First, did the FIS terms and conditions operate to the exclusion of the defendant's standard clauses? Second, even if the FIS terms and conditions did not exclude the defendant's standard clauses, did the standard clauses form part of the contract between the parties? If the answers are yes and no respectively, the defendant would be unable to rely on various contractual clauses for its defence.

10 Contrary to the defendant's submissions, I find that it is possible for the FIS terms to vary the relationship between bank and customer and thus do not accept the defendant's case on this point. In a FIS account, a bank has to provide an undertaking to its customer to provide an annual report on that account to MAS. However, apart from whether it is possible for the FIS terms and conditions to vary the standard clauses, the issue of whether the FIS terms and conditions do in fact vary specific standard clauses only arises when there is an inconsistency between the two sets of terms and conditions or when one touches on an area the other is silent on, as is the case for the undertaking to MAS. Outside these two situations, both the FIS terms and conditions and the defendant's standard clauses would apply to the FIS account. A similar issue arose in *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246 ("*Jiang Ou*"). The issue there was whether the conclusive evidence clause in the bank's standard contractual documentation barred the customer from making her claim on her FIS account. The High Court's ruling there on the conclusive evidence clause impliedly meant that the FIS terms and conditions would not exclude a bank's own standard form documentation from having effect.

11 The plaintiff claimed that he did not read or understand the contents of the standard clauses. These, together with the fact that the defendant did not bring these clauses to the plaintiff's notice, meant that they did not form part of the contractual relationship between the parties. However, I am of the view that these are irrelevant since the plaintiff, an educated and literate man (even though he elected to testify in French), had signed the documents. The courts have consistently held, as seen in *Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2003] 1 SLR(R) 712 at [39]:

> …[As] the conditions were incorporated as a whole and that the line of authorities that decides that onerous and unusual conditions cannot be incorporated unless the attention of the party sought to be bound has been specifically drawn to them *does not apply to a case like this where there is a signed contract with an explicit incorporating clause.* As far as the authorities are concerned, as I have shown above, all those that apply the specific notice requirement for onerous clauses are cases in which there was no signed contract.
>
> [emphasis added]

Furthermore, by signing the Schedule to Mandate for Account and the Risk Disclosure Statements, the plaintiff effectively acknowledged that he had received, read, understood and found acceptable the defendant's standard clauses, and that independent legal advice might be necessary. I therefore find that the defendant's standard clauses in general did form part of the contract between the parties. I do not think that any of the standard clauses should be struck down under the Unfair Contracts Term Act (Cap 396, 1994 Rev Ed) ("UCTA") for being unreasonable. Though a bank is usually in a stronger bargaining position than the customer, this was mitigated here by the defendant telling the plaintiff in writing to seek independent legal advice and the plaintiff's written acknowledgment that he was a sophisticated investor. This also meant that the defendant could not be said to have induced the plaintiff to set up an account with it. By signing the Schedule to Mandate for Account and the Risk Disclosure Statements, the plaintiff had acknowledged that he knew and accepted the existence and extent of the terms and conditions. In all, I find that the defendant could rely on its standard clauses for its defence.

12 When the FIS account was first created, it was governed by the 2002 Terms and Conditions. In a letter dated 21 March 2005, the defendant informed its customers it would be issuing a new 2005 Terms and Conditions which contained a conclusive evidence clause that the defendant relied on to say that the plaintiff was barred from pursuing his claim. The conclusive evidence clause states:

> **3.9 Statements of Account/Advices/Confirmations**
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> (A) The Bank may, in its sole discretion, issue account statements in respect of the Customer's account(s) with the Bank or advices or confirmations in relation to transactions on such account(s) at such intervals as is customary or appropriate or as the Bank may otherwise agree with the Customer provided that no account statement will be issued to the Customer in respect of any account for any period during which there is no transaction on that account. The Bank will, if required so to do by applicable law or regulation, issue an account statement once every twelve (12) calendar months since the date of the last transaction or at such other intervals as the Bank may determine The Bank may at any time issue an interim statement. The Customer should receive account statements within seven (7) days after the date(s) agreed with the Bank for the issue of account statements (unless there is no transaction on the relevant account. If an account is not received within such period, the Customer must inform the bank in writing immediately.
>
> (B) *The Customer is under a duty to examine each account statement, advice or confirmation promptly following receipt.* Where such examination of any account statement discloses any *error, discrepancy or unauthorised transaction or entry on the relevant account(s)* ("Statement Error"), the Customer must notify the Bank within (in the case of Hong Kong Branch) ninety (90) days or (in the case of Singapore Branch) *fourteen (14) days* or such other period which may be stated in the relevant statement of receipt of the relevant account statement. Where such examination of any advice or confirmation discloses any error, discrepancy or unauthorised transaction or entry on the relevant account(s) ("Advice Error"), *the Customer must notify the Bank within such period* as is stipulated in the relevant advice or confirmation, or, where no period is stipulated, within fourteen (14) days of receipt of the relevant advice or confirmation.
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> (C) *If the Customer fails to* (i) advise the Bank of non-receipt of an account statement, advice or confirmation within fourteen (14) days of the date on which that account statement, advice or confirmation should have been received by the Customer or (ii) *notify the bank in writing of any Statement Error or Advice Error within the periods referred to in Clause 3.9(B) above, the Customer shall be deemed to have agreed* (subject to Clause 3.9(E)):
>
> > (*i*) *that the relevant account statement, advice or confirmation is binding upon him;*
> >
> > (*ii*) *that all debits, credits and other transactions and entries and the balance of the Customer's account(s) recorded in such account statement, advice or confirmation are true and correct and shall be conclusive without further proof as against the Customer; and*
> >
> > (*iii*) *to waive any rights to raise objections or to pursue any remedies against the Bank in respect of the account statement, advice or confirmation*

except in the case of manifest error.

[emphasis added]

The plaintiff argued that the terms were unreasonable and should not be upheld under the UCTA. Having regard to the circumstances which were or ought reasonably to have been known to the parties when the contract was made, I find that the conclusive evidence clause and hold mail clause were not unreasonable for the reasons I mentioned above. Yet, while the conclusive evidence clause was applicable, I am of the view that it did not bar the plaintiff from making his claim in relation to the FIS account. The effect of the clause is a question of construction. Various principles of contract law apply here, the first being the *contra proferentum* rule. The High Court in *Jiang Ou* commented at [71] and [89] that conclusive evidence clauses generally are conclusive of the correctness of a transaction, rather than being capable of operating as retrospective authorisation of the transaction. I agree with this and thus find that the clause was conclusive evidence of the identity and value of assets in the FIS account. Clause 3.9(B)'s reference to "unauthorised transactions" does not prevent the plaintiff from claiming that the specific asset transactions and swap transactions were unauthorised. Rather, it meant that if the plaintiff did not dispute the identity and value of the assets in the FIS within the prescribed period, he would not be able to challenge the statement of account later on, regardless of the reasons why the statement is inaccurate and even if the transaction which caused the inaccuracy or error was unauthorised. The plaintiff, however, was not saying here that the identity and value were inaccurate. Indeed, he accepted that the transactions were made and the FIS account now stands at a diminished value. Instead, his claim is that the transactions were done without his authorisation and in breach of the duties owed to him, so that the defendant was liable to him in damages. The defendant asserted that the conclusive evidence clause of the 2005 Terms and Conditions applied even though the plaintiff did not have actual notice, by virtue of the hold mail arrangement. Given my construction of the conclusive evidence clause such that it did not bar the plaintiff's claim, it was not necessary for me to deal with this issue.

13 Since the conclusive evidence clause did not bar the plaintiff's claim, I consider next what duty, if any, the defendant owed to him. The plaintiff submitted that fiduciary duties, duties of trusteeship and/or a duty of care were created by virtue of the FIS account. He claimed that even if the standard clauses apply, they had been varied by the FIS terms and conditions. The defendant's response was that the FIS did not have the effect of changing the contractual nature of the account which was an advisory account and thus did not impose any duty in that regard. I am of the view that the defendant did not owe any fiduciary duty or a tortious duty of care to the plaintiff. The bank-customer relationship is contractual and not one of trusteeship. I agree with the view expressed in *Susilawati v American Express Bank Ltd* [2008] 1 SLR(R) 237 at [60]:

> 60 The relationship between a bank and its customer is a contractual one. The bank does not, generally, owe fiduciary duties to its customers. However, a fiduciary relationship can arise between the bank and its customer under certain circumstances. Indeed, in *Cook v Evatt (No 2)* [1992] 1 NZLR 676, it was held (at 685) that:
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>> The essence of a fiduciary relationship is an inequality of bargaining power brought about by the trust or confidence reposed in, and accepted by, the fiduciary to perform some function for another's benefit in circumstances where the beneficiary lacks the power adequately to control or supervise the exercise of that function.

Second, although the plaintiff claimed that the FIS account created a "special relationship of trust" he did not satisfactorily explain how that relationship arose. Third, in any event, I find, and there was sufficient basis for me to so find, that the bank-customer relationship was one where the plaintiff agreed not to rely on and trust the defendant's advice. Being an exempt specialised unit serving high net worth individuals under s 100(2) of the FAA, the defendant owed no duty to advise the plaintiff, including the duty to disclose product information to clients and the duty to have a reasonable basis for making product recommendations. Further, the fact that the plaintiff had pleaded that the defendant had no authority to carry out the specific asset and swap transactions shows that the account was not a discretionary one. The defendant could not deal with the assets as it wished but had to act only upon its customer's instructions. Finally, several of the standard clauses expressly negated any inference of the defendant owing fiduciary duties or a tortious duty of care. These included:

(a) Acknowledgement of the 2002 Risk Disclosure statement:

> *I/We further agree that I/we will not enter into any transaction in reliance on any statement or representation of any officer of the Bank* and that save to the extent agreed in writing by the Bank (including any responsibilities agreed by the Bank in any Discretionary Portfolio Management Agreement or similar document executed between the Bank and myself/ourselves) *the Bank is not my/our financial adviser or fiduciary nor is the Bank adopting any responsibilities to advise me/us in any way* unless stated so in such written agreement.
>
> [emphasis added]

(b) Acknowledgment of the 2004 Risk Disclosure Statement

> I/We declare that in entering into any transaction, *I/we have decided to do so based on my/our personal judgment, and independently of, and not in reliance on any statement, representation or recommendation of the Bank and my/our entry into any transaction shall constitute a representation and warranty to this effect which the Bank shall be entitled to rely upon*, save to the extent agreed in writing by the Bank (including any responsibilities agreed by the Bank in any Discretionary Portfolio Management Agreement or similar document executed between the Bank and myself/ourselves) I/we agree that (in the absence of any actual written undertaking by the Bank) that *the Bank is not my/our financial advisor or fiduciary nor is the Bank adopting any responsibilities to advise me/us in any way.*
>
> [emphasis added]

14 The plaintiff's claim that the defendant had a duty to advise him properly has to be understood in the light of *Go Dante Yap v Bank Austria Creditanstalt AG* [2011] SGCA 39 at [27] where the Court of Appeal declined to recognise a specific tortious duty to advise, deciding instead that the issue was whether there was a breach of a duty of care owed to the customer:

> 27 However, as we have noted at [19] above, the correct question was not whether the Respondent owed the Appellant a tortious duty to advise, but whether the Respondent owed the Appellant a tortious duty to take reasonable care in rendering services to him and following his instructions, and, if so, whether it had breached that duty by failing to give the advice which the Appellant alleged should have been given in circumstances where any reasonable bank in the Respondent's position would have given that advice.

Whether the defendant owed a tortious duty of care to the plaintiff turned on whether the two-stage test of proximity and public policy was satisfied. The threshold requirement of foreseeability was met because I find that the failure to exercise due care in the discharge of its role by the defendant could reasonably result in the customer incurring some form of loss. However, the plaintiff's acknowledgment of the Risk Disclosure Statements and various other standard clauses meant that there was no assumption of responsibility by the defendant. Consequently, there was no proximity between the parties to found a duty of care. The other standard clauses which led me to my decision are:

(a) The 2004 Risk Disclosure Statement

> In considering whether to trade or enter into any transaction, you should be aware of the following:
>
> > 1 . Contractual terms: You have the responsibility to fully understand the terms and conditions of the treasury, securities and financial derivatives transaction to be undertaken … You should therefore familiarize yourself with the terms and conditions of any agreement, contract or confirmation that you may enter into with the Bank. You must fully understand your rights and obligations under that agreement, contract or confirmation

(b) Clause 6(1)(i) of the Master Agreement dated 16 May 2008 signed by the plaintiff with the defendant when the plaintiff entered into derivative transactions::

> [The plaintiff] is a sophisticated investor and has sufficient knowledge and experience in financial and business matters and expertise in assessing credit risk, is capable of evaluating the merits, risks suitability of entering into each Transaction and is acting in reliance upon its own judgment or upon professional advice obtained independently of the Bank as to those merits, risks and suitability (including, where relevant, legal, financial, tax and accounting treatment of the Transaction) and is not relying upon the views or advice of the Bank.

The plaintiff also argued that the defendant owed him various statutory obligations arising from the FIS and the FAA. However, I am of the view that other than the undertaking to fulfil certain reporting obligations to MAS on behalf of the plaintiff, the defendant did not owe any other duty to the plaintiff. As it was an exempt financial advisor as defined by ss 2(1) and 23(1)(a) of the FAA and an exempt specialised unit serving high net worth individuals under s 100(2) of the FAA, the defendant did not have to comply with the obligations that the plaintiff claimed it had breached.

15 While the defendant did not owe any statutory, tortious or fiduciary duties to the plaintiff, I find that the defendant did owe him a contractual duty of care, notwithstanding the standard clauses relied upon by the defendant. A tortious duty of care and a contractual duty of care arise in different ways. The former stems from proximity between the parties while the latter is implied by law on public policy grounds. As such, the standard clauses of the defendant were effective in precluding a tortious duty of care from arising, but not a contractual duty of care. However, that did not necessarily mean that the defendant was in breach. The plaintiff did not plead how a breach, if any, caused his loss. As such, his counsel did not submit on causation or the remoteness of his loss. I thus find that the plaintiff did not prove all the essential elements of a claim for damages arising from a breach of a contractual duty of care. In any event, the reduction in value of the FIS account was due to market fluctuations affecting the assets in the account. These assets were transferred on the instructions of the plaintiff or his authorised signatories. The plaintiff claimed that prior to the commencement of legal proceedings he did not know about those transactions. He also claimed that after his account came under the FIS, his authorised signatories no longer had the authority to make transactions. I do not accept the plaintiff's arguments that Baskar and Jayes ceased to be co-signatories when the account came under the FIS. I find that the defendant executed the specific asset transactions and swap transactions with the proper authority. For reasons best known to him, the plaintiff assumed the

risk of making his relatives authorised signatories. He cannot now say that he did not authorise them vis-à-vis the FIS account. Whether the plaintiff was ignorant of these transactions is thus irrelevant. It does not detract from the fact that Jayes, who instructed the defendant on the transactions, was an authorised signatory. As the plaintiff's agent, Jayes should have discussed the transactions with his principal, the plaintiff, whenever the need arose. Instead, Jayes' evidence was that he did not discuss the transactions with the plaintiff, but with his father, Baskar, who was only a fellow agent of the plaintiff's. If it was indeed the case that Jayes acted without the plaintiff's knowledge or instructions, it would have been more appropriate for the plaintiff to sue Jayes, rather than the defendant.

16 Finally, I would dismiss the plaintiff's application for an account for two reasons. First, that remedy would be academic since the plaintiff had to know that the loss in the value of his FIS account was due to the transactions made by his authorised signatories and the depreciation of the value of the new assets in his account. He was likely to have known this in May 2008 when he changed the mandate for Jayes. At trial, he explained that he did so because of Spielbichler's advice that there were numerous transactions being carried out. I do not accept this explanation. The fact that Spielbichler's advice led him to amend the mandate only for Jayes necessarily meant that he had been told that Jayes was responsible for instructing the defendant to make those transactions. Second, the defendant had complied with the hold mail arrangement. For the most part, the defendant had given the correspondence which the plaintiff sought. However, it was unable to give the plaintiff documents for certain periods as they were shredded, either automatically after two years (as clearly stated in the hold mail clause) or pursuant to instructions given by Jayes. On 20 August 2007, during the operation of the hold mail arrangement, Jayes collected and authorised the shredding of mail sent between February 2005 to August 2007. Correspondence between January 2008 and February 2009 were collected by Baskar on 24 February 2009. This fortified my view that the plaintiff should have pursued Jayes, Baskar or both, and not the defendant.

17 For the reasons above, I dismiss the plaintiff's claim. I shall hear submissions on costs at a later date.