Golden Belt v BNP Paribas [2017] EWHC 3182 (Comm)

Nigel Tozzi QC acted for the successful claimants in Golden Belt v BNP Paribas [2017] EWHC 3182 (Comm).

In his judgement handed down on 7th December, Males J. decided that a bank was in breach of a duty of care which it owed to certificate holders under a sukuk to ensure that relevant documents comprising the sukuk were executed properly.

The case concerned an Islamic financing transaction under which a client of BNP Paribas raised $650 million through a sukuk (a form of Islamic financing which is not unlike a bond, but structured in a way so as not to offend against Shariah law regarding the charging of interest). One of the key documents was a promissory note, governed by Saudi Arabian law, for $650 million. The promissory note was significant because it potentially gave certificate holders under the sukuk a right, through an SPV, to secure judgment through the commercial court in Saudi Arabia without the sukuk being subjected to scrutiny as to whether it complied with Shariah law. Unfortunately the promissory note was not executed in accordance with the requirements of Saudi law, which meant that it could not be enforced in the Saudi commercial court. The promissory note required a 'wet ink' signature, but it was 'signed' using a laser printer. BNP Paribas was the Arranger, Sole Bookrunner and Joint Lead Manager of the sukuk. The Judge found that part of its duties included ensuring that the promissory note was executed properly, and that, on the particular facts of the case, it owed a duty of care to future certificate holders under the sukuk, who were wholly dependent on BNP Paribas doing its job properly.

BNP Paribas was unable to rely on various disclaimers in the Offering Circular for the sukuk because they were not applicable to the specific task which BNP Paribas had to perform as Arranger and Sole Bookrunner. The Judge concluded that on the facts BNP Paribas had failed to exercise reasonable skill and care in its oversight (or lack of oversight) of the execution of the promissory note. The case demonstrates that in certain limited circumstances a bank acting as an arranger and/or bookrunner in a capital market transaction may owe a duty of care to bondholders.

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