IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 184

S1525/1988

Between

Puvaria Packaging Industries
(Private) Ltd (In liquidation)

… *Plaintiff*

And

Banque Bruxelles Lambert
(formerly known as Banque
Bruxelles Lambert S.A.)
Peter Chi Man Kwong
Bobby Chin Yoke Choong

… *Defendant*

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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Puvaria Packaging Industries (Private) Ltd (In liquidation) v Banque Bruxelles Lambert (formerly known as Banque Bruxelles Lambert S.A.) and Others

[1993] SGHC 184

S1525/1988
Lai Siu Chiu JC
03 August 1993

1 **Judgment:**

2 Coram: Lai Siu Chiu JC

3 **Cur Adv Vult**

4 JUDGMENT

5 The facts

6 The plaintiffs an exempt private company (the company) were incorporated in Singapore on 5 August 1980 principally to manufacture and deal in paper products in particular corrugated boxes and offset boxes using raw materials imported from the United States, Canada and Europe and Indonesia. At all material times the company's chairman and managing director was one Djamzu Papan (Papan) an Indonesian businessman who was also its majority shareholder.

7 In 1984-1985 Papan (PW2) also managed and controlled a group of Indonesian companies known as the Putera group and two companies within the group were PT Kertas Berkasi Teguh (KBT) and PT Putera Adil Utama (PAU); KBT was a paper and pulp manufacturer which supplied medium boards to the company while PAU imported and exported general merchandise in particular garments and spare parts. Papan was the president komisaris of both companies.

8 The first defendants (the bank) are a Singapore offshore bank with its headquarters in Brussels, Belgium. In 1984-1985 the bank's credit manager was J Kestemont (Kestemont) who subsequently in August 1986 became its general manager which position he occupied until his transfer to Australia in March 1989. In 1982 the bank participated (to the extent of US$1m) in a syndicated loan of US$20m to KBT lead by Asian American Merchant Bank Ltd (AAMB). This was the bank's first contact with Papan as well as with the Putera group through Kestemont (DW1) and the bank's account officer Seah Chin Hong (Seah). By 1984-1985 KBT had paid less than 40% on the bank's share of the syndicated loan.

9 In 1984 pursuant to the bank's letter of offer dated 28 May 1984 (AB103) PAU accepted from the bank a facility of US$1m (the PAU facility) for the opening of letters of credit and or the refinancing of trust receipts which facility was secured by personal guarantees of Papan and his wife. The PAU facility was fully utilised and as at end December 1984 PAU owed the bank thereon US$954,488.18 (AB172). By March 1985 the sum outstanding on the PAU facility exceeded US$1m.

10 The trust receipts matured at periods of 180 days despite which PAU failed to make repayment. Telexes were exchanged between PAU and the bank

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in January 1985, the latter pressing for payment and the former requesting an extension of time until mid-February 1985 in which to make payment.

11 On 14 March 1985 Kestemont and Seah visited Jakarta and met with Papan and three other officials of KBT which included Chan Yoo Tuck (Chan) who was the Putera group's financial consultant. Kestemont said the purpose of his visit was twofold -- to obtain a better insight on the financial situation of the Putera group and to resolve PAU's outstanding trust receipts. At that time KBT was not operating at full capacity and 2-3 of its 6 paper mill lines were idle because the Indonesian government had lifted the ban on imports of huge paper rolls resulting in the Indonesian market being flooded with, and a reduction in the price of, paper rolls. Coupled with very high interest rates for rupiahs, KBT was as a consequence financially squeezed. Since the fate of PAU was closely linked to KBT's, the former, according to Papan, was also unable to pay the sum owing on the PAU facility.

12 Kestemont did not accept Papan's excuses which were a repetition of what Papan had said at an earlier meeting in February in Singapore. Kestemont said at both meetings he raised his voice indicating that if PAU did not pay its debt the bank would sue Papan and his wife on their personal guarantees. At one point at the Jakarta meeting Kestemont walked out of the meeting. He was called back to the meeting by Papan and his advisers after they had had their own private discussion. Papan through Chan then allegedly made the proposal which eventually gave rise to these proceedings.

13 According to Kestemont (who prepared a visit report dated 18 March 1985 after the meeting) Papan requested the bank to consider making a loan to the company claiming it was under his control, a fact then unknown to the bank.

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Papan requested for short term facilities of US$2m to the company. Kestemont rejected the proposal stating that no facilities would be granted to the company unless and until PAU's debt was paid. Further the bank had to consider whether to grant the facilities at all. Papan then said that part of the facilities would be used to settle PAU's debt. The bank wanted to know the reason behind Papan's proposal and how PAU would then discharge its debt to the company. Papan said KBT would supply through PAU raw materials viz cartons of US$1m to the company to settle the company's debt as well as KBT's debt to PAU. Kestemont said he could see the sense in Papan's proposal but indicated that the bank would have to go through the motions of examining the company's creditworthiness as a borrower. He requested an inspection of the company's factory.

14 Between 15-21 March 1985 Kestemont and Seah visited the company's factory at Jurong; they were taken round by Stanley Koo (Koo) and Ong Seng Oh (Ong) the general manager/director of marketing and the financial controller/company secretary respectively of the company. Based on the visit and the documents supplied by the company, Seah prepared a loan presentation dated 21 March 1985 (AB124-129) for members of the credit committee of the bank. Although in the loan presentation the company was said to have a negative working capital, Kestemont said he did not consider the company to be insolvent since it only commenced operations in 1982 and being a new company it had teething problems in the initial stage and had liquidity problems. Basically the company's outlook was improving and the bank considered it a reasonable financial structure. The bank which has a lending limit of US$1m recommended to Brussels that the company be offered a facility of US$2m of which US$1.5m would be utilised for short term advances and or letters of credit/trust receipts

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and the remaining US$0.5m would be for bill discounting. The bank's security would be a second mortgage (after DBS Banks' first mortgage) on the company's factory, a charge for US$2m and personal guarantees of Papan and his wife.

15 On or about 24 June 1985 (AB381) Brussels gave written approval that the company be granted a credit line of US$1m for short term advances/letters of credit/trust receipts and a separate credit line of US$1m for trade bill discounting. Prior thereto the bank had issued its letter dated 27 March 1985 (the letter of offer) offering US$2m facility to the company (AB173) marked for the attention of Papan and Ong. The duplicate copy of the letter of offer (AB174) was duly signed by Papan and dated 29 March 1985 indicating acceptance by the company. Under cover of the company's letter dated 1 April 1985 (AB179) the required documentation of the bank was returned duly executed.

16 On 10 April 1985 (AB194) the company forwarded to the bank 'a set of our contract with KBT dated 1 April 1985 (the KBT agreement) regarding the supply of paper rolls to us for the year of 1985 and 1986' and instructed the bank to debit its account and credit PAU's account with, US$1m; the KBT agreement was not signed by KBT. The bank carried out the instruction by a debit advice to the company dated 24 April 1985 (AB224) and by a credit advice to PAU of the same date (AB225). The KBT agreement was for the plaintiff to purchase 6,667 metric tons of medium graded paper in 1985-1986 at a total price of over S$4m at $600 per metric ton. The terms of payment set out in article 6 thereof stated: 1) 50% deposit on execution of this agreement; 2) 50% on delivery of each lot. We will settle the 50% (S$2,000,000) by paying on your behalf or your

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assigned accounts to Banque Bruxelles Lambert SA, Singapore branch to settle your account or your assigned accounts with the bank.

17 In May 1985 the plaintiffs through their former solicitors (Lee & Lim) informed the bank's solicitors that the plaintiffs no longer required the facility in the letter of offer. However after a meeting between Papan and Seah in the plaintiffs' office on 22 May 1985 Papan changed his mind. Ong and a director of the company Ho Kiat Lim (HKL) then executed the bank's second debenture, the second mortgage and Forms 33 and 34 for lodgment with the registry of companies.

18 On 7 October 1985 Lee & Lim informed the bank that as the company had not proceeded with the KBT agreement and as the bank had also not credited PAU with US$1m as originally arranged, the agreement between the plaintiffs and the bank was no longer binding. The bank's solicitors responded to say that US$1m had been disbursed to PAU on 24 April 1985. In reply Lee & Lim denied that PAU's account had been credited and denied that the plaintiffs had any obligations to the bank in respect of PAU's debt. They demanded that the bank credit back to the plaintiffs' S$ dollar account all sums which the bank had transferred to the plaintiffs' US$ account. This was followed up by Lee & Lim's letter to the bank's solicitors demanding the return of S$199,932.91 to the company's S$ account and forwarding a cheque for S$74,498.66 (the sum) to repay the bank the net amount overdrawn by the company on its account. The bank's solicitors returned the cheque on the basis that the company's computation was erroneous and the bank did not accept that the sum represented the full and final settlement of the company's account.

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19 In December 1985 Lee & Lim complained to the bank's solicitors that the bank had written to the company's customers threatening them with legal action if the latter did not pay to the bank debts owed to the company.

20 On 31 October 1986 DBS Bank appointed receivers and managers to the company under the first debenture and this was followed by the bank's appointment of the second and third defendants as receivers and managers under the second debenture on 10 April 1987 (AB411). On the same day the second and third defendants forwarded to the bank a cheque for S$2,723,466.34 (AB402) to settle the company's outstanding indebtedness to the bank. On 4 May 1987 (AB410) the bank discharged the second and third defendants from their appointment as receivers and managers.

21 On 24 July 1987 on a petition presented by Banque Nationale De Paris a winding up order was made against the company and Don M Ho (Ho) and Jimmy Wee Aik Guan were appointed liquidators.

22 Pursuant to his appointment Ho (PW1) inter alia looked into the affairs of the company leading to the winding up. He learned from the directors that the company purported to pass certain resolutions to accept the bank's facility which copies were in the minute book. However two resolutions passed on 28 March 1985 (AB180-181, AB187-189) were not in the minute book. These resolutions were in the bank's standard form and I shall revert to them later. Ho was also handed a draft of the KBT agreement (exh P1). He noticed that the quantity in exh P1 had been changed from 6,667 mt to 8,400 mt and the price of S$600 had been cancelled and replaced by US$240. Further the figure S$2m in article 6 had been substituted by US$1m and there was a handwritten item 3 added thereon as follows: 50% on delivery on each lot by letter of credit.

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23 Ho saw a letter from the company (signed by Ong and Koo) to PAU dated 29 March 1985 (exh P2) marked for the attention of Lazarus Perdana confirming the plaintiffs' order 'for the supply of 6,667 mt of medium graded paper for the next 12 months effective from 1 April 1985' and forwarding 'two sets of agreement and a letter of credit for supply of paper rolls for < PAU's > necessary attention' (the PAU agreement). He noted that under cover of a complimentary slip from Ong, the company forwarded to Papan for signature two sets of the KBT agreement (exh P3) which terms were in pari materia with the PAU agreement. Ho checked through the records and with the company's former directors and ascertained that neither the KBT nor the PAU agreements were signed nor were there any deliveries of paper to the company. He wrote to both KBT and PAU on 30 September 1987 (AB461A/B) to inquire about the agreements; the response from KBT and PAU was that neither had made any contracts to supply paper to the company (see AB462/463). Ho visited Papan in Jakarta where he was shown copies of documents of transactions and correspondence on repayment, between PAU and the bank pertaining to the PAU facility. Papan disclosed that PAU also owed monies to other banks in Indonesia for which he was being pressed for repayment. Ho then learnt about the March 1985 meeting with the bank which Papan told him took place in Singapore. Papan claimed the scheme was to produce sham documents for the purpose of appearing to have a legitimate transfer of funds from the company to the bank. Ho did not get a definite answer from Papan as to how he was going to settle PAU's debt to the company if the transfer of funds took place.

24 Ho testified that he did not see in the minute book of the company any resolution pertaining to the granting of a second debenture and second mortgage to the bank and when he examined the memorandum and articles (M&A) of the

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company he did not think that its powers to borrow under articles 114 and 115 thereof extended to paying money on behalf of PAU as the company derived no benefit therefrom. He felt there was a common law conspiracy between the company's officers and the bank to deprive the company of the benefit of US$1m as the only parties who gained thereby were PAU and Papan. In addition the bank was able to swap a risky and overdue loan in Indonesia for better security in Singapore. His view was fortified when he came across Kestemont's visit report dated 18 March 1985.

25 Ho then wrote to the bank on 30 June 1988 (AB464) inter alia to question the propriety of the second debenture and the company's payment of US$1m on behalf of PAU. The letter concluded with a demand that the bank refund the sum of S$2,723,466.34 (together with interest) received from the second and third defendants. Kestemont replied to Ho's letter on 7 July 1985 (AB468) denying any wrongdoing on the bank's part but agreeing to meet with Ho to clarify any doubts that Ho may have.

26 A meeting did take place between Ho and Kestemont on 20 July 1985 (the July meeting) at the bank's premises in the presence of Chong Kok Keong (Chong) then the manager of special projects with Deloitte Haskins & Sell who assisted in overseeing the liquidation of the company. Chong (PW3) prepared the minutes (exh P5) for Ho of the meeting reflecting answers by Kestemont to a list of questions Chong had prepared. Although Chong said the minutes were a verbatim report of what transpired there was no reference to 'a sham agreement' although he recalled the words being mentioned. Kestemont disputed the accuracy of the minutes and relied on his memorandum (exh D2) as to what transpired. I shall return to both exhibits at a later stage. Ho described

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the meeting as 'cordial' and that he received straight answers to pertinent questions that he raised. However it concluded with Kestemont refusing to return the sum Ho had demanded.

27 The claim

28 On 21 July 1988 the liquidators commenced the above suit. In the amended statement of claim filed in April 1989 it was inter alia alleged (after the relevant facts had been set out) that:

29 1. The bank knew or well knew that the directors of the company had no power or authority to a. borrow or cause the company to borrow monies from the bank for the purpose of discharging the indebtedness of PAU to the bank; b. to execute or cause the company to execute a debenture for the purpose of securing the loan (of US$2m).

30 2. The bank well knew that the directors of the company were in breach of their fiduciary duties in borrowing from the bank and applying the monies in the manner they had done;

31 3. As between the bank and the company the loan and or the purported discharge of PAU's indebtedness and or the debenture was/is void and of no effect.

32 4. Accordingly there were no grounds entitling the bank on 10 April 1987 to appoint the second and third defendants as receivers and managers and or their appointment was invalid, void and of no effect.

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33 5. Between 10 April and 6 May 1987 the second and third defendants purporting to act as receivers and managers obtained possession of the company's monies amounting to $2,727,476.34 and wrongfully paid the same over to the bank and two other parties.

34 6. The bank held all monies received from the company, the second and the third defendants on trust for the company.

35 7. Alternatively the bank had not carried out the company's instructions to credit the sum of US$1m to PAU's account by 7 October 1985 when the instruction was countermanded despite which on a date unknown but after 7 October 1985 the bank without authority wrongfully debited the company's account and credited PAU's account, with US$1m. Therefore there were no monies on 10 April 1987 or thereafter payable by the company to the bank which entitled the bank to appoint the second and third defendants as receivers and managers or empowered the second and third defendants to obtain possession of or pay over the company's monies.

36 The company prayed for a declaration that a. the transaction whereby the company purported to borrow US$1m from the bank to discharge the indebtedness of PAU to the bank and or the debenture is void and of no effect; b. the appointment of the second and third defendants on 10 April 1987 as receivers and managers of the bank is void and of no effect;

37 and for orders: 1. that the bank return sums paid over by the second and third defendants alternatively, monies had and received by the bank to the use of the company be returned to the company; 2. that the bank account for all sums which it received on trust for the company and that the same be paid to

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the company upon the taking of such account; 3. for damages against the second and third defendants together with interest and costs.

38 In the common defence filed by the defendants,

39 1. the bank relied on the letter of offer, the resolution of the board of directors of the company held on 28 March 1985, the debenture dated 23 April 1985 and the company's letter dated 10 April 1985 to say that it was authorised to credit PAU's account and conversely debit the company's account, with US$1m which it did on or about 24 April 1985 before it received the company's telex dated 7 October 1987 countermanding such instructions;

40 2. the bank denied that the directors of the company lacked authority as alleged and if they did, the bank denied any knowledge thereof;

41 3. the bank asserted that as at 1 January 1987 the company owed the bank in respect of various credit facilities it had been granted US$1,098,115.45, S$8,516.59 and S$289,846.59 pursuant to the letter of offer which under the terms of the (second) debenture empowered the bank to appoint receivers to the company's assets charged under the debenture. Further it was another term of the (second) debenture that the bank's facilities to the company would become immediately payable and the security thereunder enforceable in the event that a receiver is appointed to the company's undertaking. On or about 31 October 1986 DBS Bank appointed receiver and managers to the company's undertaking. On 10 April 1987 the bank appointed the second and third defendants as receivers and managers of the company in exercise of its powers under the (second) debenture;

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42 4. their appointment as receivers and managers being valid as contended by the bank, the second and third defendants denied that the payments made by them were in any way wrongful or that they held any monies on trust for the company. Accordingly the company had no cause of action against them. The second and third defendants throughout the period of their appointment acted as the bank's agents;

43 5. the company's loss and damage was denied and if indeed the company did suffer the same, the defendants denied that they were liable for such loss and damage.

44 The evidence

45 I have touched on the evidence of Ho. I shall now deal with the evidence of the other witnesses called for the company and that of the only defence witness, Kestemont.

46 I turn first to the evidence of Papan. As its chairman, managing director as well as a shareholder, he had the management and control of the company at the material time. The general manager and financial controller Koo and Ong respectively, reported to him and kept him informed of the activities of the company. The company imported medium boards from KBT. Papan testified that commencing from end 1984 the company had a cash flow problem as it received few orders with Singapore going into a recession. Consequently it was unable to service the interest on the facilities it had secured from DBS Bank.

47 At about the same time that the company was in financial difficulties, PAU was owing monies to the bank on the PAU facility. Papan testified that on

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one occasion when he came to Singapore in 1985 he met with Kestemont and Seah to discuss PAU's debt. That was followed by the March meeting in Jakarta. His version of what transpired at that meeting is as follows:

48 (i) The bank wanted repayment of PAU's debt or that the same be transferred to the company. Initially he refused but eventually he agreed. The bank said that if PAU's debt was transferred to the company it would give a greater line of credit to the company of US$2m of which US$1m would be used to repay PAU's debt.

49 (ii) The bank suggested the arrangement whereby the company would pay the bank US$1m and the company would sign a contract with PAU for purchase of paper from PAU although PAU does not deal in paper.

50 (iii) The bank lent the company US$2m because it wanted settlement of PAU's debt of US$1m. If he had not agreed to PAU's debt being paid by the company the bank would definitely not have granted the company US$2m facility.

51 Papan said that he did not come across any credit advice from the bank for US$1m in favour of PAU (although under cross examination he corrected his evidence to say that he received the credit advice much later). Further contrary to what had been agreed, the bank reduced the US$2m credit line to S$0.5m (see AB229). The bank then imposed a new limit of S$1m on the company for discounting of bills. That was why he instructed his solicitors to write to the bank's solicitors at one point in time to say the company did not need the facility.

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52 Under cross examination Papan

53 1. agreed that at end 1984/beginning of 1985 KBT owed monies to PAU and it was possible that part of the PAU facility was used by KBT;

54 2. denied that when Ho asked him how he intended to settle PAU's US$1m debt to the company he had said he would do so somehow. On the contrary he could not think of a way to settle the debt;

55 3. denied that, the proposals for the US$2m facility and to use US$1m thereof to pay off PAU's debt and that KBT supply US$1m cartons to the company, came from him;

56 4. asserted that the bank knew that KBT supplied paper to the company because of its participation in the syndicated loan led by AAMB;

57 5. denied that he arranged for Kestemont and Seah to visit the company's factory after the Jakarta visit. Kestemont voluntarily went to the factory because he wanted to lend the company US$2m;

58 6. said he did not reject the bank's proposal because the company was in difficulties but it did not occur to him to approach other banks for facilities;

59 7. alleged that the bank used the US$1m out of the US$2m from the letter of offer to trick the company.

60 Besides Papan, three other directors/shareholders of the company namely Oei Siong Sin (Oei) HKL and Ronaldo Tjakradisurya (Ronald Chang) also gave evidence, so did Lazarus Perdana (Perdana) PAU's president director.

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61 Oei (PW4) an Indonesian businessman said:

62 1. he signed the company's circular resolutions (AB310-312) when Papan brought the same to his office in Jakarta explaining their purpose. He was surprised and on several occasions he questioned Papan as to why PAU's debt had to be transferred to the company; Papan said it was a condition of the bank and the company had no choice as it was in financial difficulties. He thought that the bank's facility would help the company's cash flow problem although the condition imposed by the bank was of no benefit to the company;

63 2. Papan told him that he (Papan) would be responsible for payment of the US$1m owed by PAU to the company after the transfer;

64 3. he did not attend and there was no meeting of, the board of directors of the company on 28 March 1985;

65 4. he did not at the material time see the bank's letter of offer nor the KBT agreement.

66 HKL's evidence can be summarised as follows:

67 1. He was invited by Papan to be a director after he had invested S$0.5m in the company; he was not involved in the day to day running of the company as he had his own import and export business to take care of.

68 2. In 1984-85 Papan's group of companies was indebted to him (for more than $10m) and to the bank. He knew that the company had a cash flow problem.

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Papan asked him to import goods and sell them to the company and said that he would soon obtain a loan to pay for the goods.

69 3. He remembered the circular resolutions of the company but Papan did not brief him on the discussions with the bank for the loan. The resolutions were sent to him by Ong for signature, he also signed the second mortgage, second debenture and forms 33 and 34.

70 Ronald Chang (PW5) testified that he joined the company's board of directors at Papan's invitation as the company needed some local directors, he was a small shareholder. He considered himself a sleeping director and was not involved in the day to day running of the company. He recalled that he refused to sign the company's circular resolution (AB312) initially as he did not agree to the company settling PAU's debt of US$1m.

71 Under cross examination by counsel for the bank the following question and answer was recorded from Chang's evidence: Q: If one company wanted to make a loan to another company to help another company what is so illegal about it? A: Plaintiff company does not belong to Papan alone. There were about twenty to thirty shareholders. To transfer PAU's debt which has no connection with plaintiffs, one is an Indonesian company and one is a Singapore company, Papan only had about 20% controlling interest in the plaintiffs.

72 Chang said he finally agreed to sign the resolution AB312 albeit reluctantly, after Papan telephoned him thrice from Jakarta stating that he (Papan) would be responsible for PAU's debt (and interest) once the company's financial position improved and there was no other way to save the company. When Chang questioned Papan as to why he himself had not signed the

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resolution, Papan assured him that after he (Chang) had signed, the resolution would be posted to Jakarta for Papan's signature. There was no meeting of the board of director on 28 March 1985. He was unaware of what security was furnished for the bank's facility to the company. As it turned out, Papan never signed nor did the bank have sight of, the circular resolution at AB312 which stated: Resolved that the Board of Directors gave full authority to Mr Ong Seng Oh, Financial Controller/Co Secretary and Mr Stanley Koo, General Manager, Marketing & Operations to transact all dealings with Banque Bruxelles Lambert, SA, 140 Cecil Street #15-00 PIL Building Singapore 0106. Resolved that the Board of Directors gave full authority to Mr Ong Seng Oh, Financial Controller/Co Secretary and Mr Stanley Koo, General Manager, Marketing & Operations to specifically settle the amounts of US$1m on behalf of PT Putera Adil Utama through Banque Bruxelles Lambert SA, 140, Cecil Street, #15-00 PIL Building, Singapore 0106.

73 There was also no board resolution authorising the execution of the second debenture, second mortgage and the affixing of the company's common seal to either document.

74 As for Perdana, he testified that as the president director of PAU, he managed its day to day operations. In 1984-95 PAU did not have business dealings with the company, it does not have dealings with KBT nor does KBT export goods through PAU. PAU does not deal in paper products or corrugated medium board. As far as he could recall there was only one occasion when PAU sold goods to the company. The financial aspects of PAU were handled by Papan including the PAU facility although he countersigned the bank's facility letter (AB104) dated 28 May 1984. He was aware that the PAU facility was

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fully utilised and that PAU could not make repayment. He met Kestemont and Seah when they visited Jakarta but he was not involved in discussions with them as the same concerned financial matters. He did not at the material time see the company's letter to PAU dated 29 March 1985 (exh P2 < 2 >) although it was attentioned to him, neither did he see the PAU agreement, hence his reply (AB463) in the negative to the liquidator's letter of inquiry dated 30 September 1987 (AB461A). Prior to sending out his reply, he had told Papan he had not received the company's letter dated 29 March 1985; Papan did not disagree (although in his evidence Papan said that the letter was received by PAU). PAU is no longer active but it still carries on some small business.

75 I now turn to the evidence of Kestemont. He testified as follows:

76 1. In 1984 before the bank granted the PAU facility it carried out credit checks on PAU and amongst the information furnished by PAU it was stated that Papan owned 20% of the shares in the company. Papan also had within the Putera group a company called PT Putera Paper Products which activity was similar to the company's.

77 2. In 1984-85 he knew monies were owed by KBT to PAU, he thought KBT was still indebted to PAU although he was not certain of the extent.

78 3. At the Jakarta meeting it was Papan through Chan and the other two officers of KBT then present namely Tjandra Bachtiar the finance director and Eka the director for planning and budget (who is also a shareholder of the company) who asked him to consider a proposal to make a loan to the company stating that he (Papan) was the company's majority shareholder; that was why he stated in his visit report (AB122-123) that Papan 'is now willing to swap the

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debt from PAU to < the company > in Singapore.' This was to be contrasted with Papan's previous stand that PAU could not repay the bank's loan. The words 'KBT will, through PAU, deliver for US$1m carton, which will be paid by < the company > by granting &ltthe company&rt a loan for the same amount' referred to the discussion as to how PAU would pay the company's debt as the bank wanted to know the reason why he would do it. Papan explained that KBT would supply raw materials to the company through PAU (which was the import and export arm of the Putera group) and in that way KBT would discharge its debt to PAU. The Jakarta meeting was followed by a visit to the company's Jurong factory.

79 4. As at the date of the bank's loan presentation (21 March 1985) to its credit committee, it had already lent US$700,000 to KBT and approximately US$1m to PAU. Based on his inspection of the factory Kestemont was of the view that notwithstanding its negative working capital, the company was still a reasonable financial structure -- otherwise the bank would not have lent it US$2m. Kestemont looked at negative working capital as a lack of liquidity not as a sign of insolvency. According to the documents supplied by Ong during the factory visit it appeared that the company's cash flow situation would improve based on its projected profit for 1985.

80 5. The documents required by the bank to be signed together with the letter of offer were standard documentation namely

81 a. resolution to borrow (AB180-181);

82 b. general agreement for commercial business;

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83 c. personal continuing guarantees (of Papan and his wife);

84 d. account opening cards and e. resolution to open an account (AB187-189)

85 and they were returned to the bank duly signed and he had no reason to suspect nor was he informed, that some of the signatories had signed reluctantly. In the case of the account opening cards they were not signed in the presence of the bank's officer but in any event Seah was familiar with and could verify, the signatures of the officers who signed in particular Ong's and Papan's. The bank was also furnished with a copy of the company's M&A. He had no reason to doubt that the company had the capacity to borrow and to pay PAU's debt, to give a debenture to secure the borrowings and that the director and secretary who signed had the authority to affix the company's common seal to the debenture. As far as the bank was concerned everything was in order. Had the bank known otherwise it would not have granted the facility.

86 6. When the bank received Ong's letter dated 10 April 1985 (AB194) forwarding a set of the KBT agreement signed only by Ong on the company's behalf, it did not occur to him to ask for copies co-signed by KBT as he was only concerned with what regulates the relationship between the bank and its customer and KBT was not the bank's customer. He had however no reason to believe that Papan would not sign the KBT agreement on KBT's behalf.

87 7. After the company's account had been debited and PAU's account credited with, US$1m, the bank send to both companies monthly statements showing the status of both accounts. The October 1985 statement of PAU's account (exh D1(7)) showed a credit entry of US$5,000 remitted by PAU which

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reduced PAU's outstanding account to US$31,477.25 by end October 1985. By then the bank was at serious loggerheads with the Putera group

88 . 8. On 13 May 1985 by an internal memorandum (AB228) the bank cancelled the PAU facility.

89 9. a) It was not true as alleged by Papan that the bank reduced the credit line of US$1m granted to the company for bills discounting. On the contrary the bank relaxed the conditions imposed on such bills discounting and did not insist on the company's customers accepting such bills prior to discounting. The bank was willing to accept up to a credit limit of S$0.5m copies of delivery orders and invoices signed by customers, the 10-15 'blue chip' customers. The credit line of US$1m was still available for normal discounting by the company against bills of exchange accepted by customers.

90 b) Subsequently the bank relaxed the rules even further and accepted copies of invoices signed by the company, not its customers and this facility was extended to S$1m credit. The bank discovered that the company was not crediting to its account with the bank payments received from its customers which invoices the bank had financed. That was why the bank wrote to several of the company's customers including Malaysia Diary Industries Pte Ltd (see Lee & Lim's letter dated 9 December 1985 at AB540) to request that they make payment to the bank on the company's invoices as he thought the bank had an equitable assignment of the invoices under the bills discounted by the company.

91 c) Finally on 8 January 1987 (AB383) the bank's solicitors sent a letter of demand to the company for payment of the outstanding sums of US$1,098,115.45 and S$298,363.18 as at 1 January 1987.

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92 10. Since the dispute with the company arose, KBT had stopped repayment on the syndicated loan notwithstanding that it is still in operation.

93 11. Exh P5 (consisting of 2+ pages) was not a full verbatim account of what was discussed at the July meeting (which lasted for over an hour) in particular the following question and answer as recorded was incorrect:

94 Q: Have you looked at the M&A of the company and satisfied yourself of the company's rights to borrow?

95 A: Yes. We have a copy of the M&A.

96 The correct question and answer was

97 Q: Were you aware of a sham agreement between KBT and the < company > at the time of granting the facilities?

98 A: No.

99 as reflected in the second para of item 3 of his memorandum (exh D2) of the meeting. Further he did not say the company but PAU, was the commercial arm of Papan's group of companies.

100 Under cross examination Kestemont

101 1. denied that since April 1984 he knew of the financial difficulties of KBT although he was aware of its then liquidity problem;

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102 2. denied that the words 'now willing' in his visit report on the Jakarta meeting implied that previously Papan was not willing let alone that the debt swap suggestion came from him. He hardly knew the company before 14 March 1985. The proposal for the loan came from Papan, the structure came from the bank;

103 3. agreed that the proposal of US$1m for bills discounting and US$1m for short term advances came from him but denied that he promised Papan that bills discounting could be converted into letters of credit and trust receipts although he suggested that it would be looked at favourably. Even so it was the short term advances which had the possibility of being converted to letters of credit and trust receipts. It was Papan who had tricked the bank, not vice versa;

104 4. agreed that if after all documentation had been signed for the company's facility no arrangements were made to pay PAU's debt, he would stall if the company wanted to drawdown on the US$2m as it meant that Papan had not fulfilled his promise to pay PAU's debt first;

105 5. admitted that:

106 a) the bank was anxious to recover its loan from PAU,

107 b) it realized the difficulties in recovering payment thereof,

108 c) transferring PAU's debt to the company improved the bank's risk situation but denied that it was the only party that stood to gain from the entire transaction. If not for the swap, the bank would have sued Papan and his wife

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in Singapore for the PAU debt as he threatened Papan he would do at the February 1985 and Jakarta meetings;

109 6. denied that the bank had careless disregard for the interests of the company let alone that he proceeded with the loan in haste. However it was only normal that he would look after the bank's interests;

110 7. asserted that the bank considered the borrowings to be for the company's purpose as

111 a) by advancing money the company procured cheap supplies from KBT,

112 b) the bank put at its disposal a line which enabled the company to finance its increased turnover and also its projected increased turnover, and

113 c) it was the bank's intention to aim for a mutually beneficial long term relationship;

114 8. pointed out that the fact that KBT was then in financial difficulties did not mean it could not deliver raw materials;

115 9. denied that he turned down Papan's invitation in August 1985 to visit Jakarta because he knew he had tricked Papan. He saw no necessity to incur expenses for another trip as by then PAU's outstanding account had been reduced to about US$35,000 and it was up to Papan to visit Singapore as the company's managing director.

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116 A key player in the dealings between the bank and the company namely Ong was not called to give evidence because, according to counsel for the plaintiffs, he was out of Singapore. Further, Seah the bank's officer (who is no longer in their employ) who could have thrown some light on the discussions on 22 May 1985 between himself and Papan (see AB506A) which made the latter change his mind and agree to accept the bank's facility (after rejecting it) was not called to give evidence for the defence. I should point out that a subpoena was issued for Seah's attendance at the trial which outcome however is not known. Neither was Papan asked why he had changed his mind. The second and third defendants did not give evidence either since their case hinged on that of the bank.

117 The findings

118 The issues of law for determination can be broadly summarised as follows: 1. Did the company's directors have the power to borrow from the bank for the purpose of discharging PAU's debt to the bank? 2. If the directors did not have the powers to borrow for PAU's benefit what would be the consequential effect on the loan documentation as well as on the appointment of the second and third defendants as receivers and managers pursuant to the bank's second debenture? If the directors breached their fiduciary duties to the company did the bank then become constructive trustees of all sums obtained from the company pursuant to the debenture?

119 Before determining the issues of law, the court must first determine these factual issues: 1. Was the KBT agreement a sham as alleged by the company's liquidators? If indeed its real purpose was to disguise the discharge of PAU's debt by the company was this known to the bank? 2. Did the bank

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debit the company's account and correspondingly credit PAU's account with US$1m before the company's solicitors countermanded the company's instructions to do so on 7 October 1985?

120 Dealing with the facts first, I find it difficult to accept Papan's evidence that it was Kestemont who initiated the loan proposal in Jakarta. Kestemont had testified that the proposal was made after he had walked out of the Jakarta meeting and in the interval Papan and his KBT colleagues had held a private discussion. This aspect of Kestemont's evidence was not challenged. Further Kestemont's evidence that as at 14 March 1985 he had no knowledge that Papan controlled the company was not challenged to any credible extent. The bank's then knowledge of the company according to information supplied for the PAU facility was that Papan owned 20% of the company (see AB94). There is every reason for Papan to try and put the blame on the bank rather than admit to his own misdeed.

121 As I had earlier indicated, it would have been helpful to have ascertained what transpired at the meeting between Seah and Papan on 22 May 1985 that made the latter change his mind other than just the following cryptic comment in Ong/Koo's telex to Papan of the same date (AB506A): However after lengthy discussion between you and < the bank's > personnel Mr Seah Chin Hong in Puvaria's office in the afternoon, you have confirmed your decision to take the offer by < the bank > at the same terms and conditions, with supplement letter dated 21 May 1985.

122 The bank's supplement letter dated 21 May 1985 (AB232) offered the company bills discounting facility up to S$1m within the overall line of credit of US$2m reviewable after 6 months.

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123 At this juncture I would like to refer to the defence submission that the reason the bank did not call Seah as a witness was because there was no evidence to suggest that Seah was instrumental in the preparation of the KBT agreement. I reject such a submission. As earlier indicated, Seah's evidence would have enlightened the court as to why Papan changed his mind and decided to accept the bank's facility after instructing the company's then solicitors to reject it. If it was Seah who persuaded Papan to reconsider and to accept the bank's offer, it is arguable that the bank would be deemed the party responsible for the transaction. As the bank could have but did not, call Seah to give evidence and counsel did not offer a credible explanation as to why he was not called, I would say that an adverse inference can be drawn against the bank under s 116(g) of the Evidence Act that Seah if put in the witness box may well have given evidence prejudicial to the bank. I would stress however that I have arrived at my decision for reasons other than Seah's absence from court.

124 Leaving aside the discussion between Seah and Papan on 22 May 1985, although the proposal in Jakarta was not mooted by Kestemont, he did admit that the structure of the loan to the company came from him. For this second stage of the transaction then, was he or was he not aware that the KBT agreement was a sham and that it was merely a vehicle for the company's payment of PAU's debt which repayment the bank (and Kestemont in particular as he made the loan) was most anxious to secure? To answer this question, one has to evaluate the evidence of Kestemont some salient aspects of which I would highlight at this juncture:

125 1. I agree with the submission of counsel for the company that Kestemont was less than forthright at the July meeting when he was queried by

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Ho on whether he was aware of the KBT agreement at the time of granting the facility. His answer then was No, we don't want to be involved in the commercial contracts that go on between the company that we grant facilities and other party. Kestemont did not challenge Chong's recording of his above answer in exh P5 and yet in his own visit report (AB122) there was mention of US$1m cartons which KBT will deliver and which will be paid for by the company -- this must obviously refer to the KBT agreement.

126 2. Bearing in mind the stated purpose for his trip to Jakarta and that Kestemont proposed the structure of the loan to the company (wherein he had made it a pre-condition that PAU's debt must first be paid from the short term advances of US$1m), the bank knew or ought to have known that the primary purpose thereof was to discharge PAU's debt to the bank. Further in his loan presentation to Brussels for the company dated 22 April 1986 (AB376) Kestemont stated 'The facilities have been given to the company .... to repay the bulk of our unsecured debt to PAU.' Kestemont had said that KBT's financial difficulties did not mean that it could not supply raw materials to the company through PAU. Given that he (unlike Ho in 1987) had never visited KBT's office/factory in 1985 or at all, there was no basis for Kestemont to arrive at such a conclusion then. Further Papan's evidence that KBT could not have supplied the paper to PAU at the material time was not challenged by the defence.

127 3. Kestemont had testified that prior to March 1985 he knew Papan had 20% equity in the company. That being the case was there any basis for his belief that the KBT agreement would definitely be signed by the company even

if Papan signed for KBT? After all he had little faith by then in what Papan had to say, given the non-payment of PAU's debt.

128 4. When Kestemont received the unsigned KBT agreement under cover of the company's letter dated 10 April 1985 (AB194) he should have realized (even if he was not put on notice earlier) that something was amiss because although the letter said: As stated in the agreement we had agreed to settle on behalf of < PAU > the outstanding amount of US$1m to the account of PAU (a/c no: 307-0001034-19) and debit us accordingly neither article 6 nor any other article in the KBT agreement made reference to PAU, instead it seemed to refer to KBT's account with the bank.

129 It is therefore my finding that the bank knew as a fact that the primary purpose of its facility to the company was to discharge PAU's debt to the bank because there was every reason to believe that the KBT agreement was not genuine.

130 I next move to the second factual issue that is, did the bank debit and credit the accounts of the company and PAU respectively with US$1m before receiving countermanding instruction from Lee & Lim on 7 October 1985? I believe that on the documentary evidence it is clear that the bank did carry out the debit/credit instructions on 24 April 1985.

131 The two legal issues can be conveniently dealt with as one together with the defence contention that part of the loan was used by the company and therefore it was of benefit to the company. Counsel painted a scenario whereby if the bank had sued Papan and his wife in Singapore on their personal guarantees for the PAU debt it would have made the company's other bankers

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(DBS, BNP and Lloyd's) 'very nervous'. Therefore it was of benefit to the company that the bank forebore to sue. Further it was unlikely that any other bank in town would have lent monies to the company. Both arguments with respect are pure speculation. In any event it would have been utterly foolish of Papan to have agreed to the company assuming liability for PAU's debt without extracting some benefit for the company from the bank especially as the company was then also in financial difficulties.

132 The question really that has to be answered is -- can the company assume liability for a debt of another company and an Indonesian company at that with which it has no connection whatsoever save that both have a common shareholder in Papan? True that most of the directors of the company agreed with the defence suggestion that the bank's loan benefited the company. Indeed that was the tactic Papan used to persuade the directors to sign the necessary board resolutions. I am not convinced however that case-law goes so far as to say that because some incidental benefit is derived by a company from a loan that it overrides whatever borrowing restrictions or lack of corporate capacity the company may have.

133 I do not agree that the company's power to borrow as provided under cl 12 of the Third Schedule to the Companies Act (the Act) (incorporated into the company's M & A by virtue of cl 3 (xlv) of the memorandum) takes precedence over its articles 114 and 115 (AB21) so as to make intra vires the payment of PAU's debt.

134 Clause 12 of the Third Schedule states: to lend and advance money or give credit to any person or company .... to secure or undertake in any way the

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repayment of moneys lent or advanced to or the liabilities incurred by any person or company .... and otherwise to assist any person or company.

135 Article 114 of the M & A states: the directors may from time to time borrow from bankers or others for the temporary purposes of the company by way of bills overdraft cash .... such sum or sums of money as they in their discretion shall consider necessary or desirable for the proper administration of the company's finances and may give such security .... as the directors may in their discretion think fit.

136 Article 115 of the M & A states: in addition to the moneys so borrowed under the preceding Article the directors may from time to time at their discretion raise or borrow money for the purposes of the company and may secure the repayment of the same by mortgage or charge upon the whole or any part of the assets and property of the company .... but so that whole amount so borrowed or raised and outstanding at any one time .... shall not without the consent of the company in general meeting exceed the amount of the share capital of the company ....

137 I am of the view that cl 12 of the Third Schedule does not give a carte blanche to the company to borrow without regard to the company's own interests. Neither does s 25 of the Act make it irrelevant that an act has been done in excess of the capacity of the company, as contended by counsel for the bank. In this connection the case of Rolled Steel Products (Holdings) Ltd v British Steel Corp & Others < 1985 > 2 WLR 908 <1985> 3 AER 52 cited by both parties for differing propositions is illuminating.

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138 In that case S was one of two directors and the majority shareholder of the plaintiff company; S owed 400,000 to S Ltd a company which he owned. C Ltd a company controlled by the defendant corporation was owed over 800,000 by S Ltd which debt was personally guaranteed by S. Both C Ltd and the defendant corporation doubtful that S Ltd and S had sufficient assets to satisfy the debt, instead of pursuing remedies against them put forward proposals whereby C Ltd would lend the plaintiff the money to repay S Ltd which in turn would use that money to repay part of its debt to C Ltd and the plaintiff would guarantee S Ltd's liabilities to C Ltd. On 22 January 1969 the plaintiff which by clause 3(K) of its memorandum of association had power to give guarantees or become security for such persons, firms or companies 'as may seem expedient ' passed a resolution approving the proposals at a board meeting at which S did not declare any personal interest as he was required to do by the articles of association if he was to be counted in the quorum of two directors. Pursuant to the resolution, the plaintiff accepted the loan from C Ltd and executed a guarantee of S Ltd's indebtedness to C Ltd and a debenture over all its assets in favour of C Ltd. Subsequently, the sums secured by the debenture having been demanded and not paid, C Ltd appointed the second defendant receiver and manager and the sums secured with interest were paid to the defendant corporation as successor to C Ltd.

139 In an action against inter alia, the defendant corporation and the receiver, the plaintiff sought to recover the sums paid out by the receiver, alleging that the guarantee and the debenture and consequently the appointment of the receiver, were void. The judge held that, although the resolution of 22 January 1969 was not formally valid because of the lack of quorum of directors resulting from S's failure to declare his interest, C Ltd was entitled, in reliance on the rule

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in Royal British Bank v Turquand < 1856 > 6 E & B 327, to assume that it had been properly passed. However the plaintiff was entitled to have the guarantee and the debenture set aside (to the extent of the sum guaranteed) as C Ltd knew they were executed for a purpose other than those authorised by the plaintiff's memorandum of association. Accordingly the defendants were required to repay the sum guaranteed.

140 On appeal, the defendant's appeal was dismissed and the plaintiff's cross appeal was allowed. Vinelott J in his judgment had differentiated between two types of ultra vires, namely

141 (i) in a 'narrow sense' to describe a transaction which is outside the scope of the powers expressed in the memorandum of association of a company or which can be implied as reasonably incidental to the furtherance of the objects thereby authorised, and

142 (ii) in a 'wider sense' to describe a transaction which, although it falls within the scope of the powers of a company, express or implied, is entered in a furtherance of some purpose which is not an authorised purpose.

143 The Court of Appeal (per Slade and Browne-Wilkinson L.JJ.) held that the phrase 'ultra vires' should be confined to describing acts which are beyond the corporate capacity of a company. If an act is beyond the corporate capacity of a company it cannot be ratified.

144 Counsel for the company conceded that the taking of the US$2m facility from the bank was within the corporate powers of the company. The bone of

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contention was whether the transaction was in excess of the directors' powers and the bank had notice of such abuse/excess of powers.

145 Counsel for the bank on the other hand relied on the rule in Turquand case to say that the bank was entitled to assume that their standard form resolution had been annexed to the circular resolution (AB310) authorising the opening of an account with the bank when it was signed by 3 out of the 4 directors. As there is evidence that the transaction appeared to benefit the company there was no reason for the bank to suspect the propriety of the actions of the company's directors. Counsel further relied on Rolled Steel to contend that a third party is not put on notice by an express requirement that the power is only exercisable for the purposes of the company's business.

146 On this argument the appellate court in Rolled Steel held that the rule in Turquand case only applies in favour of persons dealing with the company in good faith. Furthermore, even if they do not have actual knowledge that an irregularity has occurred they will be precluded from relying on the rule if the circumstances were such as to put them on inquiry which they failed duly to make. The very nature of a proposed transaction may put a person on inquiry, even if he has no special relationship with the company (per Slade LJ at p 936). I pause here to observe that the bank had by early April 1985 (before Seah's meeting with Papan) a copy of the company's M & A and knew or should have known the extent of the company's powers and the directors' authority. Indeed in para 8A of the amended defence the bank had pleaded that it had knowledge of article 120 of the M & A. Therefore it must also have knowledge of articles 114 and 115 and that the directors' powers are limited to borrowing 'for the

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temporary purposes of the company' and/or borrowing 'for the purposes of the company'.

147 It is also not disputed that the directors of the company never passed any resolution authorising the execution of the second debenture or the second mortgage or the affixing of the common seal to the two documents. Indeed the bank's own solicitors telexed the company's then solicitors for the requisite resolution on 24 April 1985 (AB496) upon receipt of the executed second debenture.

148 I do not agree with the defence submission that s 25 of the Act is so sweeping as to abolish the ultra vires doctrine as seems to be suggested by the decisions in such Malaysian cases as Bumiputra Merchant Bankers Bhd v Supreme QBE Insurance Bhd < 1990 > 2 MLJ 247, Public Bank Bhd v Metro Construction Sdn Bhd < 1991 > 3 MLJ 56 and Executive Aids Sdn Bhd v Kuala Lumpur Finance Bhd < 1992 > 1 MLJ 89. I prefer the interpretation put on s 25 (which is modelled on s 68 of the Australian Uniform Companies Code and similar to s 20 of the Malaysian Companies Act) by the company's counsel viz that the section is subject to the principles of equity and is a saving provision only where the act, conveyance or transfer of property will be null and void for the reason that a company was without capacity to do the act in question. The section does not preclude an act of a company from being challenged on other grounds.

149 Counsel also referred to the Australian cases ANZ Executors & Trustees Co Ltd v Qintex Australia Ltd < 1991 > 2 Qd R 360 and Victorian Professional Group Management Pty Ltd v The Proprietors < 1991 > 1 Qd R 487. In the Qintex case the Australian appellate court in considering ss 67 and 68 of the

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Companies (Queensland) Code held that while the sections made unimpeachable the validity of corporate dealings with outsiders they did not abrogate explicit or implicit restrictions on the exercise of directors' or shareholders' powers and that the powers or funds of a company might be used only for company purposes (per Mcpherson J at p 370).

150 The Proprietors case put certain restrictions on the rule in Turquand case. In this case the plaintiff was the assignee from L of two agreements purportedly made between L and the defendant. We are only concerned with the second agreement which was a management agreement appointing L as the manager of a block of units in a building let by L to the plaintiff. The second agreement provided for L's annual remuneration as manager. Before the plaintiff took the assignment of both agreements it was aware that there was doubt as to the validity of the management agreement and the reasons thereof. The appellate court therefore held that the plaintiff could not rely upon the presumption of regularity in the management agreement since it was aware of the defects therein.

151 The indoor management rule in Turquand case only assists the bank in so far as it cannot be expected to know that there was no meeting of the board of directors of the company on 28 March 1985 when its standard resolutions (AB180-181, 187-189) were purportedly passed. Neither is it expected to know that the common seal of the company was affixed to the second debenture without authority. The evidence as a whole however does not bear out Kestemont's testimony that the bank had no knowledge or that it was not put on inquiry as to the impropriety, of what can only be termed a highly unusual transaction whereby a Singapore company assumed liability for and discharged

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a debt of an Indonesian company. To borrow the words of Harman LJ in Introductions Ltd v National Provincial Bank Ltd < 1970 > 1 Ch 199 at p 210 '.... a power or an object conferred on a company to borrow cannot mean something in the air: borrowing is not an end in itself and must be for some purpose of the company; and since this borrowing was for an ultra vires purpose, that is the end of the matter ..... if the bank did not know what the purpose of the borrowing was, it need not inquire, but it did know, and I can find nothing in Cotman v Brougham < 1918 > AC 514 to protect it notwithstanding that knowledge'.

152 His lordship's remarks would certainly apply to the bank. It bears repeating that the bank structured the loan for the company and it imposed the condition that the first US$1m thereof must be used to pay PAU's debt. How then can the bank deny actual knowledge? Even if the bank can be said not to have known, it should have been put on inquiry by the copies of the KBT agreement which it received, unsigned by KBT and which terms did not coincide with the company's written instructions in its covering letter forwarding the same. Even if the bank believed that Papan was the controlling shareholder in the company as well as in KBT and PAU, the bank should have been aware that the swap arrangement may not and was unlikely to be, in the interests of the minority/other shareholders of the company. It is an unconvincing argument to say that since none of the directors of the company approached the bank to complain, the bank was entitled to assume all was well and that the transaction was in order.

153 Accordingly I am of the view that the bank must reverse the entries it made on 24 April 1985 and credit back to the company's account US$1m and

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debit PAU's account with the corresponding figure. The bank shall pay to the liquidators of the company the US$1m with interest calculated at 6% per annum from 24 April 1985 until judgment.

154 The company in its amended statement of claim had prayed that the bank's second debenture should be declared null and void and of no effect and correspondingly the appointment of the second and third defendants as receiver and manager under the debenture. Counsel for the bank submitted that it is not open to the company to dissect the arrangement and allege that there was benefit as far as the US$1m bills discounting facility was concerned but no benefit where the advance of US$1m was concerned, the plain reason being that the former was only available to the company if it agreed to discharge the indebtedness of PAU.

155 Mindful of counsel's arguments I accordingly set aside the bank's second debenture dated 23 April 1985, the appointment of the second and third defendants as receivers and managers thereunder and I order that the bank account as constructive trustee to the liquidator with interest (at 6% per annum) for all monies received from the second and third defendants over and above the aforesaid US$1m. The bank will have to pursue alternative remedies if any, available to them to recover the money advanced to the company pursuant to their letter of offer.

156 Finally the company shall have the costs of these proceedings to be borne by the bank as the second and third defendants clearly acted as the bank's agents pursuant to their appointment as receivers and managers. In the event the parties may have difficulty in implementing any of the orders made herein, I give them liberty to apply.

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Puvaria Packaging Industries (Private) Ltd (In liquidation) v Banque Bruxelles Lambert (formerly known as Banque Bruxelles Lambert S.A.) and Others [1993] SGHC 184

Lai Siu Chiu JC

J G Advani & Chee Wei-Lin (P K Wong & Advani) for the plaintiffs
Sarjit Singh Gill/Suhaimi Lazim (Shook Lin & Bok) for the defendants

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