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Foreword

Hong Kong is one of the major cities in the world renowned for its highly developed and diversified financial services ("**FS**") industry and most of the major international financial institutions have established a presence in Hong Kong.

Accordingly, there are always disputes in Hong Kong involving financial institutions or financial products, the determinations of which could have significant impacts to the FS industry. This is particularly the case when many companies are still recovering from the unprecedented impacts caused by COVID-19 and we are in the midst of a serious economic downturn that we have not seen for decades.

In this respect, knowing the ways and rationales that Hong Kong Courts (and Courts from other jurisdictions) are dealing with FS disputes are important to all stakeholders in the FS industry.

In this DLA Piper Hong Kong FS Dispute Quarterly Law Report, we are going to discuss some recent court judgements which are relevant to the FS industry, so that stakeholders in the FS industry are aware of the issues and may then take appropriate steps to avoid any future disputes or to better protect their positions if a dispute cannot be avoided.

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Whether Quistclose Trust Exists in Intra-Group Transfers

China Life Trustees Limited V China Energy Reserve and Chemicals Group Overseas Company Limited (2023) HKCA 966

Our firm recently represented China Life Trustees Limited ("**China Life**") in their successful application for a garnishee order absolute for the sum of around USD120 million against China Energy Reserve and Chemicals Group Overseas Company Limited ("**China Energy Overseas**"), a subsidiary of China Energy Reserve and Chemicals Group Company Limited ("**Group**"), arising from a bond default dispute.

In this case, the Court of Appeal (consisting of Yuen JA, Au JA and G. Lam JA) ("**CA**") reaffirmed the first instance court's ruling by Au-Yeung J that the funds which China Life sought to garnish are not subject to a *Quistclose* trust – a form of resulting trust that arises when funds are transferred to the transferee for specific and exclusive purposes. In this important judgment, the CA examines the law on *Quistclose* trusts and provides useful guidance on the circumstances in which such trusts may be deemed to have arisen.

Factual Background

Between April 2015 and May 2018, the Group issued 8 series of bonds through various subsidiaries which are special purpose vehicles having no material operations or significant assets and the Group acted as the guarantor of all 8 bonds. The bonds in question are the HKD2 billion 6.30% bonds issued by China Energy Overseas on 27 April 2015 which were to mature in 2022 ("**2022 Bonds**") and China Life is the sole holder of the 2022 Bonds.

In 2018, one of the Group's subsidiaries defaulted on the payment of the principal and interest of one of the bonds which triggered cross-defaults of the other 7 bonds, including the 2022 Bonds. As a result of the default, Bank of Communications Trustee Ltd (the common trustee of all 8 bonds) acted upon China Life's instructions and commenced action against China Energy Overseas for recovery of the principal and interest due under the 2022 Bonds and obtained summary judgment against China Energy Overseas for the sum of HKD2 billion, together with interest and other charges ("**Judgment**").

Since there were funds in the sum of around USD120 million ("**Funds**") left in a bank account maintained by China Energy Overseas, China Life commenced garnishee proceedings to garnishee the Funds to satisfy the Judgment. There is no dispute that the Funds were transferred to the account of China Energy Overseas from another subsidiary of the Group which was said to be acting as the "general treasury" of the Group (the "**Treasury**").

In resisting the application by China Life for a garnishee order absolute, China Energy Overseas and an Ad Hoc Committee formed by various holders of one of the other 7 bonds (issued by another subsidiary of the Group) (the "**Ad Hoc Committee**") claimed that the Funds were subject to, among other things, a *Quistclose* trust in favour of the Treasury and they relied on the following matters:

- The transfer of the Funds to the account of China Energy Overseas was intended for a specific purpose – initially for the purpose of making payment for another set of bonds, and after the initial purpose failed (as a result of the default), for the purpose of being used in the restructuring of all 8 sets of bonds;
- Accordingly, there was exclusivity of purpose at any one time; and
- the Funds were never intended to be at the free disposal of and/or to be beneficially owned by China Energy Overseas.

Decision of the CA

Having examined the authorities on *Quistclose* trusts and the evidence adduced by the parties (including the internal ledgers and book entries of the Group), the CA held that there was a lack of indication of any trust arrangement with the effect of limiting the use of the Funds by China Energy Overseas.

The CA ruled that the parties' subjective intention as to the purpose or any limitation on the use or disposal of the funds is irrelevant and that the minimum prerequisite to a finding of a *Quistclose* trust arrangement is that, on an objective assessment of the arrangements and contractual mechanisms involved, the transferor should retain some beneficial interest in the funds.

The CA rejected the argument that a trust arrangement was in place given that the Funds were transferred to China Energy Overseas' account by the Treasury and that China Energy Overseas and the Treasury are controlled by the Group. To the contrary, the CA found that since China Energy Overseas and the Treasury are affiliated entities held by a common ultimate parent company, the Group could always exercise its control over the Funds through the corporate chain of command, and it was not necessary to create any "trust arrangement" between China Energy Overseas and the Treasury.

In view of the above, the CA held in favour of China Life and granted a garnishee order absolute in respect of the Funds, meaning that China Life is able to recover the Funds as partial settlement of the Judgment.

Takeaways

This case sheds light on the importance of explicitly documenting the purpose of any transfer of funds and the retention of beneficial interest in the funds by the transferor, in the event that a trust arrangement (in particular a *Quistclose* trust arrangement) is intended by the parties, even when the parties are affiliated companies controlled by the same holding company.

Absent concrete evidence of an objective intention to create a trust whereby the transferee's freedom to deal with the funds is restricted, there is a real risk that any transfer of funds would be presumed to be beneficially owned by the transferee, free from any trust arrangements. This is particularly so in the context of intra-group transfers, where any control over usage of the funds could be effected through the corporate chain of command (and hence there is no need for a trust arrangement) and therefore limitation on freedom to deal with the funds alone may not constitute sufficient evidence of a trust arrangement.

From the creditor's perspective, the granting of a garnishee order absolute by the CA in this case once again demonstrates the effectiveness of enforcement measures such as garnishee orders in protecting creditors in enforcement and recovery actions, and the reluctance of Hong Kong Courts to hinder such measures absent clear evidence of trust arrangements. This decision should be welcomed by banks and other stakeholders in the financial services market who usually extend credits to debtors, as it clarifies the position on *Quistclose* trust and provides better clarity and certainty as to the circumstances in which *Quistclose* trusts could have arisen in fund transfers between group companies.

Latest Development

Upon the applications of China Energy Overseas and the Ad Hoc Committee, on 27 October 2023, the CA granted both of them leave to appeal to the Court of Final Appeal ("**CFA**") (in FAMV333/2023 and FAMV334/2023) on the following two questions:-

QUESTION 1

What is the proper approach to assessing the issue of intention giving rise to a *Quistclose* trust, in particular whether the important intention is an intention for the transferor to retain some control of and/or beneficial interest in the assets *qua* transferor, or an intention for the transferee to not have free disposal and/or the whole beneficial interest in the assets.

QUESTION 2

What is the proper approach to determining whether a *Quistclose* trust has arisen in the context of an intra-group transfer, in particular whether the fact or potential of common control being exercised over the transferor and the transferee (by virtue of the corporate chain or grouping) is a weighty or even crucial factor including, or indicating an absence of, any intention for the transferor to retain some control *qua* transferor or any intention for the transferee not to have free disposal and the whole beneficial interest in the assets.

It will be interesting to see how the CFA is going to determine the above two questions of great general public importance and we will report on the decision of the CFA once available.

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Effects of "Exclusive Jurisdiction Clause" and "Arbitration Clause" in the Context of Winding Up and Bankruptcy Proceedings

Re Guy Kwok-Hung Lam V Tor Asia Credit Master Fund LP (2023) HKCFA 9

In *Re Guy Kwok-Hung Lam v Tor Asia Credit Master Fund LP* ("**Re Guy Lam**"), the Court of Final Appeal ("**CFA**") held that where the underlying dispute of a petitioning debt is subject to an exclusive jurisdiction clause ("**EJC**"), the Court should dismiss the petition unless there are countervailing factors.

This article provides an overview on decisions made in subsequent cases after *Re Guy Lam* and its applicability on insolvency proceedings involving arbitration clauses. The key question lies on whether the Court should exercise its jurisdiction to determine the winding up / bankruptcy petition when the underlying agreement in dispute contains an EJC or an arbitration clauses.

Factual Background

Tor Asia Credit Master Fund LP ("**Petitioner**") and Guy Kwok-Hung Lam ("**Debtor**"), together with other parties, entered into a credit and guaranty agreement ("**Agreement**"). Pursuant to the terms of the Agreement, the parties agreed to submit to the exclusive jurisdiction of the New York Courts for all legal proceedings arising out of or relating to the Agreement or the transactions contemplated thereunder.

After the Petitioner served a statutory demand on the Debtor and presented a bankruptcy petition against the Debtor, the Debtor commenced proceedings in New York against the Petitioner seeking a declaration that there had been no event of default under the Agreement.

The Court of First Instance ("**CFI**") found that if the underlying debt is not subject to a bona fide dispute, the existence of the EJC would not prevent the Court from considering the issue of whether a petitioner had standing to present a bankruptcy petition against a debtor as the existence of the EJC is only one of the factors the Court needs to consider ("**Established Approach**"). As the Judge of the CFI considered that there was no bona fide dispute on substantial grounds in respect of the debt, she made a bankruptcy order against the Debtor.

On appeal, the bankruptcy order against the Debtor was set aside by the Court of Appeal ("**CA**"). The majority of the CA held that, without strong reasons, a bankruptcy petition should not be allowed to proceed if the debt is disputed and the dispute is subject to an EJC in favour of a foreign court when the dispute in the agreed forum is yet to be determined ("**Strong Cause Approach**"). Since the majority of the CA did not find a "strong cause" to allow the bankruptcy petition to proceed, the CA allowed the Debtor's appeal.

The key issue before the CFA was whether the CFI should decline to exercise the jurisdiction to entertain and determine the bankruptcy petition issued by the Petitioner, when the debt is being disputed and there is an EJC in the Agreement.

Decision of the CFA

The CFA clarified that the bankruptcy jurisdiction of the Hong Kong Courts is not amenable to exclusion by contract. However, an agreement by the parties to an EJC would affect the Court's discretion to decline to exercise its bankruptcy jurisdiction. When an EJC is involved, the Established Approach is not appropriate. Whether there is a bona fide dispute of the underlying debt is a threshold question and the Court retains its discretion to decline to exercise its bankruptcy jurisdiction. In exercising such discretion, the Court should consider various factors, including:

- The public policy of holding parties to their agreements;
- The public policy underpinning the legislative scheme of the Court's bankruptcy jurisdiction; and
- Whether there are countervailing factors, such as the risk of insolvency affecting third parties and a dispute that borders on the frivolous or abuse of process.

Cases following Re Guy Lam

Following the CFA's decision in Re Guy Lam, there have been various cases dealing with similar issues, but the approaches taken by the Hong Kong Courts are not unified and this gives rise to uncertainty as to when the Hong Kong Courts may decline its winding up/ bankruptcy jurisdictions where there is an EJC and an arbitration clause in the underlying agreement.

RE SIMPLICITY & VOGUE RETAILING (HK) CO. LIMITED (2023) HKCFI 1443

Simplicity & Vogue Retailing (HK) Co., Limited ("**Simplicity**") was the guarantor of a convertible bond instrument. A winding up petition was filed against Simplicity after the issuer of the convertible bond instrument defaulted payments and Simplicity failed to discharge the issuer's obligations.

Simplicity failed to file its affidavit in opposition to the winding up petition in time and the Court granted leave for Simplicity to file its affidavit in opposition on condition that the amount of the debt be paid into court. Simplicity failed to make the payment into court on time and sought an extension of time to make the payment and an adjournment of the winding up petition.

Linda Chan J of the CFI held that there was no basis to extend the time further or adjourn the winding up petition because there was no credible evidence showing that Simplicity would be able to make the payment into court, and that the petitioner should be entitled to a winding up order against Simplicity as of right.

One of the grounds of opposition raised by Simplicity was that the dispute should be referred to arbitration as there are arbitration clauses in the underlying agreements and Simplicity relied on the CFA decision in *Re Guy Lam* to suggest that the Court should give effect to the arbitration clause and dismiss the winding up petition.

However, Linda Chan J refused to follow the approach in *Re Guy Lam* for the following reasons:

- *Re Guy Lam* is distinguishable on facts because it concerned an EJC, rather than an arbitration clause;
- Although similar to *Re Guy Lam*, there is no creditor supporting the winding up petition, it shall not be regarded as a general rule that the Court must dismiss or stay the winding up petition where the agreement giving rise to the petitioning debts contains an arbitration clause; and
- There is no reason why the Companies Court should adopt a mechanistic approach and invariably refuse to consider the merit of the defence raised by the debtor. If the debtor raises a substantive defence to the petitioning debt and the Court has no difficulty in concluding that such defence is one which "*borders on the frivolous or abuse of process*", then there would be no proper basis to require the parties to refer their dispute to arbitration when there is simply no genuine dispute regarding the debt.

RE NT PHARMA INTERNATIONAL COMPANY LTD (2023) HKCFI 1623

The petitioner issued a winding up petition against NT Pharma International Company Limited ("**NT Pharma**") on the grounds of insolvency arising from non-payment of prices and storage costs pursuant to two supply agreements, both of which contain an arbitration clause.

After the winding up petition was served on NT Pharma, it commenced arbitration proceedings against the petitioner for alleged breach of a separate asset purchase agreement entered between the parties. NT Pharma also paid the total amount of the underlying debt into court. NT Pharma therefore opposed the winding up petition on the grounds that it has a cross-claim against the petitioner which would extinguish the underlying debt by way of set-off and that the debt has been secured by the payment into the court (the latter ground was rejected on the basis that the payment into court is not a security nor does it compound for the underlying debt).

For NT Pharma's arguments arising from the cross-claim, Linda Chan J of the CFI acknowledged that those arguments were similar to the submissions made by Simplicity in *Re Simplicity & Vogue* and Her Ladyship held that the real issue is not whether the approach laid down by the CFA in *Re Guy Lam* should be followed, but whether NT Pharma should be allowed to withhold payment of the underlying debt until the determination of its cross-claim in the arbitration. For the following reasons, Linda Chan J held that NT Pharma should not be allowed to do so and hence there was no proper basis to dismiss or stay the petition:

- There is nothing in the supply agreements giving rise to NT Pharma's entitlement to withhold payment until the determination of its cross-claim under a different agreement;
- There is no basis showing that the cross-claim arose out of the same agreement as the underlying debt; and
- There is no suggestion that the cross-claim would be stifled if NT Pharma is required to pay the debt now. There is also nothing to suggest that the petitioner would not be able to pay any damages which may be awarded against it in the arbitration.

Linda Chan J also observed that NT Pharma had failed to discharge the burden of showing that it has a serious cross-claim against the petitioner when there is a lack of particulars in the cross-claim and a lack of evidence to substantiate its assertion that it had suffered the alleged loss.

RE SHANDONG CHENMING PAPER HOLDINGS LTD (2023) HKCFI 2065

The petitioner issued a winding up petition against Shandong Chenming Paper Holdings ("**Shandong Cheming**") on the grounds of insolvency arising from non-payment of an arbitration award, which the petitioner has obtained leave to enforce as a judgment in Hong Kong. Shandong Cheming issued a summons seeking the dismissal or adjournment of the petition on the grounds that it has a cross-claim that exceeds the judgement debt owed to the petitioner, which is subject to an arbitration agreement and will be determined in a substantive hearing of an arbitration (a date of which had already been fixed).

Having accepted that the principles and approaches laid down by the CA and the CFA in Re Guy Lam should be applicable to both an EJC and an arbitration clause, the issue for determination by Harris J is whether the same principle applies in the context of a cross-claim raised by the debtor.

Having examined the various authorities on this subject, Harris J observed that:

- As a general principle of insolvency law, there is no distinction between a defence and a cross-claim in examining whether the debtor can establish a defence to a winding up petition;
- There is nothing in the CFA decision of *Re Guy Lam* suggesting that a cross-claim and a defence should be treated differently; and
- Although the petitioner asserted that Shandong Cheming's cross-claim has no merits, it did not go as far and suggest that the cross-claim is an abuse of process and hence the Court should consider rejecting Shandong Cheming's opposition to the winding up petition despite the existence of an arbitration clause.

As a result of the above findings, Harris J ordered a stay of the winding up petition.

SUN ENTERTAINMENT CULTURE LIMITED V INVERSION PRODUCTIONS LIMITED (2023) HKCFI 2400

The petitioner issued a winding up petition against Inversion Productions Limited ("**Inversion**") as a result of Inversion's failure to repay the debt advanced by the petitioner under a loan agreement.

Inversion opposed the winding up petition on the basis that the default interest charged by the petitioner pursuant to the loan agreement is in contravention of section 24(1) of the Money Lenders Ordinance (the "**MLO Defence**") and that the loan agreement contains an arbitration clause. Inversion suggested that in view of the arbitration clause, the MLO Defence should be determined by arbitration and the winding up petition should be stayed or dismissed.

Having concluded that the MLO Defence is frivolous and an abuse of process, DHCJ Le Pichon went on to consider the implication of an arbitration clause in the context of a winding up petition. While Her Ladyship highlighted the different approaches adopted in *Re Simplicity* and *Re Shandong Chenming*, DHCJ Le Pichon did not confirm one way or the other whether the principles and approach laid down in *Re Guy Lam* are applicable where there is an arbitration clause in the underlying agreement. Her Ladyship only ruled that even if *Re Shangdong Chenming* is followed and *Re Guy Lam* is applicable to arbitration clause, the frivolous nature of the MLO Defence would be recognized a "countervailing factor" against the stay or dismissal of the winding up petition.

Takeaways

While it is unsettled whether the principles laid down in *Re Guy Lam* is applicable in insolvency proceedings involving an arbitration clause, it is obvious that similar to an EJC, the existence of an arbitration clause will likely give a debtor an opportunity to seek to stay or dismiss a winding up petition.

Certainly, the mere existence of an EJC or an arbitration clause is not going to result in an automatic stay or dismissal of the insolvency proceedings initiated by the petitioner as the Court will still need to consider the nature and merits of the defence put forward by the debtor in opposing the petition. However, an opportunistic debtor will definitely seek to rely on an EJC or an arbitration clause to try to delay or frustrate any insolvency proceedings.

Commercial parties should therefore carefully consider what dispute resolution clause and what jurisdiction clause should be incorporated in the underlying agreement. For financial institutions who are on the lending side, particular consideration should be given when a borrower seeks to include an EJC or an arbitration clause in the loan agreement as the inclusion of an EJC or an arbitration clause may turn out to be an obstacle when a lender seeks to enforce the loan by way of insolvency proceedings.

For a debtor opposing insolvency proceedings, the above authorities confirm that even if there is an EJC or an arbitration clause in the underlying agreement, the Court will still look at the nature and merits of the defence or cross-claim before it will exercise its discretion to stay or dismiss a petition. Accordingly, an opposing debtor must produce all available evidence in order to substantiate that there is a genuine defence or cross-claim.

Quincecare Duty – Duty of Banks to Comply with Payment Instructions Induced by Fraud

Philip V Barclays Bank UK Plc (2023) UKSC 25

In this decision of *Philip v Barclays Bank UK PLC* (2023) UKSC 25, the UK Supreme Court overturned the Court of Appeal's decision on the scope of the *Quincecare* duty owed by banks not to execute payment instructions of customers when being put on inquiry of a potential fraud. In doing so, the UK Supreme Court has taken the opportunity to recast the scope of the duty owed by banks when payment instructions induced by fraud are given by customers, providing much-needed clarity for banks on this issue.

The concept of *Quincecare* duty is derived from the case of *Barclays Bank plc v Quincecare Ltd* (1992) 4 All ER 363. The *Quincecare* duty requires a bank not to execute a payment instruction given by an agent of a customer without making inquiries if the bank has reasonable grounds to believe that the agent is attempting to defraud the customer.

The type of fraud committed in this case is an "authorized push payment" (APP) fraud, which involves a victim being induced by fraudulent means to authorize his/her bank to send a payment to a bank account controlled by the fraudsters. APP fraud can take multiple forms, such as a fraudster claiming to be a police officer, an employee of the victim's bank or an officer of other government authorities. It is usually perpetuated by a fraudster calling or texting the victim and claiming that there was a fraud committed on the victim's account and there is a need for the victim to transfer the money to another "safe account" in order to protect the funds.

Factual Background

In 2018, a married couple fell victim to an APP fraud and were deceived by fraudsters (who posed as officers working for the Financial Conduct Authority in conjunction with the National Crime Agency) into instructing Barclays Bank ("**Bank**") to transfer GBP700,000 in two payments from the wife's current account with the Bank to certain bank accounts in the United Arab Emirates. The Bank followed the wife's instructions and made the transfers. When the couple became aware that they had been defrauded, the wife notified the Bank and the Bank made attempts to recall the funds, but without success.

When the wife gave instructions to the Bank to make the two transfers, she attended a branch of the Bank in person to make the transfer requests. On each occasion, before making the transfer, the Bank telephoned the wife to seek her confirmation that she had made the relevant transfer request and wished to proceed with it and the wife provided the required confirmation to the Bank.

The wife claimed against the Bank for her loss, contending that the Bank owed her a duty under its contract with her or at common law not to carry out her payment instructions if the Bank had reasonable grounds to believe that she was being defrauded. In response, the Bank applied to have the wife's claim summarily dismissed on the ground that the Bank did not owe her the alleged duty as a matter of law.

The Bank's application for summary dismissal was granted by Judge Russen QC. However, the Court of Appeal allowed the wife's appeal, holding that a bank in principle owes a contractual duty to its customers as the wife alleged. The Bank then appealed to the UK Supreme Court.

The Decision

The UK Supreme Court overturned the Court of Appeal's decision and held that the *Quincecare* duty simply does not apply to cases where the customer has unequivocally authorized and instructed the bank to make a payment, albeit that the customer has been induced to do so by fraud.

Properly understood, the *Quincecare* duty does not arise from the old reasoning stemming from *Barclays Bank plc v Quincecare Ltd*, which presupposes that the *Quincecare* duty is the result of a balance being struck between a bank's conflicting duties to execute a valid order to transfer money promptly on one hand and to exercise reasonable care and skill in executing a customer's order on the other hand. Such reasoning has been criticized by the Supreme Court as flawed.

As one of the first principles of banking law, it is a basic duty of a bank under its contract with a customer who has a current account in credit to make payments from the account in compliance with the customer's instructions. This duty is strict. Where the customer has authorized and instructed the bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risks of its customer's payment decisions.

According to the Supreme Court, the reason why a bank owes a *Quincecare* duty not to execute a payment instruction given by an agent of the customer without making inquiries if the bank has reasonable grounds to believe that the instruction is an attempt by the agent to misappropriate the customer's funds is to ensure that it does not make a payment which the customer has not actually authorized. In other words, the *Quincecare* duty is consistent with and simply an application of a bank's general duty to interpret, ascertain and act in accordance with its customer's instructions.

Based on the above basis, the Supreme Court ruled that the *Quincecare* duty has no application where a victim of fraud gives a clear payment instruction to a bank and neither the validity of such instruction nor the customer's authorization of the payment are in doubt. In such circumstances, the bank's duty is to execute the instruction and any refusal or failure to do so will prima facie be a breach of the general duty owed by the bank to its customer.

Takeaways

While this decision of the UK Supreme Court is not binding on Hong Kong courts, it is expected that this decision would be highly persuasive in Hong Kong.

The Supreme Court's decision is clearly a decision welcomed by banks. By restating the legal rationale behind the *Quincecare* duty and by ruling against the Court of Appeal's expansion of the application of such duty to circumstances where the bank is dealing with a customer's direct and unequivocal payment instructions (and therefore no question of agency is involved), this decision has spared banks from the burdensome and difficult duty of examining whether a customer's payment instruction is induced by fraud or mistake, which would inevitably lead to a significant increase in time and costs associated with day-to-day processing of payment instructions, especially in the current age where APP frauds (and cyber frauds) have grown ever more rampant.

This is not to say that there is no limit to a bank's duty to execute its customer's valid payment instructions. Besides the limitation imposed by the *Quincecare* duty, as acknowledged in the decision, there is an implied limit that a bank cannot be obliged to act unlawfully. Anti-money laundering legislation would therefore impose limitations on a bank's duty to carry out its customer's payment instructions. Where a bank is on notice that the customer lacks mental capacity to operate a bank account or manage his or her financial affairs, the bank's duty of care may require the bank not to execute its customer's instructions until further inquiries have been made.

Contrary to the position of banks, the decision may be considered harsh on victims of fraud as it means that their only recourse is to commence recovery action against the fraudsters and scammers, which would likely be costly and unfruitful. In *Philip v Barclays Bank UK PLC*, the lost funds represented the bulk of the defrauded couple's life savings. Nonetheless, given the potentially serious ramifications for the banking sector and routine commercial operations, it may be more appropriate for legislators and regulators to come up with policy responses to address this social problem instead of having the courts enlarge a bank's duty in order to provide victims with redress.

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