

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC(A) 27

Appellate Division / Civil Appeal No 33 of 2022

Between

Acute Result Holdings Limited

... Appellant

And

CGS-CIMB Securities
(Singapore) Pte Ltd (formerly
known as CIMB Securities
(Singapore) Pte Ltd)

... Respondent

In the matter of Suit No 129 of 2019

Between

Acute Result Holdings Limited

... Plaintiff

And

CGS-CIMB Securities
(Singapore) Pte Ltd (formerly
known as CIMB Securities
(Singapore) Pte Ltd)

... Defendant

FOUNDATIONS OF DECISION

[Trusts — Resulting trusts — Whether resulting trust compatible with security interest]

[Trusts — Express trusts — Whether express trust compatible with security interest]

[Contract — Breach]

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Acute Result Holdings Ltd
v
**CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as
CIMB Securities (Singapore) Pte Ltd)**

[2023] SGHC(A) 27

Appellate Division of the High Court — Civil Appeal No 33 of 2022
Woo Bih Li JAD, Kannan Ramesh JAD and Aedit Abdullah J
1 February 2023

28 July 2023

Aedit Abdullah J (delivering the grounds of decision of the court):

Introduction

1 This appeal arose from the decision of the High Court judge (the “Judge”) in *Acute Result Holdings Ltd v CGS-CIMB Securities (Singapore) Pte Ltd (formerly known as CIMB Securities (Singapore) Pte Ltd)* [2022] SGHC 45 (the “Judgment”). After hearing oral submissions from the parties, we dismissed the appeal in its entirety on 1 February 2023. These are our written grounds of decision. We shall not restate in these grounds the background to this matter, which is set out comprehensively in the Judgment, save to briefly outline the relationship between the parties, the salient facts, and the cases advanced by the parties below.

The facts and the parties' cases below

2 The appellant (“Acute”) engaged in various transactions with Lioncap Global Management Limited (“Lioncap Global”) and Lioncap Asia Limited (“Lioncap Asia”), both of which are now defunct. We will refer to the two companies collectively as “Lioncap” where there is no need to distinguish between them. Lioncap Global was a customer of the respondent (“CGS-CIMB”). Acute owned a number of shares in Cabbeen Fashion Limited (“Cabbeen”), which was listed on the main board of the Hong Kong Stock Exchange (see the Judgment at [6]). Two tranches of those shares formed the subject of the present dispute.

First tranche of Cabbeen shares

3 In November 2016, Acute and Lioncap entered into various agreements under which Acute essentially created a security interest over 130m Cabbeen shares in favour of Lioncap Global (the “November 2016 Agreements”). These shares were originally held in Acute’s brokerage account with PT CIMB Securities Indonesia (“CIMB Indonesia”), and were meant to secure: (a) a HK\$2m loan which Lioncap Asia had previously extended to an associate of Acute’s sole director and shareholder; and (b) a further loan of HK\$120m which Lioncap Asia was to extend to Acute. We noted that Acute had initially deposited 144m Cabbeen shares in its account with CIMB Indonesia in connection with the November 2016 Agreements. Although it was unclear why an additional 14m Cabbeen shares were placed in the account beyond the agreed 130m which was to form the subject of Lioncap’s security, the Judge found that discrepancy to be immaterial (see the Judgment at [15]–[19]). Lioncap Asia thereafter failed to advance any part of the HK\$120m loan to Acute. In March 2017, with Lioncap Global’s consent, Acute withdrew 30m Cabbeen shares

from its account with CIMB Indonesia, thereby leaving 114m shares in that account. Acute and Lioncap eventually executed an addendum on 20 April 2017 (the “April 2017 Addendum”) to amend the November 2016 Agreements. Acute and Lioncap specifically agreed that the terms of the April 2017 Addendum were to be treated as part of the November 2016 Agreements, and that the terms in those earlier agreements which were not amended were to remain in effect (see the Judgment at [20]–[29]).

4 By the April 2017 Addendum and the November 2016 Agreements, Acute and Lioncap agreed that: (a) Acute would transfer 47.08m Cabbeen shares from its CIMB Indonesia account to Lioncap Global’s account with CGS-CIMB; (b) Lioncap Asia would extend a loan of HK\$50m to Acute (reduced from HK\$120m); and (c) 56.92m Cabbeen shares would be released from the security interest created in Lioncap Global’s favour. Further to the April 2017 Addendum, Acute and Lioncap Global jointly instructed CIMB Indonesia to transfer 56.92m Cabbeen shares from Acute’s account with CIMB Indonesia to an account in Acute’s name with China Merchant Securities (HK) Co Ltd in Hong Kong, and the transfer was duly executed on 24 April 2017. This left 57.08m shares in Acute’s account with CIMB Indonesia (see the Judgment at [30]–[34]). These shares were eventually transferred to an account in Lioncap Global’s name with CGS-CIMB (see [5] below).

5 Acute also issued two instruction letters on 24 April 2017 and 18 May 2017 (the “First Instruction Letter” and “Second Instruction Letter” respectively, and collectively the “Instruction Letters”) to CIMB Indonesia, instructing the latter to transfer a total of 57.08m Cabbeen shares (the “First Tranche Shares”) from its account with CIMB Indonesia to Lioncap Global’s account with CGS-CIMB. The First Instruction Letter and the Second

Instruction Letter related to 47.08m and 10m Cabbeen shares respectively. In both Instruction Letters, it was stated that: (a) Lioncap Global had an intention to borrow shares in the custody of CIMB Indonesia which were owned by Acute, who would remain the beneficial owner of the shares; and (b) the “legal and beneficial ownership” of the shares being transferred was to remain with Acute (see the Judgment at [35]–[39] and [42]). In accordance with the Instruction Letters, CIMB Indonesia transferred from Acute’s account with CIMB Indonesia to Lioncap Global’s account with CGS-CIMB: (a) 47.08m Cabbeen shares on 28 April 2017; and (b) 10m Cabbeen shares on 31 May 2017. This left zero shares in Acute’s account with CIMB Indonesia (see the Judgment at [40] and [43]). The shares were later dealt with by CGS-CIMB on Lioncap Global’s instructions without Acute’s knowledge (see the Judgment at [44] and [48]).

6 On this factual footing, Acute argued at trial that: (a) Lioncap Global held the First Tranche Shares on a resulting trust or an express trust for Acute; (b) Lioncap Global had acted in breach of trust and/or fiduciary duties as a trustee in dealing with the First Tranche Shares; and (c) CGS-CIMB was liable in knowing receipt and dishonest assistance in connection with Lioncap Global’s breach(es). The crux of Acute’s case was that Acute’s intention in transferring the First Tranche Shares pursuant to the April 2017 Addendum was, similar to its intention in November 2016, simply to create a limited interest in favour of Lioncap Global, and *not* to confer beneficial interest in the shares on Lioncap Global. Acute also contended that CGS-CIMB had acted negligently in transferring the First Tranche Shares out of Lioncap Global’s account with CGS-CIMB. In response, CGS-CIMB argued primarily that Lioncap Global was neither a resulting trustee nor an express trustee of the First Tranche Shares for Acute and, accordingly, that there was no basis for CGS-CIMB to be held

liable as an accessory for any breach of trust or fiduciary duties (see the Judgment at [55]–[56]).

Second tranche of Cabbeen shares

7 In May 2017, Acute and Lioncap entered into negotiations regarding a further loan facility, once again, to be secured by Acute’s Cabbeen shares. As a condition for continuing the negotiations, Lioncap Global asked that Acute open a brokerage account with CGS-CIMB and deposit 21m Cabbeen shares into that account. Acute opened such an account in July 2017 (“Acute’s CGS-CIMB Account”) and in the same month, deposited 21m Cabbeen shares into that account (the “Second Tranche Shares”). Lioncap Global then immediately instructed CGS-CIMB to transfer the Second Tranche Shares to its account with CGS-CIMB, and CGS-CIMB carried out the transfer in August 2017 (see the Judgment at [138]–[141]).

8 In respect of these shares, Acute submitted at trial that CGS-CIMB had acted in breach of contract as it was not authorised to transfer the shares to Lioncap Global. Alternatively, Acute contended that CGS-CIMB had breached a duty of care owed to Acute by executing the transfer on Lioncap Global’s instructions (see the Judgment at [142]). CGS-CIMB’s response was that there was no breach of contract because: (a) Acute had conferred actual authority on Lioncap Global to operate Acute’s CGS-CIMB Account; and (b) Acute was contractually precluded by a conclusive evidence clause in clause 2C of CGS-CIMB’s General Terms and Conditions from claiming that the transaction was unauthorised (“Clause 2C”).

The decision below

9 The Judge dismissed Acute’s claims in respect of both tranches of shares. In respect of the First Tranche Shares, the Judge found that before the April 2017 Addendum was executed, the November 2016 Agreements only created an equitable charge over the First Tranche Shares with Lioncap Global as chargee. At that point, the shares did not need to be transferred to Lioncap Global. Against that backdrop, when Acute subsequently undertook to transfer, and thereafter transferred, the First Tranche Shares to Lioncap Global’s CGS-CIMB account pursuant to the Instructions Letters, Acute must have intended to confer a benefit on Lioncap Global given that Lioncap Global was acquiring a right it did not previously have. Through the transfer, Acute either: (a) converted Lioncap Global’s existing security interest into a mortgage (if Acute intended to transfer its beneficial interest in the shares to Lioncap Global); or (b) improved Lioncap Global’s existing equitable charge by strengthening its control over the shares (if Acute did not intend to transfer its legal or beneficial interest in the shares, as reflected in the Instruction Letters (see [5] above)). The Judge found that in either scenario, Acute’s intention to confer such a “factual benefit” prevented a resulting trust from arising as a matter of fact, principle and precedent (see the Judgment at [96]–[113]). This also prevented an express trust from arising because the intention of Acute and Lioncap to create a security interest was fundamentally incompatible with the certainty of intention required to create a trust (see the Judgment at [114]–[117]). Therefore, no trust and/or fiduciary duties arose, and it followed that there could be no dishonest assistance or knowing receipt on CGS-CIMB’s part (see the Judgment at [119]). The Judge also dismissed Acute’s claim in negligence (see the Judgment at [122]–[137]).

10 As regards the Second Tranche Shares, the Judge found that Acute had admitted in separate Hong Kong proceedings between Acute and Lioncap Global that Lioncap Global had actual authority to operate Acute's CGS-CIMB Account. Thus, there was no breach of contract on CGS-CIMB's part (see the Judgment at [144]–[146]). In any event, Clause 2C operated to preclude Acute from claiming that the transfer of the Second Tranche Shares was unauthorised (see the Judgment at [147]–[154]).

Grounds of appeal and issues arising

First Tranche Shares

11 Acute appealed against the Judge's decision in respect of both tranches of shares. With regard to the First Tranche Shares, Acute submitted that the Judge erred in finding that Lioncap did not hold the shares on trust for Acute.

12 First, Acute disputed the Judge's finding that an intention to create or improve a security interest was incompatible with the intention necessary to create an express trust. Put simply, Acute's contention was that a trust can coexist with a security arrangement and the existence of a trust depends on whether the three certainties are present. Acute contended that it had the requisite intention for an express trust to arise on the facts as it intended to retain the beneficial interest in the First Tranche Shares, which was evidenced by, among other things, the Instruction Letters. During the hearing before us, counsel for Acute also highlighted the oral evidence of one Mr Ng Siu Keung ("Mr Ng"), to whom Acute's day-to-day management was delegated, of his understanding that the beneficial ownership of the First Tranche Shares would remain with Acute. Mr Ng further testified that he was only concerned with the beneficial ownership of the First Tranche Shares and was not concerned with

the words in the Instruction Letters that were used to describe the transaction between Acute and Lioncap.

13 To bolster its position that an intention to create a security interest does not preclude the creation of an express trust, Acute also submitted that the rights of a grantee of a security interest are not inconsistent with the duties of an express trustee. According to Acute, a trustee has a duty not to act for its own benefit without the informed consent of the beneficiary. While a grantee of a security interest (who is simultaneously a trustee) may act in its own interests upon default in repayment by the grantor of security (who is simultaneously the beneficiary), this is because the beneficiary-grantor would have consented to the grantee/trustee doing so.

14 Second, as regards its claim that a resulting trust arose over the First Tranche Shares, Acute submitted that it transferred the shares to Lioncap Global in circumstances where it did not intend to benefit the recipient. As with its express trust claim, Acute alleged that while legal ownership of the shares was transferred to Lioncap Global, it retained beneficial ownership, as stated in the Instruction Letters. Acute drew an analogy to the case of *Yuanta Asset Management International Ltd and another v Telemedia Pacific Group Ltd and another and another appeal* [2018] 2 SLR 21 (“*Yuanta*”), where the court found that a trust had arisen in circumstances where the plaintiff had transferred shares to an account in the defendant’s name to obtain financing.

15 Acute also disputed the Judge’s finding that an intention to confer a *factual* benefit prevents a resulting trust from arising; it submitted that the criterion of factual benefit is not recognised under the law. Acute further argued

that, in any event, it did not intend to confer a factual benefit on Lioncap Global by creating or improving a security interest, contrary to what the Judge decided.

Second Tranche Shares

16 With regard to the Second Tranche Shares, Acute submitted that it did not in fact admit in the Hong Kong proceedings that Lioncap Global had actual authority to operate Acute’s CGS-CIMB Account. It was merely describing the factual situation whereby Acute was unable to operate that account without Lioncap Global’s instructions due to the position taken by CGS-CIMB. Acute further argued that more contemporaneous documents demonstrate that Lioncap Global was not granted actual authority to operate Acute’s CGS-CIMB Account.

17 Acute also submitted that Clause 2C did not operate to preclude it from alleging that the transfer of the Second Tranche Shares was unauthorised, because: (a) it had raised a valid objection within the stipulated time; (b) the *contra proferentum* rule should be applied in construing Clause 2C narrowly in its favour; and (c) Clause 2C was unreasonable under the Unfair Contract Terms Act 1977 (2020 Rev Ed) (the “UCTA”).

Decision on the First Tranche Shares

Acute intended to create a security interest

18 Although the shares were described in the November 2016 Agreements as being pledged to Lioncap Global, shares are choses in action and, unlike choses in possession, cannot form the subject of a pledge. Moreover, there was no evidence that any share certificates which could be regarded as choses in

possession were involved here (see *Qilin World Capital Ltd v CPIT Investments Ltd and another appeal* [2018] 2 SLR 1 at [4]).

19 Regardless of the exact nature of the arrangement, it was clear to us that Acute intended to create a security interest over the First Tranche Shares in favour of Lioncap. Under the November 2016 Agreements, the First Tranche Shares were intended as security for various loan facilities granted by Lioncap Asia – it was not disputed that Lioncap would have had recourse to the shares in the event of a default in repayment by Acute. That was not altered by the terms of the April 2017 Addendum or the Instruction Letters.

No resulting trust arose

20 According to the Judge at [90]–[92] of the Judgment, the subject matter of the security interest which Acute created in favour of Lioncap could not, strictly speaking, be the legal interest in the First Tranche Shares as that is vested permanently in a nominee designated by the Hong Kong Stock Exchange, and the beneficial interest in the shares was the only property in the shares which Acute could charge to Lioncap. In determining whether a resulting trust arose over the First Tranche Shares, however, we assumed for the moment that Acute was both legal and beneficial owner of the First Tranche Shares and that legal title to the First Tranche Shares had been transferred to Lioncap.

21 However, when the November 2016 Agreements, the April 2017 Addendum and the Instruction Letters were scrutinised holistically, it appeared clear to us that no resulting trust could have arisen over the First Tranche Shares in favour of Acute.

22 The April 2017 Addendum which exhibited a draft instruction letter as Exhibit A (the “Draft Instruction Letter”) was internally contradictory. On one hand, the April 2017 Addendum stated that the Draft Instruction Letter would be executed pursuant to Section 3.05 of one of the November 2016 Agreements. Section 3.05 in turn contained an undertaking by Acute to do all that was necessary to “*perfect the right, title and interest* of [Lioncap Global] to and in the Pledged Equity Interest, and to give legal effect to the provisions of this Agreement and the transactions hereby contemplated” [emphasis added]. This suggested that the Draft Instruction Letter was meant to be executed to complete the transaction in the November 2016 Agreements. Yet, on the other hand, the Draft Instruction Letter stated that Lioncap Global “has an intention to borrow shares from [CIMB Indonesia], which are owned by [Acute] and *who will remain the beneficial owner*” [emphasis in original omitted; emphasis added in italics].

23 Although the Draft Instruction Letter was later amended in the Instruction Letters to reflect that Lioncap Global “has an intention to borrow shares under [CIMB Indonesia’s] custody, which are owned by [Acute] and who will remain the beneficial owner of the shares” [emphasis in original omitted], this change was immaterial. The inconsistency remained.

24 There was a second inconsistency found in the Draft Instruction Letter, and the Instruction Letters. The first part of those letters mentioned that Acute would remain the beneficial owner of the shares, but a later part mentioned that both “the legal and beneficial ownership of the shares remain with [Acute]”.

25 The Draft Instruction Letter was engrossed accordingly, signed and dated April 2017 (*ie*, the First Instruction Letter). A letter in virtually identical

terms save for the amount of Cabbeen shares instructed to be transferred was likewise engrossed, signed and dated 18 May 2017 (*ie*, the Second Instruction Letter). To recapitulate, under the Instruction Letters, the shares which CIMB Indonesia was instructed to transfer comprised the First Tranche Shares which were deposited into Lioncap Global's account with CGS-CIMB (see [5] above).

26 Acute's case was centred on the Instruction Letters stating that Acute was to remain the beneficial owner of the First Tranche Shares; it is on the basis of these statements and the transfer of the First Tranche Shares to Lioncap's account with CGS-CIMB, that Acute argued that while the legal title to the First Tranche Shares was transferred to Lioncap, the beneficial title to the shares remained with Acute. Hence, Acute submitted, a resulting trust arose under which Lioncap held the First Tranche Shares on trust for Acute and owed fiduciary duties to Acute.

27 However, Acute's case ignored the references in the Instruction Letters to Lioncap Global having an intention to borrow the First Tranche Shares. If Lioncap Global had in fact borrowed the shares, it would not have been holding the shares on trust for Acute. The borrowing of the First Tranche Shares by Lioncap Global would ordinarily mean that Lioncap Global was entitled to deal with and/or dispose of the shares for its own purposes, subject to an obligation on Lioncap Global's part to return an equivalent amount of Cabbeen shares to Acute. That would have been incompatible with Lioncap Global being a trustee of the First Tranche Shares for Acute as beneficiary, since Lioncap Global would have required unencumbered title to the First Tranche Shares in order to deal with and/or dispose of them.

28 Second, leaving aside whether there had been an agreement for Lioncap to borrow the First Tranche Shares from Acute, the suggestion from the April 2017 Addendum and the Instruction Letters was that they were meant to complete the transaction in the November 2016 Agreements (see [22] above). However, the November 2016 Agreements never contemplated that Lioncap would hold the Cabbeen shares (that were intended as security for loans advanced by Lioncap Asia) on trust for Acute.

29 The Instruction Letters should not be considered in isolation. When the circumstances were considered in totality, the two most plausible scenarios were either: (a) Acute and Lioncap had agreed to the latter borrowing the First Tranche Shares in addition to having a security interest over an equivalent number of shares that Lioncap would have to return to replace the First Tranche Shares that it had borrowed and dealt with, which would not ordinarily be compatible with a trust; or (b) Lioncap only had a security interest over the shares, which would also not be ordinarily compatible with a trust. We add that counsel for Acute was not able to point to any evidence which would satisfactorily explain why the word “borrow” was used in the Instruction Letters, if there was in fact no intent to lend the shares to Lioncap for its use.

30 In any event, in either scenario, there would be no clear suggestion or discernible intent that Lioncap was to hold the First Tranche Shares on a resulting trust for Acute.

31 What Acute was trying to do was to use the April 2017 Addendum and the Instruction Letters to change the nature of the transactions pursuant to the November 2016 Agreement from a pure security arrangement to one coupled with a trust when there was no suggestion of a trust in the April 2017 Addendum

itself. The words which Acute relied upon in the Instruction Letters were inadequate to do so.

32 Moreover, contrary to what Acute submitted, *Yuanta* – a case in which a trust was found in the context of a transfer of shares for the purposes of financing – was distinguishable from the case before us. As the Judge rightly noted, the transaction in *Yuanta* did not create an immediate security interest in the shares there, unlike in the present case (see the Judgment at [102]–[108]). Instead, the shares in *Yuanta* were transferred from the transferor (“TPG”) to the transferee (“Yuanta”) to secure financing for the joint venture between TPG and Yuanta (see *Yuanta* at [53]–[55]). The financing could be obtained either by a sale of the shares, or by using the shares as security for a loan. Until Yuanta used the shares, it was holding the shares as trustee for TPG. If the financing was obtained by selling the shares, TPG’s interest would no longer be in the shares but in the sale proceeds. Implicitly, if the financing was obtained by way of a loan secured by the shares, the shares would no longer be held on trust for TPG but as security for the lender (see *Yuanta* at [51] and [54]). The issue in *Yuanta* was thus whether TPG had a claim to the sale proceeds of the shares as beneficiary of a trust, as the shares had been sold in circumstances where no security interest in the shares was created. In contrast, in the present case, Lioncap was already a lender in whose favour a security interest over the First Tranche Shares had already been created.

No express trust arose

33 For the same reasons explained above at [27]–[32], we were of the view that no express trust arose over the First Tranche Shares. On the facts, there was no clear suggestion or intention on Acute’s part that Lioncap was to hold the shares on trust for Acute, or that the shares were to be held by Lioncap subject

to trust obligations (see *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [55]). We also noted the concession from Acute’s counsel that the case for an express trust was not as strong as that for a resulting trust.

Conclusion on the First Tranche Shares

34 As there was neither a resulting nor an express trust over the First Tranche Shares, and no other basis was pleaded for a fiduciary relationship to arise, Acute’s claims in knowing assistance and dishonest receipt against CGS-CIMB could not be made out. We were, in any event, doubtful whether the evidence demonstrated knowledge and/or dishonesty on CGS-CIMB’s part.

35 Our conclusion that no trust arose in the present case obviated the need to consider whether, as the Judge found, an intention to confer a “factual benefit” (eg, to create or improve a security interest) precludes a resulting trust from arising (see [99] of the Judgment). With respect, however, the Judge may have stated this proposition too broadly; it may not be entirely accurate to state that an intention to confer a purely *factual* benefit invariably prevents a resulting trust from arising. The more specific point for our purposes, was that an intention to create a security interest in a particular property in favour of the transferee of the property was incompatible with that transferee holding the property on trust for the transferor when there are otherwise no express words or circumstances to support the finding of a trust. We therefore dismissed Acute’s appeal as regards the First Tranche Shares.

Decision on the Second Tranche Shares

Lioncap Global had actual authority to operate Acute's CGS-CIMB Account

36 We also dismissed Acute's appeal in relation to the Second Tranche Shares. There was sufficient evidence to conclude that Lioncap Global was duly authorised by Acute to operate Acute's CGS-CIMB Account. The Judge did not accept Acute's explanation that in the Hong Kong proceedings, it was merely describing the factual situation caused by CGS-CIMB's insistence on taking instructions from Lioncap Global, such that Lioncap Global could unilaterally operate Acute's CGS-CIMB Account. We did not see any reason to disagree. If it were really the case that Acute was simply describing the factual situation subsisting then, it would have been reasonable to expect Acute to have explained that to the Hong Kong court. It would have strengthened Acute's case in the Hong Kong proceedings to highlight that it had lost control of its account with CGS-CIMB because CGS-CIMB insisted on receiving instructions from a third party, rather than an account holder of the account. However, Acute did not do that. Both Acute and Mr Ng (who verified the accuracy of Acute's pleadings in the Hong Kong proceedings) were content to simply state that Acute's CGS-CIMB Account could only be operated by way of joint instructions and/or authorisation from both Acute and Lioncap Global, or by way of instructions given by Lioncap Global alone (see the Judgment at [9] and [144]–[145]).

37 In addition, Acute did not query CGS-CIMB or raise objections at the material time as to why CGS-CIMB had acted on instructions from Lioncap Global even though the shares were kept in Acute's CGS-CIMB Account. Acute pointed to a letter dated 4 September 2017 and subsequent emails which pertain to Acute's instructions to CGS-CIMB to withdraw the Second Tranche Shares

from Acute's CGS-CIMB Account. However, these were not objections by Acute that CGS-CIMB had acted without authorisation but rather that Lioncap Global should not have acted as it did. This reinforced the argument by CGS-CIMB that Acute knew, and had acted on the basis, that Lioncap Global had been granted authority to operate Acute's CGS-CIMB Account.

38 We therefore agreed with the Judge's conclusion that Acute had admitted that Lioncap Global had actual authority to control Acute's CGS-CIMB Account.

Clause 2C protects CGS-CIMB from liability

39 In any event, we were of the view that Clause 2C operated to preclude Acute from alleging that the transfer of the Second Tranche Shares from Acute's CGS-CIMB Account to Lioncap's account was unauthorised. Clause 2C provided:

The Client shall verify all statements and confirmations sent by [CGS-CIMB] to the Client. If no objection is raised in writing by the Client within 7 Business Days of the date of such statements and confirmations, such statements and confirmations shall be deemed conclusive and binding against the Client, who shall not be entitled to object thereto. However, [CGS-CIMB] may at any time rectify any error or correct any omission on any entry, statement or confirmation.

40 It was undisputed that by 20 August 2017 at the latest, Acute had received a transfer note dated 3 August 2017 recording that 21m Cabbeen shares had been transferred out of Acute's CGS-CIMB Account. However, Acute did not raise any objection within seven business days after that, as required by Clause 2C.

41 Even if we accepted Acute’s submission that the seven business days to raise objections should start from 4 September 2017 when it received an account statement, we could not accept Acute’s argument that its various instructions to CGS-CIMB to withdraw the Second Tranche Shares from its account constituted an objection for the purposes of Clause 2C. While we accepted that an objection may be couched in any number of ways, the court must still consider the substance of the communication. As noted above at [37], the letter and emails sent by Acute instructing CGS-CIMB to withdraw the Second Tranche Shares did not, in substance, contain any objection to the transfer of the Second Tranche Shares as an unauthorised transaction.

42 We agreed with the Judge that Clause 2C applied even in respect of unauthorised transactions or negligent breaches (see *Tjoa Elis v United Overseas Bank Ltd* [2003] 1 SLR(R) 747 at [95]–[110]). We also agreed with CGS-CIMB that Clause 2C was not unreasonable under the UCTA. In the premises, we were therefore of the view that even if the transfer of the Second Tranche Shares was unauthorised, Acute was contractually precluded by Clause 2C from disputing the transaction, having failed to raise any objection within the time stipulated under Clause 2C.

Conclusion

43 For the reasons given, we dismissed the appeal in its entirety. We accepted CGS-CIMB’s submission that pursuant to clause 92.1 of CGS-CIMB’s General Terms and Conditions, CGS-CIMB should be entitled to the costs arising from Acute’s claims in relation to the Second Tranche Shares on an indemnity basis. Accordingly, after taking that submission into account, Acute

was ordered to pay CGS-CIMB costs of S\$65,000 (inclusive of disbursements).
The usual consequential orders would apply.

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Aedit Abdullah
Judge of the High Court

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