

Bok Chee Seng Construction Pte Ltd v Development Bank of Singapore Ltd
[2002] SGHC 30

Case Number : DA 600012/2001
Decision Date : 22 February 2002
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Tan Cheng Yew (Tan Jin Hwee, Eunice & Lim Choo Eng) for the Appellants;
Deborah Barker SC and Chan Kia Pheng (Khattar Wong & Partners) for the Respondents

Parties : Bok Chee Seng Construction Pte Ltd — Development Bank of Singapore Ltd

Banking – Accounts – Companies – Company director purporting to effect new mandate for operation of bank account – Bank honouring cheques pursuant to new mandate – Co-director obtain court order which declares new mandate null and void – Whether court order affects third parties – Effect on bank

Civil Procedure – Pleadings – Defence – Failure to plead conclusive evidence clause and facts in support of internal management rule – Effect on defence's case

Contract – Contractual terms – Rules of construction – Conclusive evidence clause – Precondition of certification by chairman and company secretary/director – Interpretation of conclusive evidence clause – Whether precondition for applicability fulfilled

Courts and Jurisdiction – Court judgments – Effect on third parties – Company director purporting to effect new mandate for operation of bank account – Bank honouring cheques pursuant to new mandate – Co-director obtain which court order declares new mandate null and void – Whether court order affects third parties – Effect on bank

Judgment

GROUND OF DECISION

Background

1. This appeal arose out of an action in the District Court brought by Bok Chee Seng Construction Pte Ltd ('BCPL'). There, BCPL sought to recover from their bankers, The Development Bank of Singapore Ltd ('DBS'), sums totalling \$186,938.38 that they asserted DBS had wrongfully debited from their current account.

2. BCPL had first established their current account with DBS at the latter's branch at Eunos Station in January 1997. At that time, BCPL had only two shareholders, Mr Peh Chee Chuan and Mr Phua Ah Pok, who were also the company's only directors. The directors' resolutions passed on 7 January 1997 authorising the opening of the account also provided that it should at all times be operated only by the two directors acting jointly. I shall refer to this mandate relating to the operation of the account as 'the original mandate'.

3. The January 1997 resolutions were in the standard form required by DBS for the opening of a current account by a company and were ten in number, the individual resolutions being distinguished by the alphabets (A) to (J). Resolutions (F) and (G) played an important part in the subsequent legal proceedings. These provided:

'(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. In July 1997, Mr Phua purported to pass a resolution accepting the resignation of the then company secretary and appointing one Mr Chua Thong Jiang, Andrew as the new secretary of BCPL. This resolution was dated 22 July. The next day, Mr Phua purported to pass another resolution whereby the original mandate was revoked and a new mandate was effected. By this new mandate, Mr Phua was authorised to act as the sole signatory of the company's cheques and the sole operator of the current account. Mr Peh was not a party to either of the resolutions and did not become aware of them until some time later. Both resolutions were signed by only one director namely Mr Phua.

5. On the same day, 23 July 1997, DBS received three documents from BCPL purportedly evidencing the new mandate. These were:

(1) a document entitled 'Change in Authorised Signatories – Resolution Passed by the Board of Directors' which was DBS's standard form resolution for such a situation. This document was signed by Mr Phua as the Chairman of the Meeting of Directors and by Mr Chua as BCPL's company secretary;

(2) a copy of Form 49 dated 22 July 1997 showing that The Mui Ngo had resigned as BCPL's company secretary with effect from 22 July and that Mr Chua had been appointed as their company secretary with effect from the same date; and

(3) a document on BCPL's letterhead entitled 'Extract of Resolution Passed by the Board of Directors of Bok Chee Seng Construction Pte Ltd on 23 July 1997' and which read as follows:

'RESOLVED that:

(a) Authority previously given to the authorised signatory to operate the Current Account with The Development Bank of Singapore Ltd, Eunos Station MRT Branch, Singapore be and is hereby rescinded.

(b) Henceforth the Current Account with the aforesaid bank be and is hereby authorised to be signed by SINGLY by Phua Ah Pok.'

6. From that day onwards, DBS observed the new mandate and honoured cheques drawn on BCPL's current account that were signed solely by Mr Phua. Between 11 August 1997 and 31 March 1998, 100 cheques were paid and the amounts thereof totalling \$263,736.97 were debited against the

current account.

7. On 3 October 1997, Messrs Ng Yap & Partners, acting as solicitors for Mr Peh, wrote to DBS to inform them that a dispute had arisen between the directors of BCPL namely Mr Peh and Mr Phua. The letter went on to give DBS notice that it should freeze the company's current account with immediate effect. On 7 October 1997, Mr Peh wrote directly to DBS. He confirmed that he had instructed Messrs Ng Yap & Partners to act for him in the dispute between himself and Mr Phua and asked DBS to provide him with copies of the statements of account in respect of the current account for the months of July, August, September and October 1997. On 13 October 1997, DBS replied to Messrs Ng Yap & Partners' letter to say that they were unable to freeze the account of BCPL without a directors' resolution or court order. Mr Peh did not take any steps to obtain a court order.

8. A year later, in September 1998, Mr Peh commenced an originating summons against Mr Phua and one Mr Chew Boon Cheng asking for relief pursuant to s 216 of the Companies Act (Cap 50). The originating summons was heard in December 1998 by Chan Seng Onn JC and, at the conclusion of the hearing, among the orders made were the following:

'(1) that the affairs of BCPL are being conducted and/or the powers of the directors are being exercised in a manner oppressive to the Plaintiff [Mr Peh] and/or in disregard of his interests as a member and/ or shareholder;

(2) the Defendant(s) have done act(s) and/or passed resolution(s) which have prejudiced the Plaintiff's rights and/or unfairly discriminated against the Plaintiff namely in the removal of the Plaintiff as a signatory to the Company's bank account and the appointment of Chew Boon Cheng to the Board of Directors;

(3) the resolutions passed by the Company on 22 July 1997, 23 July 1997, 25 July 1997, 12 August 1997 and 13 August 1997 exhibited to this Originating Summons as Annexure A be declared null and void and/or be rescinded.'

The resolutions impeached by order (3) above involved the appointment of Mr Phua as company secretary, the acceptance of the resignation of The Mui Ngo as company secretary, the rescission of the original mandate given to DBS, the appointment of Mr Phua as sole operator of the account, the change of registered office of the company, the appointment of Mr Chew as a director and the appointment of new solicitors for the company.

9. Subsequently, Mr Peh took control of BCPL and discovered the 100 cheques that Mr Phua had signed singly. BCPL took the stand that DBS had not been authorised to make payment on these cheques because the resolutions which purported to change the original mandate and make Mr Phua the sole signatory were null and void. Having paid out without the necessary mandate DBS had acted wrongfully and must reimburse BCPL with the amounts paid out. In the event, the amount actually claimed was \$186,938.38 since BCPL subsequently accepted that the cheques making up the balance of the \$263,736.97 had been issued to genuine creditors of the company.

10. DBS resisted BCPL's claim. They took the position that from 23 July onwards, BCPL's only authorised signatory was Mr Phua and they relied on the documents given to them by BCPL on that date. Accordingly, they asserted that at all material times, they had acted with authority and in accordance with the terms of the new mandate as evidenced by the aforesaid documents given to them. They did not accept that the new mandate was invalid and/or null and/or void by reason of the order of court made on 11 December 1998 ('the court order') by Chan JC in Originating Summons 1306 of 1998.

The decision below

11. The action was heard by District Judge Hoo Sheau Peng who elucidated the broad issues that she had to decide as follows:

(1) first, the nature, effect and ambit of the court order ie whether it had retrospective effect so that by relying on the new mandate, DBS had acted in breach of the original mandate or whether, as argued by DBS, the effect of the court order was simply to cancel, with effect from the date of the order, the directors' resolution changing the original mandate;

(2) secondly, whether DBS was entitled to act on the new mandate in the light of the contractual provisions between the parties or in the light of the indoor management rule as set out in *Royal British Bank v Turquand* [1856] 6 E & B 327; and

(3) thirdly, whether DBS had displayed good faith and/or had taken reasonable care when honouring BCPL's mandate.

12. In relation to the first issue, the Judge came to the following conclusions:

(1) Essentially, s216 of the Companies Act provides for personal remedies to be sought by a member of a company. In this instance, Mr Peh had applied to the court for relief under s 216 against Mr Phua and Mr Chew. He had apparently made out all his grounds and one relief granted was, by way of the court order, to declare the resolution of 23 July 1997 which effected the change in the mandate 'null and void and/or be rescinded'.

(2) In the Judge's opinion the court order had retrospective effect. 'Null and void' meant that the resolution was null and void from the start. The word 'rescinded' was distinguishable from 'terminated' and meant rescission *ab initio*. The Judge pointed out that if the court had wished to invalidate the resolution, it could have ordered that the resolution be cancelled as such power was given to it by s 216 (a).

(3) Essentially the court order meant that there was no such resolution of 23 July 1997 at all, that Mr Phua was not authorised to be the sole signatory of the account, restoring Mr Peh's position as a co-signatory of the account pursuant to the original mandate. However, it did not follow that a third party would be bound by the court order in the very same way, and to the same extent as the parties to the action. The court order did not decide the impact of the resolution vis--vis DBS.

(4) Contractual provisions govern the relationship between DBS and BCPL and it had relied on these and documents over and above the resolution of 23 July 1997. Therefore, the court order was not sufficient to, could not and did not, determine the issues of non-compliance of mandate and breach of duty.

13. In relation to the first part of the second issue which was whether the new mandate complied with the contractual provisions, the Judge held that on the face of the documents, the new mandate

was in order save for a lack of a date in the notification which on its own was not indicative of any fraud or a substantial irregularity. By acting on the new mandate, DBS had acted well in accordance with their contractual obligations.

14. The second part of the second issue related to the well known rule in *Turquand's* case. The Judge observed that the matters relating to the resolution of 23 July 1997 being declared null and void and/or rescinded were internal to BCPL. As far as DBS was concerned, the external acts complied with the January 1997 resolutions in relation to changing of signatories and even with the memorandum and articles. DBS's position was also fortified by the 'conclusive evidence clause' (ie the original resolution (G)) in that since a director and the company secretary had certified the extract of the resolution of 23 July 1997 to be a correct resolution, the conclusive evidence clause operated to protect DBS against internal matters of BCPL affecting the status of the resolution. It should be noted that the Judge regarded the January 1997 resolutions as being terms of the contract between DBS and BCPL in relation to the account.

15. On the third issue, the Judge found that DBS could not be faulted for their conduct in the affair. I need not go into her reasoning for this finding. Suffice it to say that the Judge concluded that BCPL was bound by the cheques honoured by DBS. DBS's reliance on the new mandate did not amount to a breach of mandate or to a breach of its duty to take reasonable care towards BCPL. According the claim was dismissed.

The appeal

16. BCPL appealed against the dismissal of their claim. Their ground was that once the Judge had found that the court order had retrospective effect and therefore that the new mandate was a nullity, she should have gone on to find DBS liable for non-compliance with the original mandate. This ground was supported first, by a submission that the conclusive evidence clause did not assist DBS since the conditions for its applicability had not arisen. Secondly, the narrowness of the defence pleaded by DBS meant that they had staked their position on the contention that the new mandate was valid and once that contention was rejected their defence accordingly failed. In this respect, DBS could not rely on the internal management rule or on any other basis to justify their acting in accordance with the new mandate rather than in accordance with the original mandate since DBS had not pleaded either the internal management rule or any other such basis.

(i) The conclusive evidence clause

17. I deal first with the conclusive evidence clause as contained in resolution (G). To paraphrase this, it provides that as between DBS and BCPL a copy of a resolution of BCPL is conclusive evidence of the passing of that resolution as long as that copy is certified as correct by the chairman of the meeting and by the company secretary or another director. In this case, one of the documents sent to DBS on 23 July 1997 was an extract of the resolution rescinding the signing instructions contained in the original mandate and appointing Mr Phua as the sole signatory of the account. This extract was certified as a true copy of a resolution passed by the company by the signatures of Mr Phua as a director and Mr Chua as the company secretary.

18. It was submitted on behalf of BCPL that a conclusive evidence clause cannot apply where the purported act relied on is a nullity. *Halsbury's Laws of Singapore* Vol 10 para 120.021 was cited. This paragraph reads:

'Conclusive evidence means evidence which must be accepted as proof and cannot be contradicted. Where the conclusive evidence is provided by a legal authority, it may, however, be challenged as being a nullity if the authority has acted in bad faith or in an ultra vires manner in giving the evidence.'

The analogy drawn by BCPL was that the conclusive evidence clause could be challenged because the resolution relied on had been declared to be a nullity by the court. I did not accept this argument. The passage from *Halsbury's* was dealing with a situation where evidence is provided to a court in bad faith or in an ultra vires manner. In that case, the quality of the evidence must be impugned. The conclusive evidence clause here was intended to give DBS protection from irregularities in the internal management of BCPL and to prevent BCPL from subsequently retracting from the effect of documents that it had itself supplied DBS with. In that situation, no question of providing substantial evidence to a court would arise and, further it would not be unfair to allow DBS to rely on the clause to justify its actions.

19. On the other hand, however, I took the view that a conclusive evidence clause has to be interpreted strictly because the effect of such a clause is to oust the court's jurisdiction to consider all relevant facts before coming to a conclusion. What the clause means is that once the matters stated in the clause have been proven to exist, the court must draw a certain inference from them and cannot look at other evidence which might contradict such an inference. In this case, for the conclusive evidence clause to be relied on by DBS, it had to show that it had been provided with an extract of a resolution which had been certified as correct either by two directors or by one director and the company secretary. The certification here came from one director and a person purporting to be the company secretary. This person, Mr Chua, was not in fact the company secretary as his appointment was null and void in that the resolution appointing him to the post in place of The Mui Ngo was one of the resolutions declared void by the court order. Even without such declaration the resolution would have been a nullity as it was passed by only one director of BCPL.

20. Since the pre-condition for the applicability of the conclusive evidence clause had not been fulfilled ie the extract had not been signed by the correct persons, DBS could not rely on the conclusive evidence clause to prevent BCPL from challenging the authenticity of the new mandate and holding DBS to account for not continuing to comply with the original mandate. It should also be noted that although the conclusive evidence clause was bandied about both in evidence below and in submissions, it was not directly invoked in the defence filed by DBS. Nor in fact was there even an indirect reference to resolution (G) by way of a general reference to the contractual terms of the relationship as embodied in the ten resolutions passed on January 1997.

(ii) The pleadings

21. This brings me to the main issue of the appeal which was whether the defence as pleaded by DBS entitled them to succeed on the grounds that were found in their favour. A resolution of this issue depends on the construction of the pleadings.

22. I think it would be helpful to deal with the statement of claim and defence in conjunction with each other, as far as possible. The first three paragraphs of the statement of claim gave the particulars of BCPL and DBS and stated that BCPL was at all material times a customer of DBS. These three paragraphs were admitted by paragraph 1 of the defence.

23. Paragraph 4 of the statement of claim stated that as BCPL was a customer of DBS, DBS owed BCPL the contractual duty to honour BCPL's written mandate or order and/or to exercise due care in

the discharge of DBS's duties to BCPL. By paragraph 2 of the defence DBS admitted only that they were under a duty to honour BCPL's written mandate. DBS denied the rest of paragraph 4 of the statement of claim.

24. Paragraph 5 of the statement of claim averred that at all material times DBS had only been authorised to honour cheques issued by BCPL if the same had been signed by Mr Peh and Mr Phua jointly. This was pursuant to the original mandate dated 27 January 1997. In response paragraph 3 of the defence denied that assertion except to the extent that it meant that DBS was authorised to honour cheques issued by BCPL which were signed by Mr Peh and Mr Phua jointly for the period from 27 January 1997 until 22 July 1997 (both dates inclusive).

25. In paragraph 6 of the statement of claim it was averred that in breach of DBS's obligation to BCPL, DBS purporting to act on a forged and/or invalid undated document which purported to rescind the original mandate, honoured cheques signed only by Mr Phua. Short particulars of these cheques were then given. In paragraph 7, BCPL averred that the new mandate relied upon by DBS was made pursuant to a purported resolution of the board of BCPL passed on 23 July 1997 and that this resolution was declared null and void by the court order. In paragraph 8, BCPL averred that by reason of these matters, the new mandate was invalid and/or null and/or void and/or of no effect and at all material times the original mandate was still operative and had not been revoked by the new mandate. By reason of these matters, BCPL averred, in paragraph 9, that DBS had wrongfully and without BCPL's authority paid the cheques referred to in paragraph 6 and wrongfully debited BCPL's account with the amounts of the same.

26. The meat of BCPL's claim was thus set out in paragraphs 6 to 9. No further reference to the statement of claim is necessary.

27. The meat of the defence was in paragraphs 4, 7, 8 and 9 and it is necessary to set these out in full:

'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 meeting on 23 July 1997, and by Chua Thong Jiang Andrew as the Plaintiffs' company secretary, and given to the Defendants, namely:

(a) Extract of Resolution Passed by the Board of Directors of Bok Chee Seng Construction Pte Ltd on 23 July 1997; and

(b) Change in Authorised Signatories – Resolution Passed by the Board of Directors.

(hereinafter collectively "**the Mandate Documents**")

5. Paragraph 6 of the Statement of Claim is denied, and the Defendants deny that they had acted in breach of their purported obligations as pleaded or at all.

6. ...

7. In respect of paragraph 7 of the Statement of Claim, the Defendants repeat the contents of paragraph 4 of the Defence herein. The Defendants further aver that the first time they had sight of the purported Order of Court dated 11 December 1998 in Originating Summons No. 1306 of 1998 was when the Plaintiffs' solicitors, Messrs Tan Chew Yew & Partners, sent their letter dated 5 January 1999 to the Defendants enclosing by way of service the said purported Order of Court dated 11

December 1998. Save as aforesaid, paragraph 7 of the Statement of Claim is denied.

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 Documents 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. Save as aforesaid, paragraph 8 of the Statement of Claim is denied.

9. By reason of the matters aforesaid, paragraph 9 of the Statement of Claim is denied. The Defendants aver that the Plaintiffs' alleged claim is in respect of cheques issued by them for the period from 16 August 1997 until 6 March 1998 (both dates inclusive), as stated in paragraph 11 of the Statement of Claim. 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 of 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.'

28. The submission made on behalf of BCPL at the appeal was that the above quoted paragraphs of the defence made it plain that the essential point relied on by DBS was that DBS had followed the terms of the new mandate and that was the correct mandate to follow. In other words the defence case was that there was no breach of contract and that DBS was authorised to debit BCPL's account in the way that they did.

29. Counsel then referred to the following passage from *Modern Law of Banking* by E.P. Ellinger:

'... The second function of a cheque, which defines its legal nature as between the customer and the bank, is that it constitutes an order or instruction issued by the former to the latter ... This means that, as between the bank and the customer, the contractual relationship arising from the drawing of the cheque is primarily governed by the principles of the laws of agency. Consequently, the bank's duty is to adhere strictly to the terms of its mandate. If the bank deviates therefrom, it does so at its peril. This point has been explained most clearly by Devlin J in a case relating to the liability of a bank that departed from the instructions given to it by the customer as regards the opening of a letter of credit:

It is a hard law sometimes which deprives an agent of the right to reimbursement if he has exceeded his authority, even though the excess does not damage his principal's interests. The corollary ... is that the instruction to the agent must be clear and unambiguous.

When this statement is applied to the unauthorised payment of a cheque, it means that the bank is not entitled to debit its customer's account with the amount involved unless it can plead one of the recognised defences. These include, in the first place, the common law defences that can be raised by an agent who disobeys his principal, such as estoppel, ratification, and the ambiguity of the mandate ... '

30. BCPL submitted that the case put forward by DBS was not one where it admitted that the debiting of BCPL's account was not authorised but asserted, nevertheless, that DBS was not liable because of some accepted defence available to a bank making payment in a breach of mandate case. DBS could have pleaded first that they were authorised by the new mandate to act as they did and also, secondly, in the alternative, that if the new mandate was not valid, they were still entitled to rely on it because of the operation of resolution (G) and/or the rule in *Turquand's* case. DBS did not so plead. Instead their pleadings showed that they relied entirely on the validity of the new mandate and the authority given thereby to them to pay out cheques signed solely by Mr Phua. As such, they stood or fell by whether they were authorised to pay on the cheques signed by Mr Phua solely and this meant that once it was held that the new mandate was invalid, DBS's case fell.

31. Counsel for BCPL also contended that because of the narrow way in which the issues were framed by the pleadings, other matters which could have constituted a reply to any claim by DBS to be entitled to rely on the indoor management rule were not brought into the action by way of a reply and accordingly, no evidence had been, or could have been, adduced in respect of such matters at the trial. Counsel asserted that had it been pleaded, that, despite any irregularity or invalidity of the new mandate, DBS was nevertheless entitled to rely on the same due to the indoor management rule and their ignorance of the internal affairs of BCPL, BCPL would have been entitled to plead, as a reply, all steps taken by Mr Peh to notify DBS of the problems within the company and, on that basis, to contend that the circumstances were such that reliance on the *Turquand* rule could not be allowed. BCPL would also have had more leeway in their examination of the evidence given on behalf of DBS.

32. I accepted the above arguments. Having read and carefully considered paragraphs 4, 7, 8 and 9 of the defence, it appeared to me that the main plank of the defence was that the new mandate was valid and that the order of court operated solely between Mr Peh and Mr Phua and did not affect the validity of the new mandate vis--vis DBS. I took the view that the new mandate was void *ab initio* since no valid resolution had been passed effecting it. The court order which declared the new mandate to be null and void and/or rescinded was declaring the existence a state of affairs that affected not only the parties to the action but affected third parties as well. This did not mean that third parties who had acted in reliance on the void mandate were automatically liable for having done so. It did, however, mean that such third parties would have to establish a legal reason why they should not be held liable.

33. In order to show a legal reason to avoid liability, DBS would have had to plead that reason. The purpose of the pleadings is to define the issues being fought about. In this case, from the defence filed by DBS it appeared that the issue being fought about was simply the validity of the new mandate. When BCPL came into court they were prepared to fight and win or lose on that issue alone. They were not alerted that even if they won on that issue, they would have to fight an additional issue ie whether despite the invalidity of the authority, due to other circumstances DBS was nevertheless entitled to act as if the authority was valid and be protected from liability.

34. That second issue was not addressed in the pleadings and no notice was given to BCPL of it by any of paragraphs 4, 5, 7, 8 or 9 of the defence. Each of those paragraphs emphasised the point that from 23 July 1997 onwards, BCPL's only authorised signatory was Mr Phua and the new mandate was not invalid or null or void. DBS asserted that at all times they had relied on the new mandate and had complied with the same. It was also clear that the only documents relied on by DBS to support this stand were the documents given to them on 23 July 1997 ie those described as 'the Mandate Documents'. No reliance was placed on the provisions of the original mandate. As such, once 'the Mandate Documents' were found to be of no legal effect, DBS lost the pillar they were standing on and had no subsidiary pillars to support them.

35. A detailed analysis of the defence supported BCPL's submission. As stated, the purpose of paragraph 4 was to aver that from 23 July 1997 BCPL's only authorised signatory was Mr Phua and to introduce 'the Mandate Documents'. Paragraph 5 of the defence was a straightforward denial of BCPL's assertion that DBS had been in breach of their obligation to be BCPL and had purported to act on a forged or invalid mandate. This denial meant that DBS had not acted on a forged or invalid mandate. As for paragraph 7 of the defence, it was simply a repetition of paragraph 4 and an assertion of fact ie that the first time DBS saw the order of court was when it was served on them in January 1999. This assertion was meant to convey that DBS had no notice of the irregularities in the new mandate or of the court proceedings relating to it. By itself, however, this assertion did not amount to a fresh line of defence as a bank which pays out on a forged cheque in ignorance of the forgery is not excused from liability by reason only of such ignorance.

36. Paragraph 8 of the defence could have contained the averment that notwithstanding any invalidity or irregularity in the new mandate, DBS was nevertheless entitled to rely on it for specified reasons and that the payments made could not be impugned. It did not. Instead it contained only a denial in the first sentence that the new mandate was invalid and, in the second sentence, an averment that DBS had acted with authority because they had acted in accordance with the terms of the new mandate. That must be the meaning of the sentence '... 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'. No language was included in this sentence to indicate that the words 'with authority' referred to anything other than the new mandate.

37. Paragraph 9 was in effect a repetition of paragraphs 7 and 8. DBS relied on 'the Mandate Documents' to show that they had lawfully complied with BCPL's instructions by honouring cheques signed by Mr Phua who was asserted to be 'the duly authorised sole signatory at the material times'. In the last portion of the paragraph, DBS stated that the service of the court order on them did not retrospectively render their acts unauthorised. There was no recognition in this paragraph that their acts could have been unauthorised from the beginning because of the nullity of the mandate and no assertion that despite this possibility, they were nevertheless entitled to act as they did because they could not be affected by irregularities within the company when on the surface all documents appeared to be in order and all formalities appeared to have been complied with.

38. Before me it was contended on behalf of DBS that the pleadings were adequate and that no further elaboration of their stand had been required in the defence in the light of the well known rule that parties to actions are not required to plead legal principles. The assertion was that the rule in *Turquand's* case is a rule of law and thus may be relied on even though not specifically pleaded. In my view this submission did not meet the objection raised by BCPL. No doubt the rule in *Turquand's* case is a rule of law but in order to invoke that rule of law certain facts have to be established. These facts must be pleaded since it must be made clear what facts will be relied on in support of the rule. Such a pleading would give notice of the defence to the opponent and would enable the opponent to plead other facts (if available) which would be material for the court's assessment of whether the rule in *Turquand's* case had been properly invoked or not. The basic function of pleadings is to enable each party to the action and the court to know what case is being brought by the other party. This function can only be fulfilled when all relevant facts and averments are contained in the pleadings.

Conclusion

39. I allowed the appeal by BCPL on the basis that the only defence pleaded by DBS was that they acted with authority in that they relied on a valid mandate. Once the court below had held, and

rightly so, that the effect of the court order was that the new mandate was null and void from the start, the defence of DBS had to fail since the consequence of the new mandate being void was that it was incapable of conferring any authority on DBS. DBS had therefore acted without authority in paying out on cheques signed singly by Mr Phua. With respect, it was my judgment that, on the pleadings as they stood, the District Judge was not entitled to exonerate DBS from liability on the basis of the conclusive evidence clause or the indoor management rule. Accordingly, I gave judgment for BCPL in the amount claimed with interest and costs both of the trial and of the appeal.

Sgd:

JUDITH PRAKASH
JUDGE

This does not merit reporting.

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