Cheng William (administrator of the estate of Cheng Louise, deceased) *v* DBS Bank Ltd [2010] SGHC 34

Case Number	: Suit No 37 of 2008
Decision Date	: 29 January 2010
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Anna Oei Ai Hoea and Chen Weiling (Tan, Oei & Oei LLC) for the plaintiff Andrew Yeo Khirn Hin, Colin Chow Zhiquan and Ramesh Kumar (Allen & Gledhill LLP) for the defendant.
Parties	: Cheng William (administrator of the estate of Cheng Louise, deceased) — DBS Bank Ltd

Banking – cheques – forged – mandate

29 January 2010 Judgment reserved.

Lai Siu Chiu J:

1 This was a claim by William Cheng ("the plaintiff") in his capacity as the sole remaining administrator (as well as a beneficiary) of the estate of Louise Cheng ("the estate") his late mother, against DBS Bank Ltd ("the defendant"). The plaintiff claimed compensation arising from allegedly unauthorised transfers of moneys out of the estate's bank account maintained with the defendant. The plaintiff had a co-administrator in his brother Robert Cheng ("Robert") until 11 May 2006, when Robert was adjudged a bankrupt. Robert met an untimely death on or about 4 April 2009 after he was involved in a road accident in Malaysia.

The facts

2 Louise Cheng ("the deceased") passed away on 1 September 1984. On or about 10 May 1986, in their capacities as joint administrators of the estate, the plaintiff and Robert opened an account with the defendant for the estate under account number 001-XXXXXX-X ("the account"). Both administrators were signatories to the account and the mandate to the defendant was that both signatures were required to operate the account. However, because the plaintiff was then working in Taiwan, it was agreed between the siblings that Robert would be responsible for managing the estate and monitoring the account.

3 According to the instructions received by the defendant when the account was opened, the bank statements for the account were to be sent to No 17 Jalan Senandong ("the property") which was then Robert's residence. The property was also the main asset of the estate.

4 Although the deceased died intestate, the two administrators as well as their four sisters were aware of her wishes, which she had written out in Mandarin in a document dated 28 August 1984. Essentially, it was the intention of the deceased that the estate was to be divided into three shares with one share each going to the plaintiff and Robert while the remaining share was to be used for the funeral expenses of the deceased and the cost and upkeep of her gravesite.

5 In or about October 2001, the property was sold for $4.3m and the net sale proceeds less

expenses amounting to $3,874,681.77 ("the sale proceeds") were deposited into the account. After the sale was completed, Robert moved to Block 12,Toh Yi Drive #02-389, Singapore 590012 ("Robert's house"). On or about 9 October 2001, Robert instructed the defendant to change the mailing address of the account from the property to Robert's house. The defendant complied with his instructions.

6 On 22 October 2001, DBS cheque no. 243341 for $1m was drawn in favour of the plaintiff as part of the plaintiff's one-third entitlement (equivalent to $1.3m) to the sale proceeds of the property. On 23 October 2001, DBS cheque no. 243343 dated 22 October 2001 for $1m was drawn in favour of Madam Long Lee Choo ("Robert's wife") representing part of Robert's one-third share of the sale proceeds. Robert made a gift of the sum to his wife.

7 In December 2001, Robert and the plaintiff discussed the balance $1.3m of the sale proceeds. It far exceeded what was required to maintain their parents' temporary gravesite in Taipei. Robert decided to and did consult a lawyer. He was verbally advised by a solicitor (OSH) that neither he nor the plaintiff were legally bound to hold the sum of $1.3m to maintain their parents' temporary gravesite. OSH subsequently rendered a written opinion to both brothers on 12 March 2002 (at 1AB561-564) to confirm his views. Robert duly conveyed OSH's oral advice to the plaintiff and after discussion, the plaintiff and Robert agreed that $1m from the balance one-third share would be shared equally between them leaving $300,000 for maintenance of their parents' gravesite.

8 On 6 January 2002, the plaintiff and his wife visited Robert's house. Robert suggested to the plaintiff that $1m from the one-third share for the gravesite maintenance be placed in a fixed deposit account in Malaysia as the sum was lying idle in the account. Moreover, the interest earned on Malaysian Ringgit ("MR") deposits would be higher than the interest rates offered by Singapore banks for fixed deposits. The plaintiff agreed to Robert's suggestion. The plaintiff signed DBS cheque no. 243346 for $1m ("the first cheque") in favour of the estate. A separate DBS cheque no. 243347 for $50,000 ("the second cheque") was issued in favour of the plaintiff who claimed (according to Robert's affidavit of evidence-in-chief ["AEIC"]), to have incurred expenses for the maintenance of their parents' temporary gravesite in Taiwan.

9 Robert had previously been informed by a Malaysian bank officer that there could be certain issues with regard to using a cheque to transfer a large sum of money from a Singapore bank account to an account in Malaysia. After discussing these issues, the plaintiff signed DBS cheque no. 243348 ("the third cheque") in blank as a contingency method of payment to effect the transfer of monies from the account to a MR account in Malaysia should Robert encounter problems in the transfer. The date, payee, amount and Robert's signature were missing from the third cheque. The plaintiff returned to Taiwan on the following day.

10 The conversion of $1m into MR was to be arranged by Robert's daughter (Vivienne) who worked as a finance director for a Malaysian public listed company.

11 On 8 January 2002, Robert forwarded to the plaintiff a fax that Robert had received from Vivienne on the then prevailing exchange rate between the MR and the Singapore dollar applicable to $1m. Subsequently, Robert forwarded to the plaintiff another fax he had received from Vivienne on 14 January 2002 wherein Vivienne advised that a person called Robert Yong ("Yong") wanted US$542,000 (equivalent to S$995,112) in exchange for MR2,059,600. Yong wanted a draft in the sum of US$542,000 to be handed to his Singapore private banker Jessie Heng in exchange for MR2,059,600. Robert deposed in his AEIC that he had discussed Yong's offer with the plaintiff who agreed to accept the same and that Robert should carry out the transaction.

12 Accordingly, Robert visited the Bukit Timah Plaza branch of the defendant ("the branch") on the

morning of 21 January 2002 to purchase a draft for US$542,000. Robert was handed a demand draft application form ("the application form") which he completed, signed and presented to the branch's staff for processing. He was told the application form was not acceptable as the same only had one signature whereas the mandate also required the plaintiff's signature. In response, Robert showed to the staff the third cheque and said he would be using the same to pay for the draft. He filled in the blanks in the third cheque, signed it and handed the same to the staff. Shortly thereafter, Robert received the draft for US$542,000 ("the first draft").

13 Robert proceeded to Jessie Heng's office and handed her the first draft. However, Jessie Heng informed him that the first draft was not in order as the beneficiary should be Yong and not herself. Robert informed her he would rectify the mistake.

14 Robert rushed back to the branch. He explained to a staff of the branch that the beneficiary should be Yong and not Jessie Heng. A member of the staff then crossed out Jessie Heng's name in the application form and inserted Yong's name. Robert was then asked to initial and verify the amendment which he did. Robert then received a new draft no. 00160D2004017 ("the second draft") in Yong's name for US$542,000. He returned to Jessie Heng's office and handed the second draft to her.

15 On the same day, the estate received RM2,059,600 into its Malaysian account maintained with Hong Leong Bank Berhad ("the HL account") which sum was placed in fixed deposit ("the fixed deposit"). It subsequently transpired that the third cheque was not used to purchase the first or second drafts. Instead, the defendant debited the account with the sum of $995,112 together with administrative charges of $100 and $10.

16 In his AEIC, Robert said he subsequently received the balance of $300,000 of his $1.3m share of the sale proceeds by a DBS cheque no. 300052 dated 15 April 2002 ("the fourth cheque"). Robert deposed the fourth cheque was jointly signed by him and the plaintiff and issued in favour of Robert's wife. Although the plaintiff also sued the defendant in relation to the fourth cheque, the plaintiff did not refer to the fourth cheque at all either in his AEIC or in his supplemental AEIC. The first mention by the plaintiff of the fourth cheque (admitted by him in court) was in his statement of claim (*infra*[30]). I will return to this observation when I look at the evidence adduced from the plaintiff in cross-examination (at N/E 106-107).

17 On 6 May 2002, the plaintiff sent a fax to Robert containing the following message:

> The amount from the Estate that was paid in Ringgit deposit was for 3 months only. Please give me an update and have the amount returned to the Estate account right away.

In his AEIC (at para 21), the plaintiff explained that he scribbled the above note out of extreme anger with Robert because Robert had sent him a fax about title to their parents' gravesite, amongst other things.

18 After his return to Singapore for good in June 2002, the plaintiff started familiarising himself with the estate's matters as well with the estate of his sister Daisy. The plaintiff alleged that Robert was not cooperative in this respect as which result he wrote to the defendant on 3 March 2003 with a request that monthly statements of the account be sent to his address (No. 25 Kew Drive).

19 On 13 May 2003, the plaintiff received the March 2003 statements from the defendant. He wrote to the defendant on 15 May 2003 to request for future statements of the account to be sent to him.

20 On 22 May 2003, the plaintiff received the defendant's letter informing him that his request for a change of mailing address in [18] could not be processed because Robert's signature was required.

21 The plaintiff replied to the defendant on 27 May 2003 to inquire when the change of address from the property to Robert's house was effected and whether his signature was obtained as required by the defendant. The defendant replied on 9 June 2003 to say the plaintiff's inquiry would be forwarded to the defendant's department in charge of address updating. The plaintiff claimed that in a subsequent telephone conversation with one Julie Chow of the defendant on 24 March 2004, he was told the change of address from the property to Robert's house had been an "oversight".

22 The plaintiff heard nothing further from the defendant regarding his inquiry in [21] until his receipt of the defendant's solicitors' letter dated 22 April 2008 enclosing a copy of the defendant's request form for change of address signed by Robert only.

23 In March 2004, the plaintiff finally received from the defendant statements of the account for the period July 2001 to February 2004. He perused the statements and was puzzled by the debit entry of $995,112 on 21 January 2002 in the statement for January 2002.

24 On 16 March 2005, the plaintiff wrote to the defendant requesting a copy of the outward draft advice in respect of the debit entry of $995,112 on 21 January 2002. The plaintiff received a copy of the advice on 26 May 2005. After making further inquiries of and receiving additional documents from the defendant, the plaintiff uncovered the following facts:

(a) a sum of $995,112 was remitted out of the account on 21 January 2002 based on the third cheque dated 14 January 2002 purportedly signed by Robert and himself;

(b) the application form for the first draft had been signed by Robert only; and

(c) the request for change of mailing address from the property to Robert's house was also signed by Robert only but was accepted by the defendant.

25 Consequently, on 12 September 2006, the plaintiff wrote to the defendant enclosing copies of, the third cheque, the application form (original and amended copies) and sought *inter alia* clarification on whether and when the third cheque was presented to the defendant and why the mandate of two signatures had been waived by the defendant in relation to the application form. The defendant responded to the plaintiff's queries on 26 October 2006 pointing out that:

(a) It was not disputed the plaintiff had signed the third cheque and he had admitted at a meeting he had with the defendant in July 2005 that he had signed the third cheque for the purpose of buying US dollars which transaction Robert had indeed carried out.

(b) The plaintiff had raised his queries in relation to the application form in May 2005, which was more than a year after the relevant statements of account were furnished by the defendant in April 2004, in breach of cl 7 of the Terms and Conditions (see [79] below) governing the account.

(c) the plaintiff's conduct was consistent with the fact that the defendant had carried out the

transaction properly and reasonably.

26 The plaintiff denied he had signed the third cheque in blank. He maintained he had signed only one cheque *viz* the first cheque. He also disclaimed knowledge of the fixed deposit and the HL account. He had assumed that no fixed deposit was placed because he had not been asked to sign any documents for the opening of a Malaysian bank account for the estate. Notwithstanding his receipt of Vivienne's fax dated 14 January 2002 from Robert at [11], it was the plaintiff's case that he was unaware of the placement of the fixed deposit because he had heard nothing further from Robert after 16 January 2002.

27 In fact, the plaintiff claimed he came to know of the fixed deposit and the HL account only when he sued Robert in Suit No 386 of 2005 ("the 2005 suit") to recover the sum of $995,112. Robert had there filed an affidavit in an (unsuccessful) attempt to set aside the judgment in default of pleadings that the plaintiff had obtained against him under O 19 of the Rules of Court. When Robert could not/did not pay the judgment sum in the 2005 suit, the plaintiff made him a bankrupt on 11 May 2006 in Bankruptcy No 956 of 2006. It was in the course of proceedings in the 2005 suit that the plaintiff discovered that the HL account had been opened by Robert as far back as 10 July 1995. The plaintiff believed his signature on the HL account opening form was forged.

28 The plaintiff claimed he met the defendant's representative one Bertilla Chea at its Parkway Parade branch on 12 December 2006 who then showed him the original of the third cheque. The plaintiff noted therefrom that his signature was signed in blue ink whereas the remaining handwritten portions which appeared to be written by Robert were in black ink. The plaintiff's signature on the first cheque on the other hand was in black ink. The plaintiff reiterated that he only signed the first cheque and no others on 6 January 2002; he believed Robert had forged his signature on the third cheque.

The pleadings

29 On 18 January 2008, the plaintiff commenced this action. In his statement of claim the plaintiff repeated his contention that he was unaware of and did not sign the third cheque. He alleged that the defendant used the third cheque to pay or issue the second draft in favour of Yong and thereby debited the account in the sum of $995,112 (being the amount of the third cheque) as well as two additional sums of $100 and $10.00. The plaintiff contended he did not authorise the drawing of the third cheque and he did not apply or sign the application form or the amendments thereto in respect of the first and second drafts respectively. Consequently he contended, the defendant had no authority to debit the account with the aforesaid three sums on 21 January 2002 or at all.

30 The plaintiff further alleged that unbeknownst to him until March/April 2004, the defendant had, in breach of its mandate, changed the mailing address of the account from the property to Robert's house.

31 As a result of the defendant's breaches, the plaintiff alleged that the defendant was negligent and in breach of contract in relation to the account. The plaintiff also alleged that the defendant's negligence caused him to sign the fourth cheque which sum was debited to the account on 18 April 2002.

32 In its defence and counterclaim (amendment No.1), the defendant denied it had been negligent and averred that the plaintiff and Robert had both signed the third cheque as authorised signatories to the account which third cheque the defendant utilised in payment of the two drafts. The defendant asserted that the application for and amendments to the first and second draft

respectively had been validly authorised by the plaintiff and Robert. If indeed the drawing of the third cheque was unauthorised (which was not admitted), the defendant contended that the plaintiff had facilitated such unauthorised withdrawal and the application for and amendments to the two drafts by signing the third cheque without taking proper safeguards such as indicating on the third cheque the purpose for which it was signed, and by making the third cheque available for the use of Robert who was a signatory of the account. The defendant relied on cl 16 of the Terms and Conditions governing the operation of the account to say it was not liable to the plaintiff in such an event.

33 The defendant averred that the plaintiff knew of the fixed deposit in the HL account, relying *inter alia* on the fax (in [17]) sent by the plaintiff to Robert on 6 May 2002.

34 The defendant added that the plaintiff could not in any case challenge the validity of the application for and/or the amendments to the first and second drafts respectively and/or payment of the third cheque to the defendant and payment of the fourth cheque, by reason of cl 7(b)(iii)(bb) of the Terms and Conditions governing the account.

35 The defendant pointed out that the application for and amendments to the first and second drafts respectively and/or payment of the third and fourth cheques were reflected as entries in the statements that were periodically issued by the defendant. Further, pursuant to the plaintiff's request, the defendant had on or around 3 April 2004 provided the plaintiff with statements of the account for the period September 2000 to February 2004. The statements expressly informed the holder of the account that:

> It is your duty to check all entries in this statement and unless errors are reported to the bank within fourteen (14) days after receipt, the entries will be considered correct and you will be bound by them.

36 The defendant averred that it was only by way of a letter dated 16 June 2005 which was more than 14 days after the plaintiff's receipt of the statements that the plaintiff sought to raise to the defendant objections to the application for and/or amendments to the first and second drafts and/or payment of the fourth cheque. In fact, until the defendant was served the statement of claim on 20 May 2008, the plaintiff had not raised any objections to the debit from the account of the sum of $300,000 in the fourth cheque.

37 In the event the defendant was found to be liable to the plaintiff, the defendant counterclaimed for a declaration that it was entitled to a contribution or indemnity from the plaintiff in his capacity as an administrator of the estate and/or co-signatory of the account, pursuant to s 15 of the Civil Law Act (Cap 43, 1999 Rev Ed)("the Civil Law Act").

38 In his reply and defence to the counterclaim, the plaintiff pleaded for the first time that he and Robert had agreed that a sum of $1m from the account would be placed in an account to be opened in Malaysia in the name of the estate, for a period of three months only and which would be operated jointly by both of them. The plaintiff contended that the third cheque was never reflected in any of the defendant's statements forwarded to the plaintiff or shown to have been cleared through the account maintained with the defendant.

39 The plaintiff averred that the documentation pertaining to the two drafts was only shown to him on or about 11 July 2005 after the plaintiff had queried the transaction while the original of the third cheque was only shown to him on or about 12 December 2006.

40 The plaintiff denied he had authorised Robert to amend the application form on his behalf. The

plaintiff alleged that the defendant failed to contact him when there were persistent amendments made by Robert to the application form, in breach of the mandate granted to the defendant. The plaintiff denied he had contributed to or assisted in the application form and/or in the subsequent amendments to the application form for the drafts.

41 The plaintiff contended that by reason of the defendant's wrongful and/or unauthorised change of the mailing address to which monthly statements were sent, the plaintiff was unaware of the unauthorised and/or un-mandated withdrawals. Had the plaintiff known of the discrepancies in the account, the plaintiff averred he would have stopped any further issuance of cheques in relation thereto. He contended that by its conduct the defendant was estopped from relying on any of the exclusion clauses in relation to the operation of the account.

42 On the first day of trial, the plaintiff applied by Summons No 3424 of 2009 ("the plaintiff's application") to amend the reliefs in the statement of claim to include: (i) a declaration that the defendant was not entitled to debit the account with the amounts of $995,112, $100 and $10 and (ii) a claim for restitution to the plaintiff of all sums wrongfully debited against the account. The defendant opposed, and I dismissed the plaintiff's application for the reason that, a claim for restitution is a necessary corollary to a claim for unjust enrichment but such a claim was not pleaded by the plaintiff.

43 The defendant also had an application on the first day of trial, by way of Summons No 3111 of 2009 ("the defendant's application") for Robert's AEIC to be received in evidence at the trial despite the fact that his demise meant Robert could not be cross-examined. I overruled the objections of counsel for the plaintiff and granted an order in terms of the defendant's application, with the caveat that the probative value of Robert's written testimony must factor in the lack of opportunity by counsel for the plaintiff to cross-examine Robert and (with the agreement of counsel for the defendant) that the principle in *Browne v Dunn* (1893) 6 R 57 would apply.

The evidence

44 The plaintiff was the only factual witness for his case. The defendant also had only one factual witness in its employee Ho Siew Fong ("Ho") in the light of Robert's demise. Ho at the material time was a customer service officer ("CSO") at its Bukit Timah branch. Both sides also had an expert witness. In the plaintiff's case, his expert was William Pang Chan Kok ('Pang") who is a private handwriting and forensic document examiner while the defendant's expert Yap Bei Sing ("Yap") is a senior forensic scientist from the Health Science Authority's Document Examination unit. Each side roundly criticised the opposing party's expert's testimony as well as his expertise. There was even a suggestion in the plaintiff's closing submissions that Yap was a biased witness because he had had sight of Pang's report when Yap prepared his report.

(i) The plaintiff's case

45 The plaintiff's testimony has been outlined in the facts set out above (save where the same came from Robert's AEIC). I therefore turn to the plaintiff's cross-examination for the additional evidence that was adduced from him by counsel for the defendant.

46 Contrary to the assertions made in his AEIC, the plaintiff changed his stance in cross-examination and made the following significant admissions:

(a) he knew from the two faxes in [11] that he received from Robert that $1m from the account would be withdrawn, converted into MR and transferred to an account in Malaysia;

(b) his fax to Robert at [17] showed he was aware of the fixed deposit of RM2,059.600;

(c) the fourth cheque in [16] was meant for Robert's balance share of the estate. The plaintiff disavowed his signing of the fourth cheque because he felt that Robert had taken more than his share of the estate;

(d) the plaintiff was aware that the property had been sold in October 2001 and that statements for the account could no longer be sent there. The plaintiff did not take any steps to effect the change of mailing address nor did he ask Robert if the mailing address had been changed;

(e) prior to March 2003, the plaintiff did not request the defendant for past statements for the account for the period 2001-2002;

(f) after the plaintiff signed the first cheque (for $1m) he had discussed with Robert the latter's proposal to convert $1m of the estate's money into MR as well as Vivienne's proposal of a better deal for the estate by doing an exchange of Singapore dollars for MR with a private individual (initially with the sister of one Vincent Tan and eventually with Yong);

(g) he left it to Robert to carry out the transaction of converting $1m into MR although Robert was required to keep him informed of the process;

(h) he signed four cheques on 6 January 2002 which included DBS cheque no. 243345 for $20,000 (at 2AB20). Just like the third cheque, the plaintiff signed this cheque in blue ink whereas the rest of the handwriting was in black ink.

47 I turn next to portions of the plaintiff's testimony which contradicted his case and/or his AEIC. Although the plaintiff had pleaded in his Further & Better Particulars of the statement of claim (filed on 24 July 2008) that he did not sign the third cheque to the best of his knowledge, information and belief, he was more certain in his AEIC as there (in para 31) he said:

> I wish to say that I did not sign the cheque no. 243348 dated 14 January 2002 for $995,112. I signed only one cheque [the first cheque], for $1 million on 6 January 2002. By 14 January 2002, I had returned to Taiwan and was not in Singapore. I also did not sign the cheque in blank.

48 The plaintiff's reasoning that he could not have signed the third cheque in blank was based purely on its date of 14 January 2002. However, his reasoning was flawed – the second cheque for $50,000 issued to him (at 1AB61) was also not dated 6 January 2002. Confronted with the second cheque, the plaintiff (at N/E 76/77) sought to explain the date by stating he left Singapore for Hong Kong on 7 January 2002, he returned to Taiwan therefrom on 11 January 2002 and he posted the second cheque back to his Singapore bank (Keppel Tat Lee Bank) on 12 January 2002 for crediting to his account. He then excused himself with the remark "so long ago" when he was asked to confirm that the second cheque was dated 12 January 2002 even though he signed it in Singapore on 6 January 2002. I find it strange that a person in the plaintiff's position (a Permanent Secretary of two ministries and chairman of the Central Provident Fund Board before his retirement and posting to Taiwan in 1979 to set up Singapore's trade office) would venture to say that the dates in cheques necessarily evidenced when they were actually signed.

49 The defendant's submissions criticised the plaintiff's action of bringing the second cheque back with him to Taiwan and then posting it back to Singapore as illogical and unlikely. It was the defendant's submission that it was more likely than not (with which I agree) that the plaintiff and

Robert signed four cheques in blank on 6 January 2002; the second cheque was one of them. Robert was entrusted with the four cheques and it was Robert who filled in the particulars in all the cheques including those on the second cheque and its date of 12 January 2002 and credited it to the plaintiff's Singapore bank account for him. Consequently the dates of the four cheques have no significance and even less consequence. The plaintiff's testimony ignored the common practice of backdating or postdating cheques.

50 The defendant's submissions also gave a reason why the plaintiff's case that he did not sign the third cheque has no merit. As stated earlier in [21], the plaintiff had previously sued and obtained judgment against Robert in the 2005 suit. In an affidavit filed on 3 August 2005 in the 2005 suit, the plaintiff had (in para 10) said he signed the third cheque which he disavowed in these proceedings.

51 However, subsequently, in a later affidavit (at para 14) that he filed (on 27 September 2005) in the 2005 suit, the plaintiff did a *volte face* and claimed that he did not sign the third cheque. The plaintiff explained his change of heart on the basis that he had mistaken the third cheque for the first cheque he signed on 6 January 2002 and he only realised his mistake when he obtained a copy of the third cheque from the defendant. The plaintiff's explanation was unconvincing according to the defendant. The defendant pointed out that by 3 August 2005 (when the plaintiff filed his first affidavit acknowledging he signed the third cheque) the plaintiff had already seen the third cheque as a copy thereof was exhibited in Robert's affidavit filed on 29 July 2005 in the 2005 suit.

52 The defendant submitted that it was unbelievable that the plaintiff could have confused the third cheque with the first. Granted the amounts stated in both cheques were the same *ie* $1m. However, the payee in the first cheque was the estate whereas the third cheque had no payee until Robert filled in the defendant's name (the cheque itself was dated 14 January 2002). The defendant added that it was also logical for the third cheque to be signed in blank since the payee and amount details were not known until 22 January 2002. It was only on that day that Robert could write the precise Singapore dollar amount for US$542,000 in the cheque.

53 I note that in the statement of claim, the plaintiff pleaded that the third cheque was used to purchase a draft in favour of Yong. This was in accordance with the discussions reached between the plaintiff and Robert on 6 January 2002 and reflected in the fax of 14 January 2002. The plaintiff did not deny receiving this fax nor Robert's earlier fax of 8 January 2002. The plaintiff had even made a handwritten notation of *16/01/02* on the fax of 14 January 2002 to indicate Thursday 16 January 2002 was the likely date the transaction with Yong would be concluded. If indeed he disagreed with Robert's proposed transaction with Yong, why did the plaintiff not object? Instead, there was a fax from him to Robert (set out at [17]), implicitly acknowledging the fixed deposit in MR.

54 It is puzzling why the plaintiff would send such a fax to Robert out of extreme anger. As counsel for the defendant as well as the court pointed out to the plaintiff (at N/E 24 and N/E 146 respectively) which the plaintiff conceded, the text of the fax did not reflect any anger the plaintiff may have felt towards Robert. On a plain reading of the fax dated 6 May 2002, the plaintiff wanted to have an update from Robert. It was no coincidence (according to the defendant) that the fax to Robert was sent on 6 May 2002 as that was exactly three months from the date (6 January 2002) the two brothers had discussed the placement of the fixed deposit in MR.

55 In re-examination, the plaintiff sought to explain (at N/E 153) that Robert had provoked him by asking for $300,000 urgently to buy a piece of land at Desaru, Johor. The plaintiff said he acceded to Robert's request by signing a cheque and sending it to Robert by courier service only to receive in return certain complaints from Robert. I disallowed this line of re-examination further as this turn of events was unrelated to the plaintiff's fax of 6 May 2002 (at AB72).

56 The plaintiff had also claimed that his signature on the signature card of the HL account (N/E 28) was a forgery. However, apart from a bare assertion, the plaintiff conceded that he had no other evidence to support his belief as his own expert Pang did not verify the plaintiff's signatures on HL's signature card.

57 It would appear from the plaintiff's pleadings and his AEIC that his premise for saying the third cheque was not used in the purchase of the bank draft was based on the fact that the bank statement of the account for January 2002 (at AB183) showed the cheque was not cleared through the banking system but the account was instead debited. I shall return to this observation later.

(ii) The defendant's case

58 I turn next to the evidence of Ho Siew Fong ("Ho"), the CSO who attended to Robert when he visited the branch (twice) on 21 January 2002 to procure the two drafts. Ho was then the most senior staff available at the branch that morning as neither the service nor branch managers were in. Robert had initially been attended to by one Sandy Neo and thereafter by Norita Bte Johar. The two persons were unsure whether the application form could be processed as the document contained only Robert's signature whereas two signatures were required to operate the account.

59 When the matter was referred to her, Ho informed Robert that two signatures were required to process the application form. Robert suggested that a cheque be made out to the defendant for the sum required in the draft and handed the third cheque to her. Ho examined the third cheque and verified the two signatures on the cheque with the sample signatures in the defendant's computer system. She noted the payee of the third cheque was the defendant and the foreign exchange contract number CF 02004856-01 ("the forex contract") was also inserted. Ho accepted the third cheque and approved the application form on that basis.

60 Ho deposed that the words "ok By TRSVNJJ that appeared on the third cheque (see 2AB38) were the initials of Miss Ng Jean Jane ("Ng") who used to be a treasury manager at the branch. Ng no longer worked for the defendant and Ho did not know her whereabouts.

61 In cross-examination Ho indicated it was unlikely that a foreign exchange ('forex") contract in excess of US$500,000 would have been concluded at the counter when Robert called at the branch. It was more likely that Robert contracted with one of the defendant's foreign exchange dealers *ie* Ng as reflected in the forex contract (at AB661). Ho testified there was a bit of commotion when Robert was at the branch. While Ho was doing some back room transactions, she heard Robert talking loudly before she came out to attend to him. Robert insisted on the branch processing the application form as there was a forex contract and he had the third cheque with which to make payment. Ho telephoned the defendant's treasury department to obtain its approval to use the third cheque for the forex contract before she herself approved the application form.

62 Robert's AEIC (admitted into evidence on the first day of trial) came in for intense criticism in the plaintiff's closing submissions. The plaintiff not surprisingly argued that Robert was an unreliable witness lacking in credibility, based on past inconsistent affidavits that he had filed (which documents referred to in her submissions by counsel for the plaintiff were not in any of the bundles used in this trial). The plaintiff pointed out that in Robert's affidavit filed on 30 August 2005 to set aside the default judgment in the 2005 suit, Robert had deposed to the following facts:

(a) on 6 January 2002, he and the plaintiff had agreed to place $1m in a Malaysian account to earn better interest, for which purpose the third cheque was signed;

(b) he was subsequently told that the third cheque would take time to clear and the exchange rate would not be favourable;

(c) shortly thereafter, Robert struck a deal with Yong to purchase RM2,059,600 in exchange for US$542,000; and

(d) Robert informed the plaintiff of the intended transfer of funds and the third cheque was signed, suggesting that the third cheque was signed after 6 January 2002.

63 The plaintiff then submitted that in Suit No 28 of 2007 ("the 2007 suit") where Robert's trustee for his bankrupt estate sued Robert's wife, Robert had alleged in an affidavit (filed on 14 May 2007) that the plaintiff was the cause of his earlier bankruptcy. When the plaintiff took issue with this allegation, Robert withdrew it claiming it was a mistake. This statement was erroneous – I note from the affidavit filed by Robert's wife in the 2007 suit that this allegation was not made by Robert but by Robert's wife in her affidavit). According to the plaintiff, before 2006, Robert and Robert's wife had been adjudged bankrupts in Bankruptcy Nos 4800 of 1986 and 3228 of 1986 respectively by the same judgment creditors. These bankruptcies were however discharged in 1995/1996.

64 It was submitted by the plaintiff (without elaboration) that Robert had also refused to cooperate with the plaintiff in the administration of their sister Daisy's estate. Although this fact was completely irrelevant to this suit, the plaintiff's submission also volunteered the information that Daisy's bequest to Robert in her Will was declared void because Robert's wife had witnessed Daisy's Will.

65 Having read the affidavits for the 2007 suit (to which the defendant understandably objected in its counsel's letter to the court subsequent to the trial at [106] *infra*), I disagree with and reject the plaintiff's submission that Robert lacked credibility and his AEIC should be rejected. On the contrary, there were no inconsistencies in Robert's testimony vis-a-vis his several affidavits filed in the 2005 suit and this suit, unlike the inconsistencies between the plaintiff's pleaded case and his evidence as highlighted earlier.

The expert testimony

66 As stated earlier (at [44]), each side had an expert witness of whom the other side was highly critical. I start my review by looking at the testimony of the plaintiff's expert.

67 Pang (PW2) who is the sole-proprietor of his own firm (Handwriting and Document Examiner) was instructed by counsel for the plaintiff to conduct a comparative examination of the plaintiff's signature in the third cheque with those in the first and fourth cheques and in DBS cheque no. 243345 for $20,000 with those in six other cheques issued by the defendant and in 28 cheques issued by Keppel Tat Lee Bank (hereinafter referred to collectively as "the specimen signatures"). Pang's task was to determine whether the plaintiff signed the third cheque.

68 Pang carried out a microscopic and macroscopic examination to assess the structure, features and writing quality of all the signatures followed by a comparative examination of the similarities and differences between the signature in the third cheque and the specimen signatures.

69 While the plaintiff's signature in the third cheque was pictorially similar to the specimen signatures, Pang opined that there were seven differences between them as which result he concluded that the plaintiff did not write the signature in the third cheque.

70 Both Pang's credentials and his report came in for heavy criticism from the defendant in its closing submissions. The defendant pointed out that unlike Yap who had 20 years' experience in the field of forensic documentation, who had handled more than 3,900 cases and testified in court on more than 70 occasions as an expert witness, Pang only started two years of formal apprenticeship under one Chris Anderson in 2004 and received certification as a forensic examiner in 2006. Therefore Pang had no more than three years' experience as a certified forensic document examiner. By his own admission during cross-examination, the bulk of Pang's experience was in graphology. Further, Pang continued to be mentored by Chris Anderson in all aspects of document examination and in his casework. (Chris Anderson was originally scheduled to be the plaintiff's expert together with Pang by Order of Court dated 21 November 2008).

71 The defendant criticised as flawed Pang's finding that the plaintiff's signature on the third cheque was likely to be a forgery. Essentially, Pang's methodology was to compare the specimen signatures with that in the third cheque. The defendant contended that his seven differences between the specimen signatures and that in the third cheque were in fact within the range of natural variations of the plaintiff's signatures and actually supported the defendant's view that the plaintiff did sign the third cheque. Pang's opinion was said to be not impartial. The court was urged to disregard his report as the evidence to suggest forgery of the plaintiff's signature in the third cheque was not cogent enough. The defendant argued that the plaintiff had failed to meet the requisite standard of proof to make out his case that his signature on the third cheque was forged.

72 The plaintiff not surprisingly similarly criticised the defendant's expert Yap who had opined (in his first report) that it was highly probable that the writer of the 15 sample signatures he was given was the signatory in the third cheque. The plaintiff not only complained of Yap's lackadaisical approach to preparation and presentation in his reports (which contained no explanation of his methodology), but also attacked his lack of integrity for failing to disclose that counsel for the defendant had given him a copy of Pang's first report to answer when Yap prepared his second report.

73 Yap was cross-examined in great detail and the plaintiff's closing submissions dealt *in extenso* on his non-disclosure. Counsel for the plaintiff alleged (at N/E 466) that Yap's second report was targeted at Pang's report. Yap was further criticised for his scanty first report and for accepting at face value the 15 sample signatures of the plaintiff that were given to him by the defendant (five of which were extracted from letters while six were hardly contemporaneous) unlike Pang who gathered the specimen signatures (all from cheques) himself in a professional manner.

74 It was pointed out in the plaintiff's submissions that during cross-examination (at N/E 465), Yap had admitted that he brought up ten points in his second report to discredit Pang's seven points and that was his "trump card". The plaintiff therefore submitted that the omissions in Yap's report were not "accidents" and his evidence should be viewed with suspicion because he was not an independent witness and lacked impartiality.

75 I should point out that in his second report, Yap was given for comparison with the signature in the third cheque, the specimen signatures that Pang had extracted from 28 Keppel Tat Lee cheques of the plaintiff. Conversely, in Pang's second report, he was given six of the 15 sample signatures relied on in Yap's first report and which were identified by Yap as S1, S11 to S15. S1 was the defendant's signature card signed by the plaintiff and Robert when the account was opened on

10 May 1986 while the other sample signatures of the plaintiff came from five letters he had written to the defendant between 23 August 2005 and 9 February 2007. Both experts' views remained unchanged in their respective second reports.

76 Having gone to the trouble of calling Pang as an expert witness, it was surprising to find (in para 178) the following passage in the plaintiff's closing submissions:

> The plaintiff's position remains that on the totality of the evidence, whether or not [the plaintiff's] signature was forged on the [third] cheque is not relevant because the [third] cheque was never presented and never used. The debiting of the Account was direct – it was not based on the cheque.

The Issues

77 Based on the facts and the plaintiff's pleaded case, the following issues arose for determination in this suit:

(a) Did the defendant breach the mandate for the operation of the account (which required two signatories' authority) when it accepted Robert's instructions to change the mailing address from the property to Robert's house?

(b) Did the defendant similarly breach the mandate when it accepted the application form signed by Robert for the purchase of the bank draft and entered into the forex contract?

(c) What was the basis of the forex contract?

(d) Was the plaintiff's signature on the third cheque a forgery?

(e) If the defendant is liable to the estate for breach of mandate, is it entitled to a contribution or indemnity from the plaintiff due to his negligence?

The submissions

78 Before I set out my findings, it would be useful to first look at the closing submissions tendered by the parties.

79 The defendant had relied on two clauses of the Terms and Conditions governing the account in denying liability. The first was cl 7(b)(iii)(bb) which reads as follows:

> **Customer's Duty**
>
> The customer is under a duty:
>
> to examine all debit and credit entries in the Statement of Account and updated passbooks, statements, transaction advices, deposit advices and records (Transaction Records") and to report any omission from or debits/credits wrongly made or made without authority to or inaccurate entries in such Statement of Accounts and/or Transaction Records. Unless the debit or credit entries or omissions or any other inaccuracies therein are objected to within 14 days after the customer's receipt of his Statement of Account or his Transaction Records, such entries made in the Statement of Account or Transaction Records shall be deemed correct and shall be conclusive without further proof as against the customer that such Statement of Account or Transaction Records contain all credits that should be contained therein and no debits that

should not be contained therein and further the customer shall be bound by the Statement of Account and the Transaction Records and the Bank shall be free from all claims in respect of any and every debit or credit item shown in the Statement of Account and the Transaction Records. Notwithstanding the foregoing, the Bank reserves the right upon notice to the customer to add and/or alter the entries in the Statement of Account and Transaction Records in the event of incorrect or missing entries or amounts stated therein.

80 The second clause relied upon by the defendant was cl 16; it reads:

No liability for loss

(a) the Bank shall not be liable for any loss, damage or expense suffered or incurred by the customer (whether as a result of computer breakdown, forgery of signatory's signature, material alteration of withdrawal requests or other reasons of any kind whatsoever) through no fault of the Bank.

…

(c) If in any event described in paragraph (a) or (b) above the Bank has debited the customer's account in reliance on a withdrawal or payment request on which the signature of the customer or his authorised signature was forged, the Bank shall not be liable to reverse the debit or pay or compensate the customer in respect of the amount so debited.

81 It was the plaintiff's case that the defendant was not entitled to rely on cl 16 to exclude its liability because it had breached the mandate for the account. The defendant however maintained that even if there was such a breach (which it did not admit), the defendant was not liable, relying o n *London Intercontinental Trust Ltd v Barclays Bank Ltd* [1980] 1 Lloyds LR 241 ("*London Intercontinental*").

82 In *London Intercontinental*, the plaintiff customer of the defendant bank complained that the latter acted in breach of its mandate when it paid out on two cheques (totalling £195,000) that contained only the signature of one instead of two authorised signatories as required. Slynn J held the defendant was not liable as he found that Mr Ross the sole signatory of the two cheques had actual authority to direct the transfer of the moneys. As such the defendant was entitled to act on the cheques drawn on his sole signature and those cheques were not invalidated by the fact that the defendant had a mandate requiring two signatures.

83 The defendantcontended that Robert had actual authority from the plaintiff to transfer the sun of US$542,000 from the account to Yong; there was therefore no breach of mandate.

84 Moreover the defendant argued, the law required a high standard of proof for an allegation of forgery, fraud and/or criminal conduct, citing the Court of Appeal's decision in *Yogambikai Nagarajah v Indian Overseas Bank* [1997] 1 SLR(R) 258 ("*Yogambikai*") and this was reiterated in *Chua Kwee Chen, Lim Chah In v Koh Choon Chin* [2006] 3 SLR(R) 469.

85 In *Yogambikai*, the appellant appealed against the trial judge's decision in: (i) dismissing her claim that her mandate signature was forged and that a letter to the respondent bank purportedly containing her instructions to transfer moneys from her fixed deposit to one Valli's account was not signed by her and that (ii) moneys held in her account with the respondent bank were held on trust for the benefit of Valli and Valli's infant daughter.

86 The appellant failed in her appeal. In affirming the judgment of the trial judge, the appellate court opined that the more serious the allegation made by one party, the higher was the standard of proof it had to satisfy, following the UK Court of Appeal's decision in *Hornal v Neuberger Products* [1957] 1 QB 247.

87 The defendant pointed out that the plaintiff had failed to discharge the requisite high standard of proof set out in *Yogambikai* for his allegation that his signature on the third cheque had been forged.

88 The defendant contended (in para 269 of its closing submissions) that the change of mailing address did not cause the plaintiff to sign the fourth cheque or to suffer any loss.

89 Not surprisingly, the plaintiff disagreed with the defendant. His counsel sought to distinguish *London Intercontinental* from this case on the basis that there, even though the cheques bore only one signature (that of Mr Ross) when the mandate required two, there were letters sent to the defendant bank confirming the transactions. That was why the court found that Mr Ross had actual authority to transfer the sums of money. It was pointed out that Slynn J had opined (at p 249) that as a result of its failure to observe the discrepancy, the defendant took a risk in honouring the cheque that Mr Ross was not in fact authorised although ultimately the court held he was.

90 Here, in allowing the first draft to be issued, knowing full well that the mandate was not fulfilled, the defendant had indeed taken the risk upon itself that Robert was not authorised. After all, Ho had confirmed she was not aware of the purpose for which the first draft was required.

91 Counsel for the plaintiff added that the defendant should not be allowed to rely on cl 7 of the Terms and Conditions set out at [84] above. She pointed out that the defendant's submission meant that the clause would apply even though the monthly statements were furnished to the plaintiff some two years after the transactions. That ran counter to the plain meaning of the clause that it would only apply to current statements issued by the defendant and not to statements received some years later as in this case. No objections were raised by the defendant to the plaintiff's late complaints on the monthly statements nor did it place reliance on cl 7 until three years later in the defendant's letter dated 26 October 2006 (referred to at [25] above). In any event, the plaintiff's recollection was that he had signed a cheque in the sum of $1m whilst the third cheque was for $995,112. Consequently, the plaintiff could not be criticised for being confused or for not immediately reporting a fraud.

92 The plaintiff's counsel also argued that *Yogambikai* did not apply as the course of action the defendant took was not justifiable.

93 The plaintiff criticised the defendant's witness pointing out that Ho's evidence was not helpful. The defendant failed to call Ng, a more relevant witness, to testify. Neither did the defendant call anyone to explain why the account's mailing address was changed upon Robert's sole signature in the request form. Bertilla Chea (see [28] was also not called to testify. The court was asked to draw an adverse inference against the defendant for its failure to call witnesses other than Ho.

94 I noted that the plaintiff's submissions dealt exclusively (apart from the expert testimony) on the defendant's breach of mandate as set out in [77](a), (b) without addressing the issue of the consequences that resulted from the defendant's breach (if it was found to be so liable). I shall return to this observation later.

The findings

(i) Was there a breach of mandate in the change of mailing address without the plaintiff's authority/consent?

95 It is trite law that a bank must comply strictly with the terms of the mandate from its customer. It was not disputed by the defendant that the account required the joint signatures of the plaintiff and Robert for its operation. Consequently, the defendant was in breach of that joint mandate when it acted only on Robert's sole signature in the request form dated 9 October 2001 to change the mailing address of the account from the property to Robert's house.

96 However, it bears remembering in this regard that the plaintiff did not return to Singapore until June 2002 whereas the property was sold in October 2001. Had Robert not changed the mailing address of the account to Robert's house after the completion of the sale of the property, the statements and correspondence relating to the account would have been returned to the defendant by the purchaser of the property or thrown away, unless Robert had requested (and the purchaser had agreed) that mail be forwarded to Robert's house (which would mean the statements still ended up at Robert's house). It was more likely than not that had he been asked by Robert, the plaintiff would have consented to the change of mailing address from the property to Robert's house as they then had a good relationship. In any case, the plaintiff did not offer any alternative to Robert's house as the new mailing address of the account after October 2001.

97 The unauthorised change of mailing address was tied to the plaintiff's complaint that had he received the statements for the account, he would not have signed the fourth cheque. However, the fourth cheque for $300,000 was for the balance of Robert's share of $1.3m of the sale proceeds of the property. I fail to see the connection between the plaintiff's non-receipt of the statements for the account due to the change of mailing address and his signing of the fourth cheque to settle Robert's entitlement to a one-third share. Even before October 2001, the plaintiff was not receiving the monthly statements of the account as they were received by Robert at the property.

(ii) Was the plaintiff's signature on the third cheque forged?

98 It is an established principle of law that the standard of proof required for forgery is very high (see *Yogambikai* and restated in *Chua Kwee Chen, Lim Kah Nee and Lim Chah In v Koh Choon Chin supra*[84]). I find that the plaintiff failed to discharge the burden of proof in this regard.

99 If indeed the plaintiff's signature on the third cheque had been forged, s 24 of the Bills of Exchange Act (Cap 23, 2004 Rev Ed) ("the BE Act") becomes relevant. The section reads:-

> **Forged or unauthorised signature**
>
> 24. —(1) Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.
>
> (2) Nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

100 A forgery of the plaintiff's signatures on any of the four cheques meant the defendant would have had no defence to the plaintiff's claim under the above section of the BE Act.

101 However, I disbelieve the plaintiff's claim (and reject Pang's testimony in that regard) that he only signed one cheque *viz* the first cheque and not the third or other two cheques on 6 January 2002. I find that the third cheque was signed by the plaintiff at Robert's house that day together with the second and fourth cheques. Seen in tandem with his fax to Robert dated 6 May 2002 set out at [17], the plaintiff had not only signed the third cheque but had expressly authorised Robert to enter into the forex transaction with Yong. There can be no other logical conclusion this court can arrive at, based *not* on the AEIC of Robert (which I was well aware was not tested by cross-examination) but on the plaintiff's own inconsistent testimony observed earlier at [45] to [53].

102 Earlier (at [16]), I had commented on the plaintiff's total silence in his AEIC on the signing of the fourth cheque. His only reference to the same was in para 9 of his statement of claim where he pleaded that the defendant's negligence caused him to sign the fourth cheque. Not surprisingly, the defendant requested Further and Better Particulars of such a cryptic pleading. However, the Particulars rendered by the plaintiff were singularly unhelpful. The plaintiff merely repeated his allegation that the mandate for the account required two signatures but the defendant acted only on Robert's signature in changing the mailing address from the property to Robert's house. No answer was provided on how the defendant's breach in this respect caused the plaintiff to sign the fourth cheque.

(iii) Was there a breach of mandate in the defendant's acceptance of the application form without the plaintiff's signature?

103 A finding on this second breach necessitates a recapitulation of what transpired on 21 January 2009 as set out earlier at [12] to [15]. Despite the defendant's defence and submissions to the contrary, the application form (according to Ho's own testimony) required the signature of the plaintiff besides that of Robert. What is also clear is the fact that Robert had in his hand the third cheque signed in blank by the plaintiff. Robert wanted to use the third cheque to pay the defendant when he was informed by Ho that the application form lacked the plaintiff's signature and could not therefore be processed for purposes of debiting the account for the cost of purchase of the first draft. Consequently, the third cheque should have been accepted in payment by the defendant and should have been reflected in the defendant's January 2002 statement for the account.

104 It is not disputed that the third cheque was not cleared by the defendant. Hence, the plaintiff's complaint that the defendant, despite rejecting the application form, nonetheless acted on the same and deducted the forex amount from the account, and thereby breached the mandate. The plaintiff's submissions made much of the defendant's omission in this regard and argued that its waiver of the requirement of the plaintiff's signature amounted to a breach of the mandate for the account and hence, a breach of contract. The plaintiff's complaint was borne out by the account's January 2002 statement. However, for the reasons that follow, the defendant's breach in this regard does not advance the plaintiff's case.

105 Incidentally, the plaintiff's submissions had raised as an issue (at para 20[b]) whether the defendant had breached its mandate in entering into the forex contract. This issue however was not pleaded in the plaintiff's statement of claim or reply and will accordingly be ignored.

106 At this juncture I need to digress. Counsel for the plaintiff had raised strenuous objections to the Reply submissions of the defendant on the Counterclaim complaining (in her letter dated 20 August 2009) that the same exceeded the parameters of this court's directions on submissions. In particular, counsel asked that paragraphs 1-61 of the Reply submissions be disallowed arguing that the paragraphs amounted to a reply to the plaintiff's submissions on his claim for which the defendant had no right of reply. The plaintiff contended that the defendant could/should have addressed in its

submissions filed on 20 July 2009, the issue of the forex contract as well as the plaintiff's reference to documents not referred to at the trial.

107 In response to the plaintiff's solicitors' complaint, counsel for the defendant pointed out that the plaintiff did not deny that its claim that the forex contract was unauthorised was not pleaded. The defendant accused the plaintiff of blatantly attempting to include in its submissions a new and unpleaded cause of action in relation to the forex contract, not to mention that the plaintiff referred to affidavits that were never raised in examination-in-chief, cross-examination or re-examination nor related to this suit. It was obvious that the plaintiff's tactic in objecting to paras 1-61 of the defendant's reply submissions was to mask the lacuna in his pleaded case. Consequently, his counsel's objections are without merit and are hereby dismissed.

(iv) What was the basis of the forex contract?

108 The plaintiff's allegation of the forex contract being unauthorised even if pleaded, would not have succeeded because it was clear on the evidence (based on the two faxes he received from Robert at [11] and his own fax to Robert at [17]) that the plaintiff knew of and had authorised the forex contract even though he did not sign the application form. Consequently, the transaction itself being authorised (as in *London Intercontinental*) it mattered not that the process by which the transaction was effected *viz* by the application form, was not signed by the plaintiff in accordance with the mandate for the account. Nor did it matter that the defendant omitted to clear the third cheque and instead (wrongly according to the plaintiff) debited the sum of $995,112 to the account based on the application form. It should be noted that the estate suffered no loss for which the defendant can be liable – the forex contract for $995,112 was transacted with the plaintiff's knowledge and approval and the estate did receive in exchange the equivalent sum of RM2,059,600.

109 As I found earlier in [101] that the third cheque was indeed signed by the plaintiff, it would not be necessary to address the expert testimony of the parties.

110 However, in the event my findings on the plaintiff's testimony are wrong, I would accept the evidence of Yap in preference to that of Pang, *viz* that the third cheque was likely to have been signed by the plaintiff. Granted, the plaintiff's criticism of Yap's cavalier and/or lackadaisical attitude was not without justification. Even so, notwithstanding whatever shortcomings in his first report and in his approach to being a court expert, Yap's analysis of the plaintiff's handwriting is to be preferred, despite Pang's diligence and more professional approach in gathering the specimen signatures. The court cannot overlook the fact that Yap's expertise and experience in forensic documentation far exceeded that of Pang.

111 I disagree with Pang's opinion that the seven differences between the plaintiff's signature in the third cheque and the specimen signatures meant that the plaintiff did not sign the third cheque. I prefer Yap's opinion that those differences were within the range of natural variations.

112 In the light of my findings, it would not be necessary to address the issue of whether the defendant would not have been liable to the plaintiff in any event based on cll 7(b)(iii)(bb) and 16 of the Terms and Conditions governing the account.

113 I have two observations to make before I conclude this judgment. First, although he repeatedly asserted his signatures in the third and fourth cheques were forged, the plaintiff was careful not to identify the person who allegedly forged his signature. On the evidence, the alleged forger could only have been Robert if the allegation had been true which I find it was not.

114 Secondly, the plaintiff never mentioned the fate of the HL account. According to the defendant's reply submissions (at para 121), Robert had unilaterally withdrawn moneys from the HL account after 21 January 2002. That would explain the plaintiff's unhappiness with Robert and his disclaimer of knowledge of the HL account (which I disbelieve). The plaintiff's allegation that his signature on the signature card for the HL account was forged was not established in any case as it was not corroborated by Pang (see [56]).

Conclusion

115 Consequently, I dismiss the plaintiff's claim with costs to the defendant to be taxed (on a standard basis) unless otherwise agreed. In the light of my dismissal of the plaintiff's claim, the defendant's counterclaim for a contribution from the plaintiff under s 15 of the Civil Law Act based on his negligence does not arise for consideration. The counterclaim is similarly dismissed with costs which are fixed at $2,000, as no evidence was led on the counterclaim at all, the issue of contribution being a question of law.

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