

DBS Bank appeals to the Court of Final Appeal on the effect of anti Bartlett clauses

DENTONS

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The saga of *Zhang Hong Li v DBS Bank* will continue at the Court of Final Appeal in Hong Kong, the highest court in the Special Administrative Region.

In 2017, DBS Bank lost partly in defending claims made against it by the Zhang family, who were private wealth clients of the bank. Bharwaney J found that the DBS entities had been in “serious and flagrant” breach of their duties as trustee and director of a Jersey trust, through which the Zhang family made their investments. In particular, the judge found that the DBS trust entity had breached its “high level of supervisory duty” in approving a significant increase in the trust’s credit facility, and in allowing significant purchases of foreign currency and three decumulators, which ultimately led to significant losses for the Zhang family.

A year later, on appeal to the Court of Appeal, the court was asked to examine the anti-Bartlett clause in the trust document (which was governed by Jersey law), and whether the trustee could rely on such clause to be relieved of any duty or power to interfere with the trust. However, the Court of Appeal upheld Bharwaney J’s findings that the bank had breached its duties as trustee and that as trustee, it had a “residual obligation” to ensure that the value of the trust fund is subject to appropriate controls, reviews, investment expertise and management and that such residual obligation was not excluded by the anti-Bartlett clause.

The bank did not agree with the Court of Appeal’s findings surrounding the anti-Bartlett clause. It has now obtained leave from the Court of Final Appeal to re-examine the interpretation of the anti-Bartlett clause and to clarify the nature and extent of a trustee’s duty and what effect the clause had to exclude or limit the trustee’s duties. The bank has also obtained leave to appeal the lower courts’ findings on the breach of fiduciary duties by the corporate director.

No date for the appeal hearing has yet been fixed, but we expect the Court of Final Appeal’s decision to be an important one to watch for.

For our previous articles on the Court of First Instance and Court of Appeal decisions, see [here](#) and [here](#).

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