

HSBC Bank USA (formerly known as Republic National Bank of New York) v Francisco Lee Wong and Another
[2001] SGHC 210

Case Number : Suit 600001/2001/T
Decision Date : 03 August 2001
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Harpreet Singh and Advani Ajay Jiwat (Drew & Napier LLC) for the plaintiffs; Thio Shen Yi and Elaine Tan (TSMP Law Corporation) for the defendants
Parties : HSBC Bank USA (formerly known as Republic National Bank of New York) — Francisco Lee Wong; Rachel Yu Wong

JUDGMENT:

1. Under the terms of the contract between the Plaintiffs and the Defendants, the Plaintiffs are entitled to close out any of the Defendants' positions in the circumstances which have arisen without making a margin call.
2. While I find that it was the practice of the Plaintiffs to make a margin call, this practice is subject to their legal right as I have mentioned.
3. I also find that Mr Francisco Wong was not led to believe that the Plaintiffs' legal right was waived or varied by any statement from Stephen Co.
4. In any event, the Plaintiffs' Sylvia Liu did make a margin call. This was on 8 October 1998 at about 1529 hours. However she could not give details of the margin call like the amount of the top-up for the margin and the time within which to provide the top-up. This was because Mr Wong said he would check and also expressed disbelief that he had to top-up the margin.
5. In view of his disbelief, a fax was sent by Ms Liu to explain the Defendants' positions.
6. Mr Wong then called Ms Liu at about 1621 hours. In this second conversation, Mr Wong maintained his disbelief.
7. A second fax was then sent by Ms Liu to Mr Wong to elaborate.
8. This was followed by another call by Ms Liu to Mr Wong. By this time, it was about 1721 hours. Although in this third conversation, Mr Wong appeared to understand the situation, he said he would look into the matter. Ms Liu said she would call him back.
9. At trial, Mr Wong did not dispute the accuracy of the figures in the faxes that were sent to him by Ms Liu. However, he said that at the time, he had to check his documents.
10. Initially, he said that his documents were at his office but he was not at his office when Ms Liu had made her first call.
11. Subsequently, he changed his evidence to say that his documents were at home and he had to call his wife to fax his documents to him at his office.
12. According to him, his documents were then brought to his office but he did not know by whom as

he was not in the office when they were brought.

13. He said that Ms Liu did not contact him again. In fact she made 6 more attempts to contact him during one of which she had left a message. That message had informed him that the Plaintiffs' Credit Department was requiring Ms Liu to get him to close out his positions and urged him to return her call urgently.

14. Mr Wong claimed that he did not receive this message.

15. Mr Wong's evidence about his documents being at home and having to call Mrs Wong to fax the documents to him was not corroborated by Mrs Wong. Mrs Wong said she did not know whether Mr Wong's documents were kept in his office or at home. This was telling. It belied Mr Wong's explanation that he had to call his wife to fax his documents to him from home.

16. I do not accept Mr Wong's evidence that his documents were at home. I find that they were at his office.

17. I also find that even if he was initially uncertain about the true state of the Defendants' positions, he was no longer uncertain after the second fax he had received from Ms Liu.

18. By the third conversation between Mr Wong and Ms Liu, Mr Wong knew the true state of the Defendants' positions and he had no doubt about the urgency of the situation and the Plaintiffs' intentions, i.e to require him to top-up or else they would liquidate the positions.

19. I also find that he had received Ms Liu's message later in the evening before the positions were liquidated.

20. I find that he was playing for time, hoping that the US\$/yen exchange rate would turn around in the Defendants' favour the next day. That is why he did not return Ms Liu's call. He had also assumed that since it was past 5pm by the time he received her message, the Plaintiffs would not liquidate the positions until the next day.

21. He had omitted to take into account the fact that the foreign exchange market does not sleep and that the Plaintiffs might liquidate the Defendants' positions after usual office hours.

22. That is why he was furious to learn the next day that the Defendants' positions had been liquidated the night before especially since the US\$/yen exchange rate had indeed turned around in the Defendants' favour.

23. In the circumstances, the Defendants have only Mr Wong himself to blame.

24. Accordingly, I grant judgment in favour of the Plaintiffs for US\$31,237.65 with interest thereon at the rate of 9.75% per annum from 1 November 1998 to the date of payment. The Counterclaim is dismissed.

25. I will hear the parties on costs.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

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