

Lo Man Heng and another v UBS AG (Yap Loo Mien, third party)
[2014] SGHC 134

Case Number : Suit No 752 of 2010
Decision Date : 10 July 2014
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : James Ponniah and Leong Sue Lynn (Wong & Lim) and Adam Ong (Ascentsia Law Corporation) for the plaintiffs; Andre Maniam SC, Chua Sui Tong and Daniel Tan (WongPartnership LLP) for the defendant; See Tow Soo Ling, Hu Huimin and Zara Mok (Colin Ng & Partners LLP) for the third party.
Parties : Lo Man Heng and another — UBS AG (Yap Loo Mien, third party)

Banking – Branch bank – Closing account

Equity – Estoppel

Restitution – Unjust enrichment

10 July 2014

Judgment reserved.

Judith Prakash J:

Introduction

1 The plaintiffs used to be customers of the defendant bank. In September 2007, their accounts with the defendant were closed in circumstances which are now the subject matter of this action. The plaintiffs claim that the defendant wrongfully paid the balances in the accounts to the third party. The defendant's position is that these payments were authorised by the plaintiffs. As a fall-back position, if I find the defendant liable to the plaintiffs, the defendant seeks to claim reimbursement from the third party.

2 The main issues that arise are:

- (a) Did the defendant make the payments to the third party in breach of its mandate from the plaintiffs?
- (b) If the payments were made in breach of mandate, are the circumstances such that the plaintiffs are nevertheless estopped from recovering from the defendant?
- (c) If the defendant is liable to the plaintiffs, is the third party in turn liable to indemnify and reimburse the defendant?

Background

Events leading to the action

3 The first plaintiff, Lo Man Heng ("Mr Lo"), is a Malaysian businessman primarily engaged in the

timber industry. He lives in Sabah. The second plaintiff, Zenique Investments Ltd ("Zenique"), is a company incorporated in the British Virgin Islands ("BVI") and it was set up by Mr Lo to collect money from timber sales effected by him.

4 In the course of his business, Mr Lo undertook several business ventures jointly with two other Malaysians operating in Sabah, Michael Chia Tien Foh ("Mr Chia") and Chong Siak Nyen ("Mr Chong"). Mr Chia is married to the third party in the action, Yap Loo Mien ("Mdm Yap"). One of the business entities in which the three men were involved is a Malaysian company named Rimba Kita Sdn Bhd ("Rimba Kita").

5 The defendant is a bank incorporated in Switzerland with a branch registered in Singapore. In January 2006, its Singapore branch employed Chua Hock Beng Dennis ("Dennis Chua") as a client advisor. Dennis Chua had, in his previous employment, handled the accounts of Mr Lo and Mr Chia. He remained in contact with them. Subsequently the plaintiffs and Mr Chia opened accounts with the defendant. The details of the accounts in which the plaintiffs or Mr Lo alone had an interest are as follows:

- (a) Account No 231183 in Mr Lo's name, an account which only Mr Lo was authorised to operate;
- (b) Account No 280999 in Zenique's name, which only Mr Lo was authorised to operate; and
- (c) Account No 280668 in the name of another BVI company called Blisstop Corporation Ltd ("Blisstop"), which Mr Lo and Mr Chong were both authorised to operate.

For the purpose of this judgment, I will refer to the first two accounts as "the Accounts" and to the third as the "Blisstop Account". Mr Chia also opened accounts with the defendant, some jointly with Mdm Yap, and another in the name of his own BVI company. I will refer to these collectively as "the Chia Accounts". It is common ground that only Mr Lo was authorised to operate and give instructions to the defendant in respect of the Accounts.

6 In September 2007, both Mr Lo and Mr Chia were picked up by the Malaysian Anti-Corruption Commission ("the MACC") and held in remand for a few days to assist the MACC's investigations into possible criminal activity. They were released from custody on 16 September 2007. The next day, oral instructions were given to Dennis Chua to close the Accounts and transfer the balances therein to Mdm Yap. At about the same time, Mr Chia gave Dennis Chua instructions to close the Chia Accounts as well. It is disputed as to who gave the instructions to close the Accounts and the plaintiffs are now seeking to recover the following sums paid out from the Accounts on 17 September 2007:

- (a) A\$3.48 from Account No 231183;
- (b) \$1,080.50 from Account No 231183;
- (c) US\$76,821.98 from Account No 231183; and
- (d) US\$1,727,928.33 from Account No 280999.

7 The defendant's position is that at about 8.30am on 17 September 2007, Mr Lo had a telephone conversation with Dennis Chua during which he instructed Dennis Chua to close the Accounts and to prepare bank drafts in his (*ie*, Mr Lo's) favour in respect of the balances in the Accounts. At about 4.30pm the same day, there was another telephone conversation between the two men during which

Mr Lo amended his instructions by stating that the balances should be paid to Mdm Yap instead of to himself. The plaintiffs deny that either conversation took place.

8 Mr Lo testified that after being released from MACC custody, it was only in late October 2007 that he called Dennis Chua to find out the credit balances in the Accounts. It was then that he discovered that all the moneys in the Account had been paid out to Mdm Yap. Mr Lo informed Dennis Chua that he had not given the instructions for any payment to be made to Mdm Yap and that he would come down to Singapore as soon as possible to sort out the matter. Consequently, Mr Lo travelled to Singapore on 3 November 2007 and met with Dennis Chua at the Shangri-La Hotel the next day.

9 There are two versions of what took place at the Shangri-La Hotel meeting on 4 November 2007. Mr Lo's version is that during the meeting Dennis Chua told him that Mr Chia had instructed him over the telephone to make the payments from the Accounts to Mdm Yap. These instructions were given on the morning and afternoon of 17 September 2007. When asked why he had accepted Mr Chia's instructions when Mr Chia had no authority to operate any of the Accounts, Dennis Chua's explanation was that he had been told by Mr Chia that the MACC was investigating Mr Lo and Mr Chia and therefore the moneys in the Accounts had to be safeguarded.

10 According to Mr Lo, he told Dennis Chua that Mr Chia had misled the defendant into making unauthorised payments and he should have checked with Mr Lo before making those payments. However, he accepted Dennis Chua's explanation that he had been acting to protect Mr Lo's interests. This was because at that time Mr Lo was unaware of what Dennis Chua had really been up to. Mr Lo then informed Dennis Chua that he would meet Mr Chia and request the latter to refund the moneys from the Accounts and, in the case of Blisstop Account, to pay them to himself and Mr Chong. He gave Dennis Chua this assurance because at that time there were still joint ventures between himself and Mr Chia and he was confident that Mr Chia would be keen to settle the matter due to the MACC investigations.

11 At the meeting, Dennis Chua also asked Mr Lo to sign two sets of written instructions. These instructions were to close the Accounts to avoid further charges from being incurred and for the last known account balances to be provided to Mr Lo. Mr Lo signed the forms and they were backdated to 17 September 2007, the date on which verbal instructions had been provided by Mr Chia.

12 Dennis Chua gave a very different account of the meeting. He said it lasted for about an hour and was on Mr Lo's investments and personal life. It was cordial and Dennis Chua took the opportunity to obtain a written confirmation of Mr Lo's verbal instructions to close the Accounts given on 17 September 2007. He prepared the two sets of written instructions that Mr Lo signed. The backdating to 17 September 2007 was done by one of Dennis Chua's assistants since that was the day on which Mr Lo had given his verbal instructions to close the Accounts.

13 After the Shangri-La meeting, Mr Lo returned to Sabah. He asserted that he then asked Mr Chia and asked him about the closure of the Accounts and the payment of the moneys to Mdm Yap. Mr Chia admitted closing the Accounts and effecting the payments. He reassured Mr Lo that the moneys would be repaid in due course. However, repayment was repeatedly delayed and Mr Lo never received it.

14 In 2010, Mr Lo instructed Singapore solicitors to pursue the claim against the defendant. This action was started on 30 September 2010. Mr Lo explained in his affidavit and under cross-examination that he did not take action sooner as he was facing both criminal and civil proceedings in Malaysia and wanted to focus on those proceedings first. It should be noted, however, that the

Malaysian criminal proceedings against Mr Lo continued until August 2012 when the prosecution's appeal against Mr Lo's acquittal was dismissed. As for the civil proceedings, these referred to a claim brought by Mr Chia against Mr Lo alleging that the latter had breached the terms of an agreement reached in November 2008. The proceedings were started in 2009 but subsequently, after a defence and counterclaim were filed, Mr Chia withdrew the action.

The defendant's documentation

15 During the discovery process, the plaintiffs were able to obtain the disclosure of many of the defendant's standard internal banking documentation. The documents included Payment Instruction Forms, Payment Instruction Amendments, cheques issued by the defendant and internal e-mail correspondence passing between the defendant's employees.

16 With respect to the Accounts, the following documents were disclosed:

(a) Six Payment Instruction Forms dated 17 September 2007 ("Payment Forms"), in respect of a phone call made at 8.30am and four of which instructed that the sums of A\$3.48, \$1,080.50, US\$76,821.98 and US\$1,727,928.33 were to be paid from the Accounts to Mr Lo by way of bank drafts; and

(b) Six Payment Instruction Amendments prepared by Ms Chan Foong San, an employee of the defendant, all of which changed the beneficiary of the payments from Mr Lo to Mdm Yap purportedly because of a 4.30pm phone made by Mr Lo the same day.

17 The significance of the Payment Forms is that although all six forms related to the Accounts and Blisstop's Account, four of them recorded that the person who gave oral instructions to the defendant was Mr Chia. Mr Lo's name as being that of the instructing party appeared in only two forms. In evidence, Dennis Chua confirmed that he was the person who had taken the phone calls which he maintained had come from Mr Lo. However, he had not filled up the forms because he had delegated that job to his assistants. Dennis Chua also said that on the same morning he had received a phone call from Mr Chia who had instructed him to close the Chia Accounts and transfer the funds to Mdm Yap.

18 The instructions were for the bank drafts in respect of the amounts from the Accounts to be issued the same day. The drafts were not, however, issued on 17 September 2007 as instructed due to several deficiencies in the documentation. In the event, the defendant issued the following cheques payable to Mdm Yap on 18 September 2007:

(a) A cheque for \$1,080.50;

(b) A cheque for US\$76,821.98;

(c) A cheque for US\$1,727,928.33; and

(d) A cheque for A\$3.48 (the exact date of issue is not known but it was probably issued together with the other cheques).

19 On the same day, the defendant wrote Mr Lo two letters informing him that his accounts numbered 231183 and 280668 had been closed and the assets transferred out as directed. Since Mr Lo had opted for the defendant's "Hold Mail" service, these letters were not sent out to him physically but were held for him at the defendant's premises. A separate letter was sent to Zenique at its

correspondence address in Jurong East Street 13 informing it that its account numbered 280999 had been closed and the assets transferred out as directed.

The proceedings

20 When this action was commenced, there were three plaintiffs, the third being Blisstop, which had a similar claim for reimbursement of unauthorised payments from the Blisstop Account. However, Blisstop was struck out as a plaintiff in June 2012 after it was discovered that it no longer existed, having been struck off the Register of Companies in the BVI on 1 May 2008.

21 The basis of the plaintiffs' claim as set out in the statement of claim is straightforward – the defendant had acted on the instructions of Mr Chia (who had no authority to give those instructions) when it made payments from the Accounts to Mdm Yap and thereafter closed the Accounts. The plaintiffs further allege that the defendant had breached its duty to them by failing to verify the alleged verbal instructions given by Mr Lo and by making the payments despite having not received any written confirmation from Mr Lo in respect of these instructions.

22 The defendant's position as stated in its defence can be summarised as follows:

- (a) It was Mr Lo who had given Dennis Chua oral instructions on 17 September 2007 at about 8.30am to close the Accounts and to pay the balances to Mr Lo himself;
- (b) Subsequently, at about 4.30pm on 17 September 2007, Mr Lo had given oral instructions to Dennis Chua to pay the balances in the Accounts to Mdm Yap instead;
- (c) The payments to Mdm Yap were recorded in debit advices and statements of account which were delivered to the plaintiffs;
- (d) The plaintiffs were precluded by virtue of cl 2.1 of the Account Mandates from making the claims as the plaintiffs had failed in their duty under this clause to inform the defendant of unauthorised payments out of the Accounts within 14 days of the dates thereof; and
- (e) The plaintiffs were estopped from alleging that the payments were unauthorised because they had either acquiesced in the payments or represented by conduct that the payments were in fact authorised.

23 As stated, the defendant filed a third party claim against Mdm Yap alleging that she had been unjustly enriched by receiving a benefit at the defendant's expense, due to the defendant's mistake in making the payments to her, and that she should reimburse the defendant with the same.

24 Mdm Yap contended in response that there was no unjust enrichment because the moneys held in the Accounts did not belong to the plaintiffs but to Mr Chia. She asserted that on 16 September 2007 Mr Chia had instructed Mr Lo to close the Accounts and to issue cashier's orders in the name of Mdm Yap. Mr Lo duly complied with these instructions. Further, by certain conduct (the details of which I need not go into here), the plaintiffs had clearly accepted that there was no unauthorised payments by the defendant to Mdm Yap.

The Issues

Did the defendant act in breach of its mandate when it paid the credit balances in the Accounts to Mdm Yap?

25 The resolution of the first issue depends on who gave the 17 September 2007 instructions to Dennis Chua. Determining this issue involves testing the diametrically different stories of the parties against each other and against the available documentary evidence and the inherent probabilities of the situation.

Credibility of Dennis Chua and Jasmine Tan

26 The plaintiffs seek to discredit the defendant's witnesses and obtain support for their case from what they see as the changing positions taken by Mr Chia. They contend, first, that Dennis Chua was an untruthful witness as during cross-examination he could not recall many things. They allege that this was also the case for his assistant, Ms Jasmine Tan ("Jasmine Tan") who confirmed that she was the one who had written up three of the Payment Forms.

27 Second, they claim that Mr Chia sought to tailor his evidence according to the questions asked in cross-examination by changing his account when he was ordered to produce his passport. While Mr Chia had originally asserted that he had spoken to Mr Lo personally in the office of Rimba Kita, after being ordered to produce his passport, he corrected himself by saying that these instructions had been given over the telephone while he was at Sandakan airport en route to Kota Kinabalu.

28 Third, they claim that Dennis Chua had sought to suppress a conversation he had with Mr Chia on 16 September 2007 relating to the scheme to get the money in the Accounts.

29 In my estimation, the criticisms of Dennis Chua's evidence are not weighty. It is believable that he could not remember many details pertaining to the transactions. They took place some six years prior to the hearing and since the defendant was only informed of the claim in late 2010, after Dennis Chua had changed his employment, there was no special reason for him to go over the events and fix the details in his memory. Second, he was a relationship manager and handled many customers and many transactions on behalf of his customers on a regular basis. Third, there was a lot going on on 17 September 2007 with him receiving a number of urgent telephone calls relating to the closure of all the Accounts, the Blisstop Account and all the Chia Accounts on an urgent basis. It is understandable that Dennis Chua could not remember all the details of those transactions. As Jasmine Tan worked closely with Dennis Chua that day and had to take action to effect all these instructions, it is believable that she too would find it difficult to remember all the details of what had happened in relation to the Accounts so many years earlier. Again, it is important that although what had to be done was urgent, there would have been no indication to Jasmine Tan then or shortly afterwards that there was anything out of the ordinary in what was being done.

Credibility of Mr Chia

30 There are more difficulties in Mr Chia's credibility. In his affidavit of evidence-in-chief, he asserted that the funds in the Accounts and in the Blisstop Account belonged to him as a result of the business dealings of himself, Mr Lo and Mr Chong. He gave an account of how this had come about but the details need not be repeated here. Mr Chia said in his affidavit that he did not have supervision of the Accounts and Blisstop's Account but he trusted Mr Lo to act on his instructions. The affidavit went on to state how Mr Chia had given Mr Lo instructions in relation to the closing of the Accounts and the Blisstop Account in September 2007. The credibility issue arises because he changed this evidence in court.

31 The affidavit as filed stated the following in paras 77, 79, 80, 81 and 82:

(a) On the evening of 16 September 2007, Mr Chia met Mr Lo personally and instructed him to

close the Accounts and issue cashier's orders in respect of the sums in the Accounts in favour of Mdm Yap.

(b) On the evening of 16 September 2007, Mr Lo made a telephone call to Dennis Chua to instruct him to close the Accounts and issue the cashier's orders in favour of Mdm Yap.

(c) On 17 September 2007, Mr Chia returned to the office of Rimba Kita in the afternoon. He called Dennis Chua to find out if his instructions on the Chia Accounts had been effected and also if other cashier's orders from the Accounts had been issued in Mdm Yap's favour. Dennis Chua informed him that no other cashier's orders had been issued.

(d) Mr Chia was angry with Mr Lo because the cashier's orders representing the balances in the Accounts had not been prepared. He walked over to Mr Lo's room in the Rimba Kita office and asked him whether he had instructed Dennis Chua to issue these cashier's orders. Mr Lo said no. Mr Chia then instructed Mr Lo to call Dennis Chua immediately in his presence to give the instructions. Mr Lo did this and Dennis Chua then called Mr Lo back and Mr Chia heard Mr Lo give the instructions.

(e) Immediately thereafter, Mr Chia himself called Dennis Chua to verify whether Dennis Chua had received those instructions and obtained the necessary verification.

32 Mr Chia's affidavit was filed in June 2013. Subsequently, he was asked to produce his passport for examination. The passport showed that Mr Chia arrived in Hong Kong on the afternoon/evening of 17 September 2007. To get to Hong Kong, Mr Chia had to fly from his home town Sandakan to the state capital Kota Kinabalu and then board a flight there for Hong Kong. This meant that he could not have been in the office of Rimba Kita in Sandakan on the afternoon of 17 September 2007. Thus, when the trial commenced and Mr Chia was called to the stand, he made corrections to his affidavit.

33 There was some difficulty in eliciting the changes in Mr Chia's evidence. In trying to correct himself, he was often confused and/or confusing. He said that the meeting on 16 September 2007 between himself and Mr Lo had indeed taken place but in the afternoon, not in the evening. He said his statement that "the next day, when I returned to the Rimba Kita office in the afternoon", was incorrect because it meant the visit to the office took place on 17 September 2007. Instead, it should have referred to him returning to the Rimba Kita office on the afternoon of 16 September 2007. Next, he stated that his call on 17 September 2007 to Dennis Chua, to find out whether his instructions had been effected, had been made from the airport in Sandakan between 8am and 8.30am and not from the Rimba Kita office in the afternoon. He then said that he had called Dennis Chua again at about 4.30pm on 17 September 2007 from Kota Kinabalu, and discovered that there were no further cashier's orders in Mdm Yap's name. As such he had telephoned Mr Lo and asked him to instruct Dennis Chua to have the cashier's orders made payable to Mdm Yap.

34 These changes meant, as Mr Chia confirmed, that no angry confrontation between him and Mr Lo in Rimba Kita's office had taken place on 17 September 2007. Further, Mr Lo had not made any calls to Dennis Chua in Mr Chia's presence and Mr Chia had not heard Mr Lo give instructions to have the name on the cashier's orders changed to Mdm Yap's name.

35 In assessing his credibility, it must be remembered that Mr Chia was not an independent witness. He had an interest in the proceedings in that the stand taken by Mdm Yap and himself was that the money in the Accounts belonged to him. He did not want Mdm Yap to be ordered to repay this money to the defendant which might happen if the court found that the instructions for the money to be paid to Mdm Yap had emanated from Mr Chia. Therefore, it was in his interest to support

Dennis Chua's evidence that these instructions had come from Mr Lo himself. I find Mr Chia's evidence that he instructed Mr Lo over the telephone on the afternoon of 17 September 2007 to pay the money in the Accounts to Mdm Yap to be untrue. It is probable that no such conversation took place.

36 This finding, however, does not in itself lead to the conclusion that Mr Chia instructed Dennis Chua to make the payments to Mdm Yap. The core of the dispute is whether Mr Lo or Mr Chia gave Dennis Chua the 17 September 2007 instructions. The fact that Mr Chia may have lied when he asserted that there was a conversation between him and Mr Lo at about 4.30pm on 17 September 2007, does not mean that Mr Lo did not in fact instruct Dennis Chua in respect of the payments. The story that Mr Chia told was intended to show Mr Lo's motivations for giving instructions that might at first sight appear to be improbable. It does not go to who actually gave the instructions. The rest of the evidence has still to be analysed in order to determine who gave those instructions in fact.

Inconsistencies in the plaintiffs' story

37 As stated earlier, the plaintiffs' position is that no conversations between Dennis Chua and Mr Lo took place at all on 17 September 2007 and Mr Lo did not find out that the Accounts were closed and the money had been paid to Mdm Yap until late October 2007. There are difficulties with Mr Lo's story.

38 First, there are inconsistencies in regard to when Mr Lo became aware of the transactions in favour of Mdm Yap. In his affidavit, he said that he learnt about them in late October 2007. Then, he found out during the 4 November 2007 meeting that Dennis Chua had acted on Mr Chia's verbal instructions given both in the morning and in the afternoon of 17 September 2007. This was confirmed by him when he spoke to Mr Chia on his return to Sabah. However, this account in Mr Lo's affidavit differed from other accounts given by him:

(a) On 16 August 2010, Mr Lo telephoned the defendant ostensibly to find out about the Accounts. By then Denis Chua had left the defendant and Mr Lo spoke with one Ms Hong Shu Qin ("Ms Hong") who had no knowledge of the matter. According to a contemporaneous memorandum of the conversation prepared by Ms Hong, Mr Lo told her that he suspected something was wrong in November 2007 and had questioned both Dennis Chua and Mr Chia. He gave Ms Hong the impression that they had evaded his questions and he did not get any answers from them.

(b) Mr Lo made a police report in Singapore on 14 September 2011 regarding the closure of the Accounts. In the report, he stated that in October 2007, Mr Chia told him that his money in the Accounts was "safeguarded". Subsequently, on 4 November 2007, Dennis Chua had told him that the Accounts were closed on 19 September 2007 under the instructions of Mr Chia. Dennis Chua did not tell him the reason for the closure and refused to give him any further information. The police report also stated that in 2009, he managed to retrieve a document sent from the defendant's Hong Kong office relating to the closure of the account and it showed that a cashier's order had been made in his name but that was reversed later on and reissued in favour of Mdm Yap.

39 It can be seen that the affidavit, the memorandum and the police report contain material differences in relation to:

(a) how Mr Lo learned about the transactions and the closure of the Accounts; and

(b) what happened in the meeting between Mr Lo and the person who provided him with the information.

40 Second, Mr Lo gave inconsistent accounts as to whom the money was to be paid to. In further and better particulars furnished on 16 June 2011, it was asserted that Dennis Chua told Mr Lo that Mr Chia's instructions were to pay the proceeds of the Accounts to Mr Chong. Later, in an affidavit made on 25 July 2013, Mr Lo corrected the further and better particulars and asserted that the payments were to be made to Mr Chia, not to Mr Chong. Finally, in his affidavit of evidence-in-chief, he took the position that Dennis Chua told him that the instructions given by Mr Chia were that the payments were to be made to Mdm Yap.

41 Third, there are inconsistencies in Mr Lo's accounts of the 4 November 2007 meeting. In his affidavit of evidence-in-chief, he stated that the written instructions to close the Accounts were prepared by Dennis Chua and he merely signed them without filling in the dates. When he was cross-examined, however, Mr Lo stated that he had written out these instructions in Dennis Chua's presence. He had previously made a statement to this effect in an earlier affidavit dated 31 January 2011.

42 The inconsistencies in Mr Lo's evidence that I have pointed out above are material inconsistencies as they relate to important parts of the plaintiffs' case and they must play a significant part in the assessment of the plaintiffs' claim.

Inconsistencies in Mr Lo's conduct

43 The defendant submitted that the plaintiffs' claim that the payments were unauthorised was inconsistent with Mr Lo's conduct subsequent to his alleged discovery of the unauthorised payments in October 2007. There is much force in this argument. First, Mr Lo signed the written instructions to close the Accounts on 4 November 2007, even though he was aware from Dennis Chua that the Accounts had already been closed and the money in the Accounts paid out to Mdm Yap on Mr Chia's instructions. His explanation for signing these written instructions was that he had done so in order to prevent further charges from being incurred. Under cross-examination, he explained that these charges referred to items like the annual charges for a BVI company and the Hold Mail charges.

44 Mr Lo's explanation is not convincing. Since the Accounts had already been closed, Mr Lo must have known that no further charges would be incurred. Moreover, the total amount that had been wrongly paid to Mdm Yap was around US\$1.8m. That sum was far more than any likely charges that would be incurred in maintaining the Accounts. In November 2007, if Mr Lo had truly believed that Dennis Chua had acted without his authorisation, the more likely response would have been for him to refuse to sign any documents which would regularise the unauthorised closure of the Accounts and to have made a complaint to the defendant's management. Instead, Mr Lo by his own account told Dennis Chua that he would sort the matter out with Mr Chia directly and went away without any complaint to anyone else in the defendant.

45 In fact, Mr Lo did not raise the matter with the defendant until more than two years after the closure of the Accounts. Mr Lo's reason was that he chose to concentrate on his civil and criminal proceedings in Malaysia rather than be involved in another civil claim in Singapore. That reason is flimsy because when he did start the present action there were still proceedings on-going in Malaysia. Furthermore, in regard to the Malaysian civil proceedings which were by Mr Chia against Mr Lo and others, Mr Lo did not put forward a counterclaim to recover the money taken from the Accounts. Mr Lo's explanation for that omission was that he did not want to sue in Malaysia when the assets were in Singapore. That was another flimsy explanation since the money was no longer in Singapore and Mr Chia, the person whom Mr Lo had initially said he would recover the money from, was in Malaysia and already a party to the Malaysian action.

46 Mr Lo also testified that he had first sought legal advice from his Malaysian lawyer on his claim against the defendant in 2009. He was then advised to concentrate on his criminal proceedings in Malaysia first. This evidence means that Mr Lo had taken no steps at all in relation to seeking recovery of the money from the defendant, not even preliminary legal advice, between the time when he first learnt of the payments in October/November 2007 until, at the earliest, the end of 2008. This was a period of more than 12 months during which Mr Lo must have been in constant contact with his Malaysian lawyers for the purpose of the Malaysian criminal and civil proceedings. I consider that if he truly felt that the plaintiffs had a claim against the defendant, he would most likely have sought advice earlier.

47 Another puzzling aspect of Mr Lo's behaviour was that he continued to deal with the defendant and Dennis Chua despite finding out that Dennis Chua had acted on a third party's instructions to deprive the plaintiffs of their funds. On 7 November 2007, Mr Lo opened another account with the defendant, having given his instructions through Dennis Chua, in the name of a new BVI company called G-Assets Ltd ("G-Assets"). The bundle of documents produced in court included some cryptic correspondence between Dennis Chua and Mr Lo in relation to the establishment of G-Assets and when Mr Lo was questioned about these documents, he was evasive. It took quite a bit of effort to get him to admit that he had understood the e-mails from Dennis Chua regarding the establishment of a new BVI company and choice of name for it, that he had replied to them and that they related to his request to Dennis Chua to establish a new account on his behalf. Mr Lo tried to diminish the impact of the establishment of the G-Assets account by asserting that he had tried to monitor this account by himself without Dennis Chua's aid. There was no evidence to support that and the fact that he had subscribed to the Hold Mail arrangement for the G-Assets account is an indication that the G-Assets account was handled no differently than his personal account with the defendant had been.

48 It is also interesting that on 25 March 2008, Mr Lo authorised the payment of substantial sums of US\$386,252.65 and US\$343,375 from his G-Assets account to Ravenswood Development Ltd ("Ravenswood"), a company solely owned by Mdm Yap, despite Mr Lo's contention that UBS had wrongly paid Mdm Yap (and Mdm Yap had wrongly received) some US\$1.8m from the Accounts. Mr Lo admitted that at the time of these payments he was expecting Mr Chia to repay him the US\$1.8m.

49 Mr Lo's only explanation for authorising the payments to Ravenswood is that he had to provide Mr Chia with further funds in order to secure timber concessions. Mr Lo was asked why he could not have set off these payments against the moneys owed him. He did not give a credible explanation: all he said was that things did not work like that in the timber business and that in order to secure a timber concession a businessman had to make an upfront payment. He went to say that in this case it was Mr Chia who would be giving him the concession. That being so, it is not comprehensible that he could not have told Mr Chia to use part of the funds from the Accounts which Mdm Yap received for any upfront payment needed for the purposes of the concession instead of paying more money from the account of G-Assets.

Analysis of the documentary evidence in Payment Forms

50 The plaintiffs relied on the contents of the defendant's documents to assist in establishing their case. First and foremost, were the four Payment Forms made on the morning of 17 September 2007 which recorded that oral instructions via a telephone call were given by Mr Chia to issue bank drafts for the four amounts from the balances in the Accounts. Dennis Chua was asked about the fact that the Payment Forms indicated Mr Chia gave the instructions and he responded that this was a mistake. He had spoken to Mr Lo in respect of all the bank drafts and after the telephone conversation had been completed, he had given the information to Jasmine Tan so that she could fill up the Payment

Forms. After she did so, the Payment Forms had been sent back to him for him to verify the details. In court, Dennis Chua asserted that although he had verified the Payment Forms, the information written there could be an error and that he should have checked the Forms "more properly".

51 The fact that Mr Chia's name was written on the Forms instead of Mr Lo's, though damaging to the defendant's case, cannot in itself prove that Mr Chia gave the instructions. The defendant's case is that a mistake was made in the recording of the instructions in that the name of the person giving the instructions was wrongly written down. It should be noted that as far as these Payment Forms dealing with the Accounts were concerned, although the instructions were recorded as having come from Mr Chia, the instructions given were for the balances in the Accounts to be paid out by bank drafts in favour of Mr Lo. When it came to the Payment Instruction Amendments which recorded the change in the original instructions so that Mdm Yap became the payee instead of Mr Lo, all of these recorded Mr Lo as the person who had spoken to Dennis Chua.

52 The defendant's story of a mistake is not unbelievable or improbable. On that morning, the defendant received instructions at about the same time to make urgent transfers of funds from the Accounts, the Blisstop Account, and from the Chia Accounts. In the case of the Chia Accounts, the instructions that Mr Chia undoubtedly gave were to urgently transfer the balances in these accounts to Mdm Yap. It is entirely possible that the defendant's staff made several clerical errors during the process of writing down these instructions, given that a total of eight urgent instructions were given at about the same time and the documentation was handled by various bank employees, although Jasmine Tan's name was the only one stamped on the documents. It is probable that the inconsistencies in the Payment Forms were due to negligence but negligence does not mean that the instructions were given by Mr Chia rather Mr Lo.

53 It also has to be remembered that at the time the defendant's procedure was to record all calls regarding payment instructions. That was why although the calls were initiated by the client, the bank officer involved had to make a return call from the defendant's telephone. This enabled the calls containing the verbal instructions to be recorded. Knowing that all such calls had to be and were recorded, how likely would it be that Dennis Chua would accept instructions from unauthorised persons? I consider such behaviour to be highly unlikely since Dennis Chua would have known that his job, his reputation and his assets would all be at risk if he caused the defendant to make a wrongful payment from one client's account to another's. Such unauthorised action would be speedily found out when the client complained and the defendant's telephone records were checked. Dennis Chua was not to know on 17 September 2007 that Mr Lo would receive the information regarding the unauthorised payment of the plaintiffs' funds with relatively little fuss. Nor could he have guessed, let alone confidently anticipated, that the response would be "I will get the money back from Mr Chia", thus letting him off the hook for acting without authority.

54 The defendant's practice is to keep recordings of telephone conversations for two years. By the time the plaintiffs started this action, the recordings of any conversation that took place on 17 September 2007 had long since been disposed of. The defendant was thus unable to back up its defence with those recordings. The defendant did suggest that the plaintiffs deliberately waited until the recordings would be disposed of to start this action. The plaintiffs denied that suggestion vigorously and there is no proof that they knew the recordings were only kept for two years. However, on the other side of the fence, Dennis Chua would have known about the length of time the recordings were kept and he could not, reasonably, have expected a customer whose funds had been wrongly sent to a third party to wait more than two years to even make a complaint and then initiate recovery proceedings. This makes it more unlikely that he would act on Mr Chia's instructions in respect of the Accounts.

55 There were six Payment Forms issued in respect of the Accounts and the Blisstop Account. It is not the plaintiffs' case that all six Payment Forms are accurate in their description of the instructing person: the plaintiffs concentrate on the four Payment Forms that describe this person as "Mr Chia" and ignore the two that describe him as "Mr Lo". If all six Payment Forms are accurate, it would mean that in respect of Account No 231183 held in Mr Lo's name, Mr Lo gave instructions for the payment of \$1,080.50 and US\$76,821.98 while Mr Chia gave instructions for payment of A\$3.48. Mr Lo did not say that that was the case. He said the four Payment Forms mentioning Mr Chia as the instructor are correct because the instructions were in fact given by Mr Chia. But he does not explain why Mr Chia should have given instructions in the morning for the funds in the Accounts to be paid to Mr Lo if the purpose was to safeguard the funds and put them beyond the reach of the MACC. Although the plaintiffs do not say so expressly, it must be their position that the two Payment Forms bearing Mr Lo's name were the mistakes because Mr Lo said he gave no instructions at all that morning and everything was done by Mr Chia. Perhaps the plaintiffs did not take this position expressly because the very fact that two different instructing persons are named in the six Payment Forms itself indicates that there was carelessness on the part of the defendant's staff.

56 As the defendant submits, the fact that the Payment Forms recorded Mr Chia as having given some of the instructions in relation to the Accounts, tends to rebut any suggestion of a conspiracy between Mr Chia, Mdm Yap and Dennis Chua. If Dennis Chua had intended to defraud the plaintiffs, he would have attributed to Mr Lo all the instructions in respect of the Accounts and the Blisstop Account. One would not expect to see Mr Chia's name featuring in any of the defendant's internal documents relating to the Accounts. The fact that some Payment Forms had one name and other forms had another name is more indicative of negligence than fraud. Fraudulent parties take care to make their documents consistent with the picture they wish to portray.

Other documentary evidence

57 The Payment Forms were not the only documents generated by the defendant that the plaintiffs relied on. In addition, they referred to an e-mail sent at 11.41am on 18 September 2007 by Dennis Chua to his immediate superior, one Derrick Tan. This e-mail stated:

Subject:

FW Closure of a/c 280668, 280999, 231636 & 231181

"Hi Boss

The funds from all these accounts will be consolidated under client's wife's name under a new account. Client wants to place his fund from his sole and joint to his wife's sole account.

The fund will not leave the bank.

For your kind approval.

Dennis Chua"

In relation to the captioned accounts in the e-mail, the first two account numbers referred to the accounts of Blisstop and Zenique, while the other two account numbers referred to the Chia Accounts.

58 The context in which the e-mail was sent was that a few minutes earlier, Dennis Chua had been

informed by Jasmine Tan by e-mail, that he needed the approval of the defendant's Country Team Head in order to close the Accounts because the defendant had not received written instructions from the account holders to that effect. Jasmine Tan explained that the deficiency in compliance with procedures was due to the issue of drafts in one of the client's names the previous day. The e-mail quoted in [57] above was Dennis Chua's response to this information from Jasmine Tan.

59 The plaintiffs submitted that Dennis Chua's e-mail gave the impression that all the captioned accounts belonged to one customer solely and/or jointly with the customer's wife. They asserted that the purpose of the e-mail was to avert any possibility of either Derrick Tan or the Country Team Head making a request that e-mail confirmation be obtained from the account holder. As Dennis Chua had admitted in court, since no details of the captioned accounts were given apart from their numbers, neither Derrick Tan nor the Country Team Head would know that the captioned accounts were actually held by more than one customer. Further, to ensure that his purpose was achieved, Dennis Chua assured his superior that the funds would not leave the defendant.

60 The defendant pointed out that in court Dennis Chua had freely admitted that he had made a mistake in the e-mail by referring to the four accounts as if they were all Mr Chia's accounts. The defendant submitted that this was a genuine mistake and there was nothing sinister about it. There was no evidence that the assertion that the funds from all the accounts were to be consolidated and placed in the client's wife's name was material for the purpose of the defendant overlooking the discrepancy. Although in one part of the evidence, Ms Hong had stated that the defendant did not accept verbal instructions to close accounts, she later clarified that for herself she would prefer written instructions to close an account and that she had never followed any different practice. However, that was Ms Hong's practice and there was no evidence that overall the defendant as a whole never accepted verbal instructions to close an account. The defendant submitted that it is clear that in this case it had accepted verbal instructions to close the Accounts, including the Blisstop Account, and had also acted on verbal instructions to close the Chia Accounts. Further, for the account in Mr Lo's own name, no deficiency was even highlighted as requiring a waiver.

61 I accept the defendant's submissions. Dennis Chua made a mistake in his e-mail in referring to all four of the captioned accounts as being Mr Chia's accounts. The circumstances, however, were such that it appears probable to me that the mistake was a result of carelessness and not deliberation. First, Jasmine Tan's e-mail was sent out at 11.28am and Dennis Chua's reply was sent out less than 15 minutes later. Second, there were a number of accounts being closed at the same time belonging to various, albeit connected, clients. Third, in Jasmine Tan's e-mail, the caption was "Closure for a/c 280668, 280999, 231636 & 231181". This was exactly the caption that Dennis Chua used in his usual e-mail to Derrick Tan. There was no indication in her e-mail that these accounts belonged to different parties. Dennis Chua handled many clients and many accounts (and one client, like Mr Chia and Mr Lo, could have accounts in more than one name). Dennis Chua could not be expected to remember each client's account number offhand and to be able to identify the same without reference to the files. In Jasmine Tan's e-mail she had referred to the deficiency being due to the issue of drafts in a client's name on 17 September 2007. Since the instructions that had been issued to Dennis Chua were that when the Accounts were closed all the funds were to be paid to Mdm Yap, it is not surprising that he had assumed that the accounts referred to in the e-mail correspondence were the Chia Accounts. I also accept the submission that whilst the defendant's general practice was not to close accounts without written instructions, it did do so in this case.

62 The plaintiffs made much of the fact that the defendant never sent any e-mail to the plaintiffs to confirm that Mr Lo had given it verbal instructions to close the Accounts and transfer the balances to Mdm Yap. They pointed out that even a simple e-mail to inform Mr Lo that his verbal instructions had been implemented might have instigated a response from him stating "What instructions? I never

gave any instructions". The plaintiffs' point was that this was a deliberate omission because Dennis Chua could not take the chance of alerting Mr Lo to what he had done. However, the evidence was that not all of Mr Lo's previous instructions had been confirmed in writing. The defendant had provided a list of instances when verbal instructions had been acted on without written confirmation. The defendant also submitted that Mr Lo was afraid at the time that he was still under surveillance by the MACC and therefore it was a fair inference that he would not have wanted to receive e-mails confirming that all his funds with the defendant had been moved out. This, in my view, is a valid point. Such fear on the part of Mr Lo was evidenced by the havey-cavey nature of the e-mail correspondence between him and Dennis Chua in October 2007 in relation to the acquisition of G-Assets and the subsequent account to be set up in its name.

Conclusion on breach of mandate

63 I am satisfied on the evidence that the instructions to close the Accounts and to pay the funds standing to the credit of the Accounts to Mdm Yap were given by Mr Lo on 17 September 2007. This being the case, the defendant did not act in breach of its mandate in respect of the operation of the Accounts when it closed the Accounts and paid the funds therein to Mdm Yap. The plaintiffs' case therefore fails and must be dismissed. I will however, briefly, give my views on the other issues raised in the proceedings.

If the payments were made in breach of mandate, are the plaintiffs estopped from prosecuting their claim?

64 Generally speaking, where a bank makes an unauthorised debit from a client's account, it is answerable to a claim from that client for reimbursement. The defendant said that in this case, even if the instructions in relation to the Accounts had come from Mr Chia, it is not liable to reimburse the plaintiffs. In this regard, the defendant relied on cl 2.1 of its "Account Mandate" document signed by the plaintiffs and on the general principles of estoppel.

65 Clause 2.1 of the Account Mandate reads as follows:

The Bank shall send the Client periodic confirmations or advices of all transactions carried out by the Client and/or the Authorised Representative and statements reflecting such transactions and balances in the Account. The Client undertakes to carefully check, examine and verify the correctness of each such confirmation or advice and each such statement of account. The Client agrees that reliance can only be placed upon original confirmations, advices and/or statements. The Client further undertakes to inform the Bank promptly and in any event, with regard to such confirmations or advices, within fourteen (14) days from the date of such confirmation or advices, and with regard to such statements, within ninety (90) days from the date of such statements, of any discrepancies, omissions, credits or debits wrongly made to or inaccuracies or incorrect entries in the Account or the contents of each confirmation, advice or statement or the execution or non-execution of any order, failing which, upon the expiry of the fourteen (14) days, the Bank may deem the Client to have approved the original confirmations or advices and upon the expiry of the ninety (90) days, the Bank may deem the Client to have approved the original statements as sent by the Bank to the Client, in which case they shall be conclusive and binding upon the Client without any further proof that the Account is and all entries therein and the execution of all transactions are correct, and the Bank shall be free from all claims in respect of the Account and all such transactions, save for unauthorised transactions which have resulted from the forgery, fraud or negligence of the Bank or any of its employees.

66 The defendant relied on the fact that the plaintiffs had remained silent for more than two and a

half years from the date of the payments made to Mdm Yap and despite allegedly knowing, within a month or two of such payments, that they had been made pursuant to instructions from Mr Chia. It submitted that such conduct was in breach of cl 2.1 in that the plaintiffs had failed to inform the defendant "promptly" and in any event within the prescribed time periods (14 days for confirmation or advices, 90 days for statements) of "any discrepancies ... credits or debits wrongly made to or inaccuracies or incorrect entries in the Account ...". Thus, the defendant was entitled to deem the plaintiffs to have approved the confirmation and advices and the same were therefore conclusive and binding on the plaintiffs.

67 The above submission does not carry the defendant very far. As the defendant itself recognised the "conclusive evidence" aspect of cl 2.1 does not apply to "unauthorised transactions which have resulted from the forgery, fraud or negligence of the Bank or any of its employees". This proviso is fatal to the defendant's reliance on the clause. If Dennis Chua had taken instructions from Mr Chia in relation to the Accounts instead of from Mr Lo, his conduct would, at the very least, have been negligent. When taking instructions in respect of any account maintained with the defendant, the defendant's employees would have a duty to ensure that they were taking such instructions from persons who were authorised to give them. If Dennis Chua had checked the Account Mandates signed by the plaintiffs in respect of the Accounts, he would have known that only Mr Lo was authorised to operate the Accounts. If he did not check the Account Mandates and took instructions from Mr Chia instead, this would have been clearly negligent conduct on his part for which the defendant would be responsible. His negligence would preclude the defendant's reliance on the "conclusive evidence" portion of cl 2.1.

68 The defendant next submitted that even if it could not rely directly on the conclusive evidence aspect of cl 2.1, the plaintiffs' breach of this clause was still a breach of contract on their part. The defendant argued that the effect of that breach would be to disentitle the plaintiffs from maintaining their claims because of estoppel. The same conclusion would be reached, even aside from cl 2.1, by applying general principles of estoppel to the plaintiffs' conduct.

69 The requirements for an operative estoppel as set out by the Court of Appeal in *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR(R) 273 ("*Pertamina Energy*") at [72] are that there must be:

- (a) A representation or conduct amounting to representation intending to induce a course of action on the part of the person to whom the representation was made;
- (b) An act or omission resulting from the representation by the person to whom it was made;
- (c) Detriment to such person as a consequence of the act or omission.

70 I address each element in turn. The first requires a representation to have been made by the plaintiffs to the defendant. In this case, the plaintiffs did not tell the defendant about the unauthorised payments for a substantial period of time. It is established law that an omission to inform or silence can amount to a representation if there is a duty to speak: see *Greenwood (Pauper) v Martins Bank, Limited* [1933] 1 AC 51 at 57. In this case, the plaintiffs were contractually obliged by cl 2.1 to inform the defendant of any discrepancies or inaccuracies in the Accounts or in the debiting of sums from the Accounts. The plaintiffs did not do so and their silence in these circumstances amounted to a representation that all was in order. It should be noted that Mr Lo accepted in court that the plaintiffs had a contractual duty to promptly inform the defendant once they learnt of any unauthorised transactions in respect of the Accounts.

71 I consider that Mr Lo also made a positive representation on behalf of the plaintiffs when he signed the account closing instructions in November 2007. Those documents ratified the oral instructions given to close the Accounts and would have led the defendant to believe that there had been no difficulty of any sort in the operation of the Accounts or the payments made out of the Accounts.

72 The second element is that there must have been an act or omission on the part of the defendant arising from the plaintiffs' misrepresentation. This element is satisfied too. The defendant took no action to recover the moneys that had been paid out without authority because it was not aware that the payments were made without authority.

73 The third element is that the defendant must have suffered a detriment by reason of its omission. To satisfy this element, the defendant relied on the fact that up to the end of February 2010 Mdm Yap maintained accounts with it which contained funds exceeding the aggregate sum of US\$1.8m which she had received from the Accounts. If it had been informed by the plaintiffs of the unauthorised payments before March 2010, it could have taken immediate steps to recover them from Mdm Yap. At the least, it could have declined to allow her to withdraw the equivalent amount when she closed her accounts in March 2010. The defendant asserted that the plaintiffs' delay in informing it of the unauthorised payments had seriously prejudiced its prospects of recovery against Mdm Yap.

74 In *Pertamina Energy* at [85], the court held that in relation to the element of detriment, the party relying on the estoppel must:

- (a) plead and identify what steps it would have taken had it not been for the representation; and
- (b) prove that it would have had a real chance of protecting or improving its situation and that it would have taken that chance.

75 I am satisfied on the evidence that during the period from November 2007 to March 2010, the defendant did nothing to protect its position as against Mdm Yap because it did not know that the payments were unauthorised. In fact, the defendant was under the impression that all was well and no complaints could be made against it in relation to its handling of the Accounts. This was because of the plaintiffs' failure to inform the defendant of the situation and because of Mr Lo's endorsement of the instructions to close the Accounts.

76 I am also satisfied on the evidence that if the defendant had been aware of the plaintiffs' claim before March 2010, it would have been in a better position to protect itself than it was thereafter. Before March 2010, it could have made a claim against Mdm Yap and secured itself in respect of that claim (even if the claim was disputed) by holding on to an equivalent sum in her account. After March 2010, even if the defendant was successful in an action for recovery against Mdm Yap, since the money was no longer with it and she is not a Singapore citizen or resident it would have to start enforcement proceedings in Malaysia which would be costly in terms of time and money.

77 For the reasons given above, it is my view that the defendant would have been able to maintain a defence of estoppel in respect of the plaintiffs' claim had I found that the payments were unauthorised.

Would the defendant have been able to make out a claim in unjust enrichment against Mdm Yap?

78 If the defendant had been found liable to the plaintiffs, it is my view that it could have recovered from Mdm Yap all the moneys paid to her from the Accounts.

79 The defendant's claim against Mdm Yap is based on the ground of unjust enrichment. The elements of its claim are that Mdm Yap had received a benefit at the expense of the defendant and that it would be unjust to allow her to retain this benefit. It submitted that:

- (a) it would not have made the payments from the Accounts to her if it had known that they were unauthorised; and
- (b) the payments were made by mistake.

The defendant also submitted that there were no defences available to Mdm Yap.

80 Mdm Yap's defence to the defendant's claim for reimbursement was that:

- (a) The defendant had failed to plead whether its claim was based on unjust enrichment;
- (b) The defendant had not pleaded a circumstance recognised as rendering Mdm Yap's enrichment "unjust" and therefore reversible;
- (c) The receipt of the money by Mdm Yap constituted a discharge of the debts which the plaintiffs owed Mr Chia and they had benefited from Mdm Yap's receipt of the money.

81 The first objection made by Mdm Yap is not well founded. A claimant is only required to plead material facts on which it relies for its claim and does not need to plead the evidence by which those facts are to be proved or the legal basis of the claim. In this case, the defendant's statement of claim against Mdm Yap contains particulars of the unauthorised payments to her and sets out the defendant's indemnity claim against Mdm Yap on the basis that she received money when she was not entitled to it. Those are the material facts which underpin its cause of action. In my judgment, the defendant has sufficiently pleaded its case.

82 The second point is based on the legal requirement that an unjust enrichment claim must be premised on an "unjust factor": see *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 ("*Alwie Handoyo*"). The point made here is that the way in which the defendant pleaded its claim meant that the defendant was relying on "want of authority" as being the requisite unjust factor. Mdm Yap submitted that the defendant could not rely on this factor because in *Alwie Handoyo* the Court of Appeal had rejected "want of authority". This submission is correct but it is not the end of the matter.

83 This is because the defendant has an alternative ground for recovery. It submitted that the payments were made by reason of a mistake to someone who had no right to them and therefore it was entitled to restitution. Mistake is a recognised "unjust factor". The pleading which stated that Mdm Yap received money when she was not entitled to it is somewhat sparse but is, I think, sufficient to imply both that there was a want of authority on Mdm Yap's part and that the money was paid by mistake to someone who had no right to receive it.

84 The relationship between a bank and its customer maintaining an account is a debtor-creditor relationship. Money deposited by the customer and received by the bank becomes the bank's money and the bank then owes the customer a debt in the equivalent sum. So when the defendant paid Mdm Yap, it was paying her its own funds, albeit at the time it accounted for the payment by debiting

the Accounts with the funds paid. If the defendant in doing so had acted on instructions of Mr Chia then the payments would have been due to a mistake since the defendant was not in fact authorised to act on such instructions. If that had happened, the defendant would be entitled to succeed in its claim for unjust enrichment because the test to be applied is whether the factual mistake caused the mistaken payment. In this case, the defendant would never have paid the relevant amounts to Mdm Yap had it not believe it had been given instructions to do so.

85 The third argument put forward by Mdm Yap, that is, that her receipt of the money constituted a discharge of the plaintiffs' debt to Mr Chia and therefore she would not be obliged to refund it, is a non-starter. There was no debt owed to Mdm Yap and therefore, except pursuant to an express agreement between the plaintiffs and the actual creditor, payment to her could not operate as a discharge of such debt. Ms Yap did not plead and prove a defence of *bona fide* change of position which is a recognised defence to unjust enrichment claims. In the absence of a substantive defence, she relied on technical arguments which would have failed had I ordered the defendant to meet the plaintiffs' claims.

Conclusion

86 For the reasons given above, the plaintiffs' claims fail and are dismissed with costs. As a consequence of the failure of the plaintiffs' claims, the defendant's claim against the third party must be dismissed. The plaintiffs shall pay the costs of the third party as taxed or agreed.