Panwell Pte Ltd v Indian Bank (No 2)
[2001] SGHC 315

Case Number : Suit 422/2001

Decision Date : 17 October 2001

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Sushil Sukumaran Nair and Yarni Loi (Drew & Napier LLC) for the plaintiffs; Tan Teng Muan and Wong Khai Leng (Mallal & Namazie) for the defendants

Parties : Panwell Pte Ltd — Indian Bank

Contract – Formation – Offer and acceptance – Expiry of offer – Defendants reminding first plaintiffs about offer – First plaintiffs subsequently accepting offer – Whether extension of deadline by defendants – Whether defendants acting on basis that offer still effective

Equity – Estoppel – Estoppel by convention – Parties entering into transaction on basis of common assumption of facts – Change of position by a party – Whether other party can deny truth of such facts

Cur Adv Vult

: The first plaintiffs, Panwell Pte Ltd (`Panwell`), sought a declaration that its liabilities to the defendants, the Indian Bank, had been fully settled. The second plaintiffs, Deogratias Pte Ltd (`Deogratias`), claimed to be entitled to a tranche of Central Bank of Nigeria Promissory Notes with a face value of US$7m, which were allegedly wrongfully sold by the bank. In addition, Deogratias sought the recovery of US$139,901.32 from the bank. The Indian Bank, which denied that Panwell`s liabilities had been settled, contended that Panwell still owed it a large amount of money and sought to recover the amount allegedly owed. The bank also asserted that it was entitled to sell the promissory notes claimed by Deogratias and to retain the sale proceeds.

Background

Panwell, a Singapore company, is in the business of trade financing. Deogratias, a Hong Kong company, is an investment company. The Indian Bank, an Indian corporation, has a registered office in Singapore.

In the late 1970s, Multibis Ltd, a Hong Kong company, whose credit facilities with the Indian Bank were insufficient for its business in Nigeria, approached Panwell for assistance. Panwell was offered facilities including those relating to letters of credit, trust receipts and foreign bills purchase, by the Indian Bank. These facilities were utilised by Multibis and Panwell earned a commission.

In the early 1980s, the Nigerian government imposed foreign exchange controls. Multibis ceased its trading activities in Nigeria and Panwell was unable to pay the large amount owed to the Indian Bank. Subsequently, the Central Bank of Nigeria issued United States Dollar Promissory Notes (`CBN Notes`), payable up to January 2010, to foreign creditors, with quarterly instalment payments at an agreed rate of interest. Panwell`s clients, Multibis, were entitled to such CBN Notes.

Multibis utilised the CBN Notes in the following manner:

(1) One tranche of CBN Notes with a face value of US$7m (`Multibis tranche`) was assigned to the Indian Bank. Part of this tranche, namely CBN Notes with a face value of US$2m, was utilised to settle Multibis` own liabilities to the bank. It was agreed that after the 41st instalment had been paid, the remaining instalments under these CBN Notes would be utilised to reduce Panwell`s liabilities and that this batch of CBN Notes was to be assigned to Deogratias after Panwell`s liabilities had been extinguished. The remaining CBN Notes with a face value of US$5m in the Multibis tranche were offered as security for Panwell`s liabilities to the bank and were to be transferred to Deogratias once Panwell`s liabilities to the bank had been extinguished.

(2) A second tranche of CBN Notes with a face value of US$6,761,398 (`Panwell tranche`) was assigned to the Indian Bank in 1988 as security for the Panwell`s liabilities.

Panwell estimated that as at 31 December 1988, it owed the bank more than US$9.6m. It entered into negotiations with the bank on reducing its liabilities. On 14 June 1990, the Indian Bank offered Panwell an arrangement to restructure its liabilities. This letter of offer (`the 1990 offer`) required the proposed package to be accepted within 30 days.

The terms of the 1990 offer need not be discussed. What is relevant is that while the bank thought that it had made favourable concessions to Panwell, the 1990 offer was not accepted within the specified deadline as Panwell wanted even more favourable terms. After the deadline expired, the bank reminded Panwell on a number of occasions to accept the offer but to no avail. Panwell`s account was suspended in 1992 and classified as a `non-performing asset` in 1994.

On 5 May 1998, Panwell`s adviser, Dr RC Cooper, met the bank`s general manager, Mr Shri Srinivasan, to discuss the company`s position. After the meeting, Dr Cooper wrote to the bank to accept the 1990 offer to restructure Panwell`s liabilities to the bank. The bank`s assistant manager, Ms Meyyappan Umayal, was then instructed to work with Panwell`s accountant, Ms Mary Quake, to update Panwell`s accounts on the basis of the terms of the 1990 offer. A year later, on 12 May 1999, the accounts were finalised and were faxed by Ms Umayal to Panwell.

On 2 November 1999, following Panwell`s request for its Singapore Dollar Term Loan Account (`SDTL Account`) to be converted into United States currency and transferred to a second United States Dollar Term Loan Account (`USDTL Account`), the Indian Bank confirmed that after the conversion, the amount outstanding in this second USDTL Account as at 30 September 1999 was US$485,737.96, an amount which was calculated on the basis of the terms of the 1990 offer.

Panwell then took steps to extinguish its liabilities to the bank. On 1 August 2000, it instructed the bank to sell CBN Notes with a face value of US$1,761,398 from the Panwell tranche. These were sold at the rate of 28% and the bank acted on Panwell`s instructions to utilise the sale proceeds to fully settle its liabilities in its second USDTL Account, with the remainder to be used to partially settle the outstanding amount in its first USDTL Account.

In September 2000, Panwell instructed the bank to sell CBN Notes with a face value of US$4m from the Panwell tranche and to use the sale proceeds to settle its liabilities in its first USDTL Account. Panwell, which assumed that the terms of the 1990 offer governed its relationship with the bank, calculated that its liabilities to the bank were extinguished after the sale proceeds were received by the bank. In fact, the bank now owed Panwell around US$122,000. As such, Panwell asked the bank for a refund of this sum and for the remaining CBN Notes with a face value of US$1m in the Panwell tranche to be transferred to Deogratias. Without disagreeing with Panwell, the bank paid Panwell more than US$121,000 and transferred the said CBN Notes to Deogratias.

The bank was then requested to transfer the remaining unsold CBN Notes with a face value of US$7m in the Multibis tranche to Deogratias. However, the bank suddenly asserted in early 2001 that as Panwell had not accepted the 1990 offer within the deadline of 30 days, its terms did not govern the bank`s relationship with Panwell. The bank also claimed that Panwell still owed it a large sum of money. In March 1998, the bank sold the said CBN Notes with a face value of US$7m and kept the sale proceeds.

If the terms of the 1990 offer governed Panwell`s relationship with the bank after May 1998, Panwell

does not owe the bank any money. Furthermore, the bank would have to account to Deogratias for the proceeds of the sale of the CBN Notes with a face value of US$7m. On the other hand, if the terms of the 1990 offer did not govern Panwell`s relationship with the bank after May 1998, Panwell still owes the bank a large sum of money and the question of transferring the CBN Notes with a face value of US$7m to Deogratias does not arise.

Pleadings

Panwell`s counsel, Mr Sushil Nair, put Panwell`s case on two fronts. First, he contended that the doors to the 1990 offer were never closed as a result of continuing negotiations between the parties and that in early 1998, the bank requested Panwell to sign and return the letter of offer of 14 June 1990. Secondly, he asserted that after receiving Panwell`s letter of acceptance in May 1998, the bank acted on the basis that the terms of the 1990 offer were in force and held out to Panwell on innumerable occasions that the said terms governed their business relationship. Panwell altered its position on the basis of the bank`s actions and representations and the bank is estopped from asserting that the terms of the 1990 offer did not govern its relationship with Panwell after May 1998.

The bank pleaded that Panwell could not have accepted the 1990 offer because it lapsed 30 days after it was made. The bank`s witnesses also asserted that the 1990 offer had not been validly accepted because the bank`s Head Office had not agreed to allow Panwell to accept the 1990 offer in 1998 and that fresh guarantees were not furnished by Panwell. These additional assertions by the bank`s witnesses need not be considered because they were not pleaded. In any case, even if these assertions had been pleaded, the bank`s general manager, Mr Srinivasan, admitted that approval by the Head Office is an internal matter of the bank which is not communicated to clients. It was not established that an exception to this rule was made in Panwell`s case. As for the additional guarantees required under the terms of the 1990 offer, the bank had clearly waived this requirement. Mr Nachiappan, the bank`s assistant manager, admitted that the bank did not press for the additional guarantees because it already had existing guarantees in place.

Did the 1990 offer lapse after 30 days?

The bank`s defence that the 1990 offer lapsed 30 days after it was made will first be considered. Although the bank`s letter of offer of 14 June 1990 imposed a deadline of 30 days for the offer to be accepted, the bank`s assertion that this offer lapsed when the deadline passed does not rest on solid ground. This is because the said deadline was extended when the bank reminded Panwell on a number of occasions after its expiry to accept the offer.

To begin with, on 30 July 1990, two weeks after the deadline, Mr MBN Rao, the bank`s deputy general manager, wrote to Panwell as follows:

> *We refer to our [letter] dated 14 June 1990 on the restructuring of your liabilities under (1). We are still awaiting your acceptance for the restructuring packages on which we have not heard from you.*

Furthermore, on 28 August 1990, Mr M Nachiappan, the bank`s assistant manager, wrote to Panwell

as follows:

> *However, we note that we have yet to receive your acceptance for the restructuring arrangements which we request you to look into and respond as soon as possible.*

Almost one year after the 1990 offer was made, Mr Rao notified Panwell on 9 May 1991 that the terms of the 1990 offer could be withdrawn if it was not accepted soon. In this letter, Mr Rao stated as follows:

> *We also wish to bring to your notice that the restructuring arrangement was conveyed to you on 14.6.90 and despite the passing of nearly 10 months it has still not been completed. Our Head Office is very concerned of this delay and we believe that if this stalemate continues, they may even withdraw all the concession.* ***In view of this we request you to look into the matter personally and arrange to furnish us the acceptance/resolution to enable us to instruct our solicitors to draft the necessary agreements****. [Emphasis is added.]*

Notwithstanding the contents of the abovementioned letters, the Indian Bank`s witnesses initially insisted that the 1990 offer lapsed 30 days after it was made. When cross-examined, the bank`s general manager, Mr Srinivasan, said:

> *Q: [O]n 30 July 1990, more than 30 days after the offer of acceptance, your bank wrote to Panwell, asking for the acceptance letter for the offer of 14 June 1990. Is it your evidence that if, in response to this letter, Panwell forwarded the letter of acceptance immediately, would the acceptance have been valid?*
>
> *A: No, because it would have been beyond the 30 days.*

When it was pointed out that if the offer had lapsed, it made no sense for the Indian Bank to warn Panwell on 9 May 1991 that the offer could be withdrawn by the Head Office if it was not accepted soon, Mr Srinivasan changed his position altogether and contradicted himself when he said as follows:

> *I did not say that the offer had `instant death`. It is a process after a period of time*

When cross-examined about Mr Rao`s efforts to persuade Panwell to accept the 1990 offer, Mr Srinivasan again agreed that the 1990 offer did not lapse 30 days after it was made. He said as follows:

> *Q: Isn`t it evident from the bank`s letter of 30 July 1990 that it was still open to Panwell to accept the offer of 14 June 1990?*
>
> *A:* ***Yes, at that time*** *. The chief executive of the bank took it as a big challenge to settle the accounts.* ***Until 1992, when he left, he tried to get the terms of the proposal of 14 June 1990 through*** *. [Emphasis is added.]*

Mr Nachiappan also furnished contradictory answers as to when the offer of 14 June 1990 lapsed. When cross-examined, he said:

> *Q: If Panwell responded to your letters of reminder in 1990 to accept the offer of 14 June 1990 by accepting it, would it have been valid?*
>
> *A: No, unless the acceptance was within 30 days*

However, when questioned by me, Mr Nachiappan suddenly changed his position altogether and said as follows:

> *Ct: Mr Srinivasan said that if Panwell accepted on 30 July 1990, the acceptance would have been valid. What is your view?*
>
> *A: I agree with what he says.*
>
> *Ct: You have taken inconsistent positions. What is your final position?*
>
> *A: An acceptance at that time would be valid.*

It is thus obvious that the deadline for accepting the offer of 14 June 1990 was extended by the Indian Bank. As such, the bank`s assertion that Panwell`s acceptance was invalid on the ground that the deadline of 30 days had not been met must be rejected.

Panwell`s acceptance in May 1998

Panwell contended that its long delayed acceptance of the 1990 offer in May 1998 must be viewed in the light of continued negotiations over a long period of time to reach a settlement satisfactory to both sides. Panwell`s director and finance manager, Ms Fong Li Li, testified that when she and Panwell`s adviser, Dr Cooper, were at the bank on 5 May 1998 for a meeting, Mr M Nachiappan, the bank`s assistant manager, asked her on three occasions to have the letter of offer of 14 June 1990 signed and returned to the bank. She claimed that he said that this was necessary to enable entries to be made in the bank`s own accounts to allow Panwell`s liabilities to the bank to be readjusted on the basis of the terms of the 1990 offer.

After the said meeting with Mr Srinivasan on 5 May 1998, Dr Cooper wrote the following letter to the bank:

> *Thank you very much for sparing your valuable time this morning for a meeting with us.*
>
> ***As requested by Mr M Nachiappan**, I am enclosing herewith the letter of 14 June 1990, duly signed by Mr Joseph Gondobintoro. I am also enclosing a suitable resolution of the Board of Directors of Panwell (Pte) Ltd accepting the package as laid down in the letter of 14 June 1990. [Emphasis is added.]*

Mr Nachiappan, who denied having asked Panwell to return a signed copy of the said letter of acceptance in May 1998, offered no explanation as to why he did not reply to Panwell to set the record straight. When cross-examined, he merely said as follows:

> *Q: Did you respond to this letter to record your own version of events?*
>
> *A: No, I was already expecting this letter. It made no difference to me what they wrote.*

The bank`s general manager, Mr Srinivasan, should have written to Dr Cooper to state that Mr Nachiappan did not request Panwell to accept the 1990 offer in May 1998 if no such request had been made. However, he was in no position to do so because, according to Mr Nachiappan, he did not find out whether or not the said request had been made until after Panwell had instituted legal proceedings against the bank. All the same, he was prepared to testify that he had a very good reason for not replying to Dr Cooper`s letter. When cross-examined, he said as follows:

> *Q: Why did you not write to correct the statements in Dr Cooper`s letter?*
>
> *A: I was more worried about how our Head Office would view this belated signature by Panwell. I did not want to write and suggest anything to Panwell as that would give them a false impression that I am agreeing with them.*

Mr Srinivasan`s explanation cannot be countenanced. By not replying to Dr Cooper`s letter, he gave Panwell the impression that he was not disagreeing with Dr Cooper`s assertion that Mr Nachiappan had requested Panwell to sign and return the letter of offer of 14 June 1990. In any case, Mr Srinivasan did not inform his Head Office about Panwell`s acceptance of the terms of the 1990 offer until five months after he received Dr Cooper`s letter.

The plaintiffs` counsel, Mr Tan Teng Muan, submitted that Ms Fong`s evidence should not be believed as she had claimed to have met Mr Nachiappan in his room when the latter did not have his own room in the bank`s premises. On balance, I believe that Mr Nachiappan asked Panwell to accept the 1990 offer in May 1998 and this showed that the bank was still keen to resolve the stalemate with Panwell over the proposed restructuring of its accounts on the basis of the terms of the 1990 offer. It is important to note that when cross-examined, Mr Srinivasan conceded that Mr Nachiappan could have requested Panwell to sign and return the letter of offer of 14 June 1990. However, I prefer to rest my decision regarding the rights of the respective parties in this case on whether or not the bank and Panwell conducted their affairs on the common assumption that the terms of the 1990 offer governed their business relationship after May 1998.

Whether the Indian Bank acted on the terms of the 1990 offer

Panwell asserted that the bank`s actions and letters prove that its relationship with the bank was on the firm footing that the terms of the 1990 offer were applicable after May 1998. Mr Nair submitted that the question of estoppel clearly arises in the circumstances of this case. As for estoppel by

convention, he explained Panwell`s position in his opening statement as follows:

> *[T]he evidence will support a finding of fact that there was a clear mutual understanding and belief on parties throughout the period from the time the [bank statements] were forwarded to the Plaintiffs to the time the liabilities were settled in full according to the Statements of Account furnished by the Defendants, that the terms of the Restructuring Agreement would govern the terms of the restructured facilities. This understanding was regularly communicated to the Defendants.*
>
> *The evidence will further show that in fact, by their words and conduct, the Defendants allowed and to a large extent encouraged the Plaintiffs to proceed on the basis of this understanding.*
>
> *The Plaintiffs will therefore submit that the Defendants are now clearly estopped from asserting that the Restructuring Agreement was not duly accepted.*

The bank`s witnesses tried in vain to stem the awesome tide of evidence that the bank and Panwell had both acted on common assumption that the terms of the 1990 offer governed their relationship after May 1998. To begin with, as soon as Panwell notified the Indian Bank of its acceptance of the 1990 offer, the bank acted swiftly by instructing its assistant manager, Ms Umayal, to work with Panwell`s accountant, Ms Mary Quake, on reconciling Panwell`s accounts on the basis that the terms of the 1990 offer were in force. A year later, Ms Umayal sent the completed reconciled accounts to Panwell on 12 May 1999. Several continuation sheets were subsequently sent by Ms Umayal to Panwell.

The bank asserted that the fruits of Ms Umayal`s labour were unofficial information sheets compiled at Panwell`s informal request to see what the position might have been if the 1990 offer had been accepted. Nothing could be further from the truth as the bank accepted these `information sheets` as `statement of accounts` in its subsequent correspondence with Panwell and relied on them for an update of the latest position when fresh funds were injected by Panwell to reduce its liabilities to the bank.

When sending Panwell a copy of a letter written to Multibis on 16 July 1999, Mr CS Venkataraman, the bank`s manager (credit), added the following very important sentence for Panwell`s attention:

> *We enclose the last page (**A-6 & A-7**) of the S$ Term Loan statement of account wherein we have credited the CBN instalments with respective value dates received from Multibis Ltd for the period 5.4.9[8] - 5.4.99 and recomputed the interest from 31.3.98. [Emphasis is added.]*

Although Mr Venkataraman described Ms Umayal`s information sheets as a `statement of account`, he testified that this was a misnomer. Even if it was, he cannot deny that in his note, he referred to accounts worked out on the basis of the terms of the 1990 offer and that he informed Panwell that funds had been credited into these accounts. Mr Venkataraman initially denied the clear effect of his own words. When cross-examined, he said:

> *Q: Your letter referred to the 12 May 1999 documents as a `statement of account` and reflects how instalments have been worked into those*

accounts on the basis of the 1990 agreement. Do you not agree that Panwell would understand those documents to represent its liability to the bank?

A: A customer will think so but the bank is not responsible for what he thinks.

When pressed further, Mr Venkataraman finally conceded that his note to Panwell contributed to Panwell`s belief that the bank had accepted that the terms of the 1990 offer were in force. When cross-examined, he said:

Q: You said that it was reasonable for Panwell to believe that the statement of accounts reflected its liability to the bank.

A: Yes, from Panwell`s perspective.

Q: Panwell`s belief would be further strengthened by your reference to statement of accounts in your letter.

A: Yes.

CONFIRMATION OF OUTSTANDING BALANCE IN PANWELL`S ACCOUNT IN NOVEMBER 1999

The Indian Bank`s confirmation in November 1999 of the outstanding amount in Panwell`s SDTL Account and of the payment of money into Panwell`s two USDTL Accounts provide incontrovertible evidence that the bank acted on the basis that the terms of the 1990 offer governed their business relationship with Panwell after May 1998.

On 24 September 1999, Panwell`s chairman, Mr Joseph Gondobintoro, asked the bank to convert the outstanding amount in Panwell`s SDTL Account into United States currency. In his letter, he stated as follows:

Further to Multibis Limited letter to you dated 20 May 1999, the quarterly instalment of the Promissory Notes (from the 46th instalment onwards) should be credited to Panwell Pte Ltd Singapore Dollar Liabilities. However the instalment payment is in US$ currency, we would request you to convert Panwell Pte Ltd [Singapore Dollar] outstandings to US$ at prevailing market rate.

On 2 November 1999, Mr Venkataraman replied to Panwell as follows:

We refer to your letter dated 24/9/99 and ***confirm that the S$ outstanding as on 30/9/99 amounting to S$811,182.40*** *was converted @ the exchange rate of 1.6700 to US$485,737.96 (* ***US$ A/c 2****).*

Please be advised the 46th instalment received on 14/7/99 has been credited to your US$ outstanding (***US$ A/c 1****) and request you to refer to page* ***B-11 of our statement copy****.*

*On receipt of the 47th instalment (due on 5/10/99), we shall as per your letter credit the same to your **US$ A/c 2** and forward a copy of the statement for your files. [Emphasis is added.]*

There is no doubt that Mr Venkataraman`s reply was on the basis that the terms of the 1990 offer were in force. If this was not the case, the outstanding amount in Panwell`s SDTL Account could not have been S$811,182.40 and Panwell would not have had the two USDTL Accounts, which were referred to as `US$ A/c 1` and `US$ A/c 2` by Mr Venkataraman. Furthermore, the term `page B-11 of our statement copy` in Mr Venkataraman`s letter refers to figures calculated on the basis of the 1990 offer. Notwithstanding the unassailable evidence that he relied on the terms of the 1990 offer, Mr Venkataraman made the ludicrous assertion that his letter did not confirm that the outstanding amount in Panwell`s SDTL Account was S$811,182.40. When questioned by me, he said as follows:

Ct: Did you not state in your letter dated 2 November 1999 that you were confirming that the outstanding amount in Panwell`s Singapore Dollar account was $811,182.40?

*A: No. **I merely confirmed Panwell`s instructions to me but not the amounts** .*

Ct: If that was your intention, why didn`t you state this clearly in the letter?

*A: **It was an omission** . [Emphasis is added.]*

Why the bank`s general manager, Mr Srinivasan, also insisted that Mr Venkataraman did not confirm the outstanding amount in question cannot be fathomed. When questioned by me, he said:

Ct: Did your bank not say to Panwell that its outstanding liability as at 30 September 1999 was S$811,182.40?

*A: Yes, but we did not say that its **total** liability was this sum. [Emphasis is added.]*

The issue is not Panwell`s total liability but its outstanding liability in a specified account, namely Panwell`s SDTL Account. There can only be one outstanding amount for this account.

As for Panwell`s two USDTL Accounts, which could not have existed unless the terms of the 1990 offer were in force, Mr Venkataraman found it possible to deny that Panwell had these two USDTL Accounts even though he confirmed in his letter that instalment payments under the CBN Notes had been credited to the said two USDTL Accounts. It was only when he was pressed that he finally agreed that he had informed Panwell that the amount in the SDTL account had been converted into United States currency and put into the second USDTL Account.

Despite the attempts by the bank`s witnesses to distort the plain meaning of Mr Venkataraman`s letter of 2 November 1999, Panwell is justified in asserting that this letter offers concrete evidence that the bank acted on the basis that the terms of the 1990 offer were in force.

REFUND OF MONEY TO PANWELL AND TRANSFER OF CBN NOTES TO DEOGRATIAS

The fact that the bank refunded Panwell around US$121,000 and transferred CBN Notes with a face value of US$1m to Deogratias in October 2000 provides further irrefutable evidence that the bank accepted that the terms of the 1990 offer governed its relationship with Panwell after May 1998.

B/f as at 28.09.00	US$ 1,231,906.42
Less [instalment payments]	992,065.16
Add: Interest charged (estimated)	5,237.17
Less payment by sale of CBN Notes of US$4m @ 28%	(1,120,000.00)
BALANCE DUE TO PANWELL	122,697.67

On 24 October 2000, Panwell`s Ms Fong wrote to Mr Venkataraman as follows:

> *RE: SETTLEMENT OF ACCOUNT*
>
> *We are enclosing your statement of account as at 28.9.00 showing an outstanding of US$ 1,231,906.42, allow me to assist you in the approximate calculations:*
>
> *Kindly remit me the estimate amount of US$122,000.00 to my account with The Bank of Tokyo-Mitsubishi Ltd, Singapore Branch, Panwell Pte Ltd US$ Account No: 052802.*

In her letter, Ms Fong referred to the bank`s own statement of accounts, which showed that Panwell`s outstanding liability was US$1,231,906.42, a figure which was based on the terms of the 1990 offer. She asserted that with the sale of CBN Notes with a face value of US$4m from the Panwell tranche, Panwell had a credit balance of around US$122,000 and asked the bank for a refund of this sum. A request was also made for the unsold balance of CBN Notes with a face value of US$1m in the Panwell tranche to be transferred to Deogratias as the same were no longer required as security for Panwell`s liabilities. The bank, which did not contradict Ms Fong in any way, refunded Panwell US$121,321.06 and transferred CBN Notes with a face value of US$1m to Deogratias. It is crystal clear that the bank would not have taken these actions unless it accepted that the terms of the 1990 offer governed its relationship with Panwell after May 1998, and that as a result, Panwell`s liabilities had been extinguished.

Mr Srinivasan agreed that the Indian Bank would not pay a customer any money unless it owed that customer money. Realising that the bank should not have paid Panwell such a large sum of money or transferred CBN Notes with a face value of US$1m to Deogratias if Panwell still owed the bank money, he claimed that the payment to Panwell and the transfer of the CBN Notes to Deogratias were part of his `final strategy for the final settlement in a manner much better than the 1990 formula`. He did not explain what his `final strategy` entailed. His answer was so contrived that it merits no consideration whatsoever.

When cross-examined, Mr Venkataraman did not refer to Mr Srinivasan`s `final strategy`. Instead, he furnished a totally different but equally implausible reason for the payment of such a large sum of money to Panwell and for the transfer of a valuable security to Deogratias when he said as follows:

> *Q: You said that Panwell had a huge liability to the Bank and yet you expect us to believe that in the face of this huge debt, you gave back around US$122,000 to Panwell and CBN Notes with a face value of US$1m to Deogratias on Panwell`s instruction?*
>
> *A: I do not expect anyone to believe it but we returned it as a matter of goodwill*

Mr Venkataraman is right only to the extent that no one would believe that the bank would, as a matter of goodwill, give around US$121,000 to Panwell and CBN Notes with a face value of US$1m to Deogratias. I have no doubt that by paying the huge amount demanded by Panwell and by returning CBN Notes with a face value of US$1m to Deogratias, the bank clearly accepted that the terms of the 1990 offer governed its relationship with Panwell after May 1998.

BANK`S LETTER OF 21 SEPTEMBER 1999 TO DEOGRATIAS

Apart from representing to Panwell on many occasions that the terms of the 1990 offer were in force after May 1998, the bank took the same position in a letter to Deogratias dated 21 September 1999. In it, Mr Srinivasan stated:

> ***As per the terms of our offer letter reference 1792/90/MN/ADV dated 14.6.90**, we confirm that we shall return the captioned CBN Notes as per your instruction vide letter dated 9.6.99, on complete adjustment of the liabilities of M/s Multibis & M/s Panwell Pte Ltd with us. [Emphasis is added.]*

Although it had become a rather tiresome exercise, Mr Srinivasan again tried to deny the effect of his own words by claiming that a mistake had been made in this `badly drafted` letter. In reply to my questions, he said:

> *Ct: Why did you refer to the terms of the 1990 agreement in this letter and confirm that you were acting in accordance with those terms?*
>
> *A: **I agree that the reference to the terms of the 1990 agreement is a misnomer**. It was a poorly drafted letter signed by me. There was no need for me to cite the letter of offer of 14 June 1990 since Deogratias did not suggest it.*
>
> *Ct: Did you not confirm in this letter that you were acting in accordance with the terms of the 1990 agreement?*
>
> *A: **No, because I was writing to Deogratias and not to Panwell**. [Emphasis is added.]*

Mr Srinivasan knew that Panwell and Deogratias were linked companies and that the latter was to have the benefit of the unsold CBN Notes after Panwell`s liabilities to the bank had been extinguished.

Furthermore, his letter to Deogratias was addressed to Mr Joseph Gondobintoro, who was simultaneously the chairman of Panwell. If nothing else, this letter shows that when dealing with Deogratias, the bank`s approach was consistent with that adopted in its letters to Panwell, namely that the terms of the 1990 offer governed its relationship with Panwell after May 1998.

AUDIT BALANCES

The bank asserted that for the purpose of determining whether or not it acted on the basis that the 1990 offer governed its relationship with Panwell after May 1998, it should not be overlooked that when it wrote to Panwell`s auditors to confirm the outstanding amount in Panwell`s account, it did not rely on the terms of the 1990 offer.

As the bank completed its reconciliation of accounts on the basis of the 1990 offer in May 1999, only two audit balances merit attention, namely those for Panwell`s financial years ending 30 June 1999 and 30 June 2000. In regard to Panwell`s financial year ending 30 June 1999, Ms Quake explained that as Ms Umayal had just reconciled the accounts in May 1999, her auditors accepted her explanation that the agreed balances were found in the statement of accounts agreed upon between the bank and Panwell.

TERM LOAN (1)	US$	1,583,007.85
TERM LOAN (2)	US$	388,831.75

As for the financial year ending 30 June 2000, Ms Quake wrote to the bank`s Mr Sugumaran on 28 September 2000 to object to the fact that the bank`s reply to its auditors did not reflect the figures based on the terms of the 1990 offer. In her letter, Ms Quake stated:

> *I fax to you your bank[`s] reply to my auditor for their audit confirmation request.*
>
> *As per our agreed statement balance as at 30.6.00*
>
> *We thank you for your attention into this matter.*

If the bank disagreed with Ms Quake, a reply should have been sent to Panwell to state its position. However, no reply was sent. Interestingly enough, Mr Sugumaran made the following hand-written notation on Ms Quake`s letter after he received it:

> *Ms Suki,*
>
> *Please arrange to send an amended statement* ***as shown above****.*
>
> *Thanks. [Emphasis is added.]*

The words `as shown above` clearly referred to Ms Quake`s figures. Mr Sugumaran also wrote the words `Interest to be charged from 1.7.00` beside Ms Quake`s figures. This further confirmed that Ms Quake`s figures are correct. Ms Suki, who did not act on these instructions, and Mr Sugumaran were not called by the bank to clarify the position during the trial.

Mr Nachiappan conceded that a reasonable interpretation of Mr Sugumaran`s instructions is that he ordered an amended statement containing Ms Quake`s figures to be sent to Panwell. This is thus additional evidence that the Indian Bank acted on the basis that the terms of the 1990 offer governed its relationship with Panwell after May 1998.

ESTOPPEL

Panwell asserted that this case involved estoppel by representation, proprietary estoppel and estoppel by convention. In **Amalgamated Property Co v Texas Bank** [1982] 1 QB 84, Lord Denning MR put matters in their proper perspective when he said as follows:

> *The doctrine of estoppel is one of the most flexible and useful in the armoury of the law It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them - neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.*

The question of estoppel certainly arises in the present case. One only needs to look at estoppel by convention to see why the bank`s defences are totally flawed. In ***Amalgamated Property Co v Texas Bank*** (supra at p 130), Brandon LJ explained:

> *The kind of estoppel is not the usual kind of estoppel in pais based on a representation made by A to B and acted on by B to his detriment. It is rather the kind of estoppel which is described in **Spencer Bower and Turner, Estoppel by Representation**, 3rd Ed (1977) at pp 157-160, as estoppel by convention. The authors of that work say at p 157:*
>
> *`This form of estoppel is founded, not on a representation of fact made by a representor and believed by a representee, but on an agreed statement of facts the truth of which has been assumed, by the convention of the parties, as the basis of a transaction into which they are about to enter. Where the parties have acted in their transactions upon the agreed assumption that a given state of facts is to be accepted between them as true, then as regards that transaction each will be estopped as against the other from questioning the truth of the statement of facts so assumed.`*

In the face of the overwhelming evidence that after May 1998, both the Indian Bank and Panwell acted upon the agreed assumption that the terms of the 1990 offer were in force and that Panwell altered its position as a result of this common assumption, it is now far too late and most inequitable for the bank to resile from the accepted position.

Conclusion

I have no doubt whatsoever that the evidence of Panwell`s witnesses is to be preferred over that of the bank`s witnesses, who, apart from being hesitant and evasive, furnished far too many contradictory and unbelievable answers during cross-examination. Panwell`s counsel, Mr Nair, rightly observed that it is remarkable that the bank`s senior officers testified that the bank`s clear statements and representations to a customer cannot be relied upon. The bank ought to have stood by its officers` words and actions instead of advancing a hopeless case based on misnomers, misinterpretation of well-understood words and alleged omissions.

For reasons already stated, I hold that Panwell`s liabilities to the Indian Bank have been settled. As such, the bank, which had been duly authorised to transfer CBN Notes with a face value of US$7m to Deogratias, should not have sold the said CBN Notes and kept the sale proceeds. Deogratias is entitled to damages for the wrongful conversion of these CBN Notes. Deogratias is also entitled to the instalment paid to the Indian Bank under the said CBN Notes in January 2001.

The Indian Bank`s counterclaim against Panwell is dismissed.

Panwell and Deogratias are entitled to costs.

Outcome:

Plaintiff`s claim allowed.

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