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S'pore firm in row over Libyan payments wins lawsuit

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A Bahrain-based bank failed in a US\$18.8 million (S\$25 million) court suit against public-listed **Boustead Singapore** in the fallout from a construction project that derailed during Libya's 2011 civil war.

The Court of Appeal in effect stopped the Arab Banking Corporation (Bank ABC) from receiving any payment from **Boustead** and held it from making payment to another bank further up the banking chain involved in the guarantee arrangements.

Bank ABC had sought the payouts based on a credit facility agreement with **Boustead**, a Singapore incorporated infrastructure company involved in international construction developments, as it wanted to settle, in turn, demands from Libya's Bank of Commerce and Development (BCD).

But the Court of Appeal comprising Chief Justice Sundaresh Menon, Judge of Appeal Andrew Phang and Justice Quentin Loh found Bank ABC had acted fraudulently as it could not have "honestly believed it was obliged to honour any demand from (BCD)," among other things.

BCD had sought the payouts based on guarantees from Bank ABC because it said it had to pay the project developer, the Organisation for Development of Administrative Centres (ODAC), following the project meltdown.

But the ODAC notices were "manifestly" defective as they did not comply with the conditions of the performance bonds and advance payment guarantees upon which hinged the whole case.

"Any banker who compared those notices against the requirements for a valid demand stipulated in the performance bond and advance guarantee payment could not have reasonably concluded that they constituted

conforming demands," wrote CJ Menon in judgment grounds released last month.

But the court made clear this "truly is an exceptional case", resulting in a rare suit where a bank lost claims against a client over demands to settle performance guarantees provided by the client.

Boustead's spat with Bank ABC began from a 2007 deal in which it undertook a joint venture to build a township in Al-Marj, Libya.

As part of the arrangements, both entities vouched for advance payment and performance to BCD.

BCD was, in turn, expected to pay the sums of US\$3.7 million for the advance payment guarantee and US\$15 million for the performance guarantee to ODAC, a Libyan government outfit which had hired **Boustead's** joint venture company for the project.

When unrest broke out in February 2011, the project site was pillaged and looted and **Boustead** abandoned the project.

It deemed the project contract with ODAC terminated by the "force majeure" event – an unavoidable accident.

Boustead subsequently obtained a court injunction to stop Bank ABC from carrying out the guarantee payments to BCD but the latter insisted **Boustead** pay up under the facility agreement. The bank's action was in part triggered by pressure from BCD.

The High Court ordered last year that Bank ABC was not to receive payment from **Boustead**, and was not to make payment to BCD.

The bank appealed to the apex court, where its lawyers Muralidharan Pillai and Sim Wei Na from Rajah & Tann argued there was

insufficient evidence to find the demand was made fraudulently, among other things.

Wong Partnership Senior Counsel Tan Chee Meng and lawyer Josephine Choo countered for **Boustead** that Bank ABC had no grounds to claim against **Boustead** because the bank would not incur any liability against BCD.

Hence any claim against **Boustead** in those circumstances would be fraudulent.

The court found that “in gist”, Bank ABC had acted fraudulently in making the demand recklessly on **Boustead** based on the facility agreement. It ruled **Boustead** would not be required to make the payments for good.