# Credit Agricole Indosuez v Banque Nationale de Paris
# [2001] SGCA 20

**Case Number** : CA 52/2000

**Decision Date** : 06 April 2001

**Tribunal/Court** : Court of Appeal

**Coram** : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

**Counsel Name(s)** : Steven Chong SC, Toh Kian Sing and David Tan Yew Beng (Rajah & Tann) for the CAIs; Choi Yok Hung, Gan Kam Yuin and Rowena Chew Kiat (Bih Li & Lee) for the BNPs

**Parties** : Credit Agricole Indosuez — Banque Nationale de Paris

*Civil Procedure – Appeals – Judgment reversed on appeal – Repayment of judgment sum paid pursuant to judgment – Whether repayment should be with interest*

(delivering the judgment of the court): On 14 February 2001, we delivered a judgment allowing the appeal of the appellants, Credit Agricole Indosuez (`CAI`), and reversing a decision of the High Court granting judgment to the respondents, Banque Nationale De Paris (`BNP`) on a letter of credit (`LC`) issued by CAI and negotiated by BNP. We held that BNP were not entitled to any payment under the LC because it was a deferred payment credit rather than a negotiation credit. The order of this court has not yet been extracted.

Pursuant to the judgment below in favour of BNP, on 10 April 2000, CAI paid the sum of US$1,378,360.02 to BNP. In the light of our decision reversing the judgment below, the solicitors for CAI wrote on 16 February 2001 to BNP`s solicitors asking for a refund of the US$1,378,360.02 plus interest thereon at 6% per annum from 10 April 2000 to the date of the repayment. On 21 February 2001, BNP`s solicitors replied, stating that BNP refused to pay interest on that sum from 10 April 2000 to the date of judgment of this court. BNP agreed to pay interest only in respect of the period from the date of this court`s judgment. In view of this disagreement, CAI has asked this court to rule on it. Accordingly, the parties were invited to make their submission on the question.

***The law***

The locus classicus on the issue is the Privy Council decision in **Rodger v The Comptoir D`Escompte de Paris** (Unreported) , where Lord Cairns, delivering the judgment of the Board, said (at pp 475-476):

> *It is contended, on the part of the Respondents here, that the principal sum being restored to the present Petitioners, they have no right to recover from them any interest. It is obvious that, if that is so, injury, and very grave injury, will be done to the Petitioners. They will by reason of an act of the Court have paid a sum which it is now ascertained was ordered to be paid by mistake and wrongfully. They will recover that sum after the lapse of a considerable time, but they will recover it without the ordinary fruits which are derived from the enjoyment of money. On the other hand, those fruits will have been enjoyed, or may have been enjoyed, by the person who by mistake and by wrong obtained possession of the money under a judgment which has been reversed. So far, therefore, as principle is concerned, their Lordships have no doubt or hesitation in saying that injustice will be done to the Petitioners, and that the perfect judicial determination which it must be the object of all Courts to arrive at, will not have been arrived at unless the persons who have had their money improperly taken from them have the money restored to them, with interest, during the time that the money has been withheld.*

...

*Their Lordships, therefore, so far as any precedents applicable to the case are concerned, believe that the precedents will be found to be in favour of a restitution of the money with interest. They are quite satisfied, that this practice is in accordance with the true principle to be applied to this case, and with what the justice of such a case demands, ...*

This court had recently, in the case **Singapore Airlines Ltd v Fujitsu Microelectronics (Malaysia) Sdn Bhd (No 2)** 1 SLR 532 , the occasion to consider a similar question and there, having reviewed the judgment of the Privy Council in ***Rodger*** as well as a decision of the Court of Appeal of the State of Victoria, Australia, in **Meerkin v Rossett Pty Ltd** (Unreported) , in particular the judgment of Callaway JA, we emphasised that justice in such a case demands that the focus be on restitution rather than compensation.

In ***Goff and Jones on the Law of Restitution*** (5th Ed), a leading work on the subject, the learned authors, citing ***Rodger*** , state that (at p 457):

*It is then settled that a successful appellant can compel the respondent to restore all benefits gained through the judgment which has been reversed. The appellant has a right of `restitution` of money paid by him ... The court will also order that interest shall be paid.*

We recognise that there may be some force in BNP`s counsel`s submission that until the High Court`s judgment was overturned, BNP was entitled to the money. This was what counsel stated:

*Firstly, after the decision in the High Court, there was a valid and binding final judgment entitling the Respondents to the sum of money. As of that point, the judgment was valid and binding and final. It stood so up until the Court of Appeal reversed that decision. Until the Court of Appeal delivered judgment, the Respondents were even entitled to execute judgment and entitled to the sum of the judgment debt. After the High Court judgment, the Respondents should not have been kept out of the fruits of litigation. It is trite law to say that an appeal will not automatically act as a stay of execution.*

...

*If interest is claimed for the period between the High Court judgment and the Court of Appeal judgment, it must be in recompense for the loss of the right to use that money. However, if the appellants were entitled to the use of the money, at that point, then the Respondents could not also have had the right to the use of the money after the High Court judgment. The award of money to the Respondents by the High Court judgment would be rendered nugatory even before the Court of Appeal decision. By awarding interest from the date of the payment, the Court might as well have given a stay of execution.*

It is really a question of the perspective from which one views the matter. It would be plain from the

rationale given by Lord Cairns in ***Rodger*** (supra) that an order made in this regard is really in pursuance of the court`s equitable jurisdiction. What counsel has said is true if you look only from the viewpoint of the respondent. In considering this question, the court should seek to do justice to all the parties, not just the appellant or the respondent. In the words of Callaway JA in ***Meerkin*** (supra):

> *The error was made by the court below, not by the respondent. There is no right to compensation as against the respondent only to restitution. If interest measured by the appellant`s loss is awarded, all that the court will do is to shift the injustice occasioned by the erroneous judgment from the appellant to the respondent.*

The principle underlying the modern law of restitution is unjust enrichment and the object of this remedy is, to quote from 9 ***Halsbury`s Laws of England*** (4th Ed) para 630, `to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep.` It will, therefore, be seen that the doctrine of restitution essentially viewed the matter from the point of view of the respondent: the one who received the money and is now required to restore it. In a case, the loss suffered by the appellant could very well be more than the benefit enjoyed by the respondent, but all that restitution demands is that the respondent returns the benefit it has obtained from the payment made pursuant to the judgment below.

The rules of court do not lay down any rate applicable to such a situation. What is the benefit, or the quantum thereof, which the respondent has to disgorge, besides refunding the judgment sum, would have to depend on the circumstances of the case. In ***Singapore Airlines v Fujitsu*** (supra), as we felt the respondent had acted reasonably in placing the judgment sum with a financial institution to earn interest, we ordered that the respondent needed only to refund the judgment sum and the interest actually earned, to the appellant.

In relation to the present case, the respondents are a bank carrying on banking business in Singapore. No evidence is tendered before us as to how the respondents had made use of the judgment sum paid by the appellants. However, it would not be unreasonable to assume that the respondents would have utilised the money for its normal banking activities. We note that the sum paid was in US dollars. As the parties had not placed any material to assist this court, it does not seem that the earning rate of 6% per annum was not attainable by the respondents. In the result, we would order that the respondents, besides refunding the judgment sum, also pay to the appellants interest at 6% per annum (being a reasonable estimate of the benefit which the respondents had enjoyed in holding the judgment sum) from the date of receipt of the judgment sum to the date of the judgment of this court.

## Outcome:

Orders accordingly.