

BNP Paribas Wealth Management v Lam Chi Kin David
[2009] SGHC 117

Case Number : Suit 875/2008, RA 24/2009
Decision Date : 15 May 2009
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : K Muralidharan Pillai (Rajah &Tann LLP) for the plaintiff/respondent; Soh Gim Chuan (Soh Wong & Yap) for the defendant/appellant
Parties : BNP Paribas Wealth Management — Lam Chi Kin David
Credit and Security

15 May 2009

Woo Bih Li J:

Introduction

1 The plaintiff BNP Paribas Wealth Management ("PWM") is a licensed Hong Kong private bank. The defendant Lam Chi Kin David ("DL") is at present a Singapore citizen who was formerly a lawyer in Hong Kong. PWM's claim is for sums alleged to be due from DL under a multi-currency short term loan facility granted to DL under a facility agreement dated 4 January 2008 and executed by DL on 9 January 2008.

2 I adopt the following definitions:

AUD	-	Australian dollars
NZD	-	New Zealand dollars
JPY	-	Japanese yen
SD	-	Singapore dollars
USD	-	United States dollars

3 PWM filed Summons No 5543/2008/F on 18 December 2008 for summary judgment against DL. On 21 January 2009, an assistant registrar granted judgment against DL for JPY 29,062,179.35, contractual compound interest and costs of SD 4,000 and disbursements. DL appealed against this decision. On 11 March 2009, I dismissed his appeal with costs. DL has filed an appeal to the Court of Appeal.

PWM's allegations

4 Under the terms of the facility agreement and in the event of any shortfall of the Margin Requirement (as defined in the facility agreement), DL was required "to furnish [PWM] on demand, but

no later than the next Business Day with additional cash collateral or securities which [PWM] approves, or to reduce the Total Outstanding to make up for the shortfall in order to maintain the Margin Requirement”.

5 On 8 October 2008 at about 1.21pm, PWM sent an urgent telefax to DL to inform him that his outstanding liabilities exceeded the loanable value of his charged portfolio by USD 1,064,000 and that DL had to remit funds to PWM immediately to cover the shortfall and to maintain the Margin Requirement.

6 Later that same day, PWM sent another telefax at about 1.55pm to DL to inform him that the shortfall had increased to USD2,500,000 and of a clean position of USD400,000, meaning that even if the foreign currency positions in his account were liquidated, he would owe PWM USD400,000. DL did not respond immediately but later in the evening, he gave instructions as follows:

(a) Sell AUD 6,560,000 (at the rate of 65.92 for value on 10 October 2008) at or around 6pm on 8 October 2008; and

(b) Sell NZD 14,000,000 (at the rate of 61.35 for value on 10 October 2008) at or around 8pm on 8 October 2008;

(c) Sell NZD 13,136,790.91 (at the rate of 64.83) at or around 8pm on 8 October 2008.

7 Instructions (a) and (b) were transacted. However, instruction (c) was subsequently amended pursuant to further telephone instructions from DL to do either of the following:

(d) To sell NZD 13,136,790.91/buy JPY 851,658,154.70 at the rate of 64.83; or

(e) To sell NZD 13,136,790.91/buy JPY 851,658,154.70 at the rate of 57.90.

8 If instruction (d) was executed, DL would make a profit of USD 25,345.16, and if instruction (e) was executed, he would stop his loss at USD 894,230.21.

9 In the end, as the rates envisaged in (d) and (e) were not reached, neither of the instructions was executed and there was still a shortfall in the Margin Requirement in respect of DL’s account.

10 The following day on 9 October 2008, PWM attempted to contact DL from 3pm through various means, *ie*, by the telephone and leaving voice messages and sending telefaxes but DL was uncontactable.

11 Later, on 9 October 2008, PWM sent a further telefax to DL at about 6.43pm to ask that he respond with instructions on how he intended to ensure the satisfaction of the Margin Requirement. The telefax asked for his instructions before 7.30pm failing which PWM would close DL’s outstanding position.

12 As DL failed to respond by the deadline, PWM proceeded to close his NZD/JPY position at or around 8pm by selling DL’s NZD 13,165,334.60 (the exact amount to be confirmed the following day) at 62.17. The actual transaction after confirmation was NZD 13,144,294.84 @ 62.17 and NZD 65,334.60 @ 62.47 for value on 14 October 2008.

13 The sum of JPY 29,062,179.35 is the total amount outstanding in DL’s account.

DL’s allegations

14 Before me, the crux of DL's defence was that PWM's telefax of 8 October 2008 sent at about 1.21pm was invalid because it demanded immediate remittance from DL to top up his account whereas under the terms of the facility agreement, he had up till the next business day to do so.

15 He also asserted that PWM's telefax dated 9 October 2008 sent at about 6.43pm was also invalid because it gave him up to 7.30pm to revert when, again, he should have had up till the next business day to do so.

The court's decision

16 While it was true that PWM's telefax of 8 October 2008 sent at about 1.21pm should have given DL more time to revert, the fact of the matter was that DL did revert, not with the top-up required, but with instructions on his positions as set out above. He did not dispute his instructions set out as (a) and (b) above for the sale of AUD 6,560,000 at 65.92 and NZD 14,000,000 at 61.35. Clearly he had to bear the losses arising from those instructions.

17 The remaining NZD position of 13,136,790.91 was not executed because the exchange rates did not fall within his instructions, as mentioned above. So, after PWM was unable to reach him since 3pm of 9 October 2006, PWM sent the telefax at about 6.43pm with a deadline of 7.30pm for him to revert.

18 As can be seen, this telefax of 9 October 2008 at about 6.43pm was a follow-up from the earlier events. In the circumstances, I did not think that the requirement to give DL a business day to top up any shortfall was to be re-calculated from 9 October 2008. This would have meant that each time PWM sent a chaser, DL's time to revert would be extended.

19 In my view, DL had had enough time to revert by 7.30pm of 9 October 2008. It seemed to me that he was deliberately avoiding PWM. I was of the view that he could not complain about the last transaction as well and PWM was entitled to summary judgment for the entire sum claimed. Accordingly, I dismissed his appeal with costs.