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Insights

HIGH COURT HANDS DOWN FIRST EVER MERITS JUDGMENT ON INTERNATIONAL BANKING TRANSFER RIGHTS UNDER LEBANESE LAW – VATCHE MANOUKIAN V SOCIÉTÉ GÉNÉRALE DE BANQUE AU LIBAN S.A.L AND BANK AUDI S.A.L

Mar 25, 2022

SUMMARY

Following the recent decision of the High Court, in which specific performance was ordered against two Lebanese banks in favour of our client, Vatche Manoukian, the Court has now handed down its fully reasoned judgment.

The judgment in favour of our client is groundbreaking in being the first full merits judgment in any jurisdiction on the international transfer rights of banking customers under Lebanese law. That issue is likely to be of very real interest to all customers of Lebanese banks, but particularly those who can bring claims in the UK or EU under consumer legislation.

The High Court considered whether two Lebanese banks in this case had an obligation to effect the international bank transfer requested by our client, Mr Manoukian. The Court interpreted the terms and conditions of the two banks in accordance with Lebanese law, and considered the impact of custom on the contracts with banks.

In finding in favour of our client, the Court held that Mr Manoukian had a right to an international transfer, thus being entitled to an order for specific performance. That finding was based both on the terms of the contracts but also the wider issue of Lebanese banking custom which is incorporated into contracts under the Lebanese civil code.

Written by Graham Shear, partner, Andrew Street, senior associate and Irina Tuca, trainee solicitor at Bryan Cave Leighton Pasiner LLP and first published on 25 March 2022.

Vatche Manoukian v Société Générale De Banque Au Liban S.A.L and Bank Audi S.A.L

Lebanon's economic crisis stimulated Lebanese banks to introduce restrictions on customers, limiting their ability to send money out of their accounts. Mr Vatche Manoukian, a dual national of Lebanon and the United Kingdom, was one of the depositors impacted by the banks' introduction of capital control.

In late 2020, we issued a claim against Bank Audi S.A.L, Lebanon's largest bank, and Société Générale De Banque Au Liban S.A.L (SGBL) on behalf of Mr Manoukian in the English High Court based on the court's jurisdiction over consumer contracts entered into by UK residents. We primarily sought an order for specific performance requiring the two banks to execute the transfer requested by Mr Manoukian.

FACTS AND BACKGROUND

At the outset of the crisis, our client, Vatche Manoukian, made a number of written request for Bank Audi and SGBL, where he held accounts, to execute international transfers from these accounts in Lebanon to accounts held outside of Lebanon.

Mr Manoukian's main claim was that the two banks were contractually obliged to effect the transfers which he had requested. His claim therefore focused on the Lebanese contracts and customs, which entitle depositors like Mr Manoukian to instruct banks to execute international transfers in the course of normal banking arrangements.

The banks pleaded that there were under no obligation to make the transfer, whether contractually or as a matter of Lebanese customary law. Given Lebanon's economic crisis, the two banks argued that they were entitled to refuse to effect the transfers required by Mr Manoukian, invoking the uncertain financial climate.

The proceedings took place against the background of similar claims against Lebanese banks. Of particular relevance was the claim brought by Mr Bilal Khalifeh against Blom Bank. In defending Mr Khalifeh's claim, Bank Blom argued that it had discharged its debt to Mr Khalifeh by using Article 822 of the Lebanese Code of Civil Procedure ("**LCCP**") (also referred to as the 'tender and deposit' procedure). Under this procedure the debtor (in this case, the bank), will seek to tender payment in the form of bankers' cheques and then to deposit those cheques with a notary public in Lebanon.

In the Khalifeh case, Mr Justice Foxton held that the Article 822 tender and deposit procedure was effective in discharging Blom Bank's debt to Mr Khalifeh. However, a major difference between Mr Manoukian's claim and Mr Khalifeh's claim was that our client wished to obtain specific performance for the written international transfer requests he had made, whereas Mr Khalifeh instead brought a debt claim.

By the judgment, Mr Justice Picken ruled in our client's favour, holding that Mr Manoukian does have the international transfer right that he has asserted, and thus he was entitled to specific performance.

ISSUES

The primary issues before Mr Justice Picken included:

1. Whether Mr Manoukian had a right to an international transfer under the contract with the banks, as interpreted by reference to Lebanese law and custom;

2. The impact of the LCCP Article 822 ('tender and deposit') procedure on Mr Manoukian's claim.

THE TRANSFER RIGHT ISSUE (1)

Lebanese law governed the contracts between Mr Manoukian and the two banks. Mr Justice Picken therefore applied Lebanese law in interpreting the relevant clauses in relation to the issue of whether there was an obligation for the banks to effect the international transfer. Significant Lebanese law evidence was heard from the parties' appointed experts.

(a) General principles of interpretation under Lebanese Law

In interpreting the contracts in this case, Mr Justice Picken noted that the Lebanese general principles of contractual interpretation are very similar to those applicable under English law.

For example, the court looked at Clause I/A/b/2 of SGBL's Terms and Conditions, which stated that the "*account holder has the right to request SGBL to make any transfer to another account*". In disagreeing with SGBL's argument that this provision merely entitled the customer to *ask* for a transfer, Mr Justice Picken interpreted the clause on the basis of the rule against surplusage, concluding that that "*a right to ask that there be a transfer must entail a right to that transfer being made*".

Similarly, the Court also applied the principle that a contractual clause should be interpreted in the light of other contractual provisions. The fact that SGBL's Terms and Conditions specifically set out the circumstances where international transfers can be refused was held to indicate that those are the *only* exceptions, and that, by implication, in any other situation not caught by the exception the customer does indeed have a right to an international transfer.

After concluding that the contracts, correctly interpreted, provide for a right of international transfer, Mr Justice Picken considered if, and to what extent, custom affects this interpretation.

(b) Custom as an aid to interpretation under Lebanese Law

Article 371 of the Lebanese Code of Obligations and Contracts (LCOC) provides that a judge must apply established 'customary provisions' into the contract, even if these are not expressly incorporated, unless they are contradicted by the terms of the contract.

The banks ultimately conceded that custom is incorporated into the banks' terms and conditions. However, they argued that the right to an international transfer granted by custom is not absolute,

but rather subject to limitations. The banks in this case contended that "the bank[s] had a legitimate right not to make the transfer". Our client's case was that while the right is not absolute, the situations in which a transfer can be refused are limited (in particular to insufficiency of funds and suspicion of money laundering).

In assessing the expert evidence, Mr Justice Picken preferred Mr Manoukian's expert, Mr Najjar, whose position was that the obligation to make the transfer is not subject to the loose exception of 'legitimate reason'. Mr Justice Picken agreed with Mr Manoukian's case that such a wide exception would 'water down' down the concept of an international transfer right to such an extent that there would be no obligation at all.

Second, the Court looked at Lebanese court decisions. Both experts agreed, and Mr Justice Foxton confirmed in his judgment in *Khalifeh*, that there is no doctrine of precedent under Lebanese law. The fundamental question before Mr Justice Picken was, therefore, whether 'a number of constant rulings' (as Mr Najjar called them in his expert evidence) can constitute 'jurisprudence' in the sense of a coherent body of law which can be treated as authority. Further, if the answer was yes, Mr Justice Picken also had to consider whether 'Urgent Matter Judge' decisions (i.e. cases where judges grant urgent relief in emergencies without determining the merits of the rights and obligations of the parties) could fall under the definition of 'jurisprudence'.

Mr Justice Picken answered 'yes' to both questions. He agreed with our client's expert that although (unlike English law) Lebanese law does not have a doctrine of precedent, a number of constant rulings will be accorded substantial weight by judges in determining what the legal position is on a given issue. Picken J further agreed with Mr Najjar that 'Urgent Matters Judge' decisions can be properly classified as jurisprudence and thus be given appropriate weight in assessing custom. The main reason for this conclusion was that, although these summary decisions are merely concerned with granting relief, a judge cannot grant relief without looking into the issue of merits, albeit without making a binding ruling on it. It was, therefore, appropriate to consider these rulings in so far as they were relevant for the issue of custom.

Mr Justice Picken looked at various 'Urgent Matter Judge' decisions, and the way they have been interpreted by the Lebanese Court of Appeal and concluded that the custom exists in the form contended for in our client's case. The right to an international transfer is not subject to a 'legitimate reason' exception, and banks' terms and conditions should be interpreted accordingly.

THE LCCP ARTICLE 822 (TENDER AND DEPOSIT) ISSUE (2)

By the time of the end of the trial, the Banks had abandoned their case that the LCCP Article 822 process would serve to negate any prior binding obligation to effect an international transfer. In that regard Mr Justice Picken noted "any tender and deposit would need to match the object of the debtor's obligation". Given his finding that the debtor's obligation was to effect the international

transfer as requested by Mr Manoukian, the only conclusion was that engaging the tender and deposit procedure "entails a mismatch".

In other words, the LCCP Article 822 procedure may be effective in discharging a debt (as it was in the *Khalifeh* case), but it is ineffective in discharging the banks' obligation of effecting the international transfers. The procedure was therefore found to have no bearing on the question of whether an order for specific performance should be granted, a question which Mr Justice Picken ultimately answered in favour of our client.

COMMENTS

The decision is the first full substantive merits decision holding that individual customers of Lebanese banks have a right to an international transfer as a result of Lebanese banking custom (subject to their contracts with banks not excluding such a custom).

Each case will turn on its particular terms and conditions, but this case concerned two of the biggest banks in Lebanon and many others will share the same standard terms and conditions as Mr Manoukian.

The case also confirms that the LCCP Article 822 tender and deposit procedure is no answer to a prior international transfer which has been made by a customer.

Other customers of Lebanese banks who have jurisdiction to bring consumer claims in England and who have made international transfer requests of their Lebanese bank are likely to be able to rely upon the findings of Mr Justice Picken in bringing their own cases.

BCLP instructed counsel Daniel Toledano QC, Bobby Friedman, and Caspar Bartscherer on the case.

Case details

- Court: High Court of Justice, Queen's Bench Division
- Judge: Mr Justice Picken
- Date of Judgment: 25 March 2022
- Link to Judgment: https://www.bailii.org/ew/cases/EWHC/QB/2022/669.html

This article was produced with help from Irina Tuca.

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