

Hong Kong Court of Final Appeal confirms win for bank in mis-selling case

The Court of Final Appeal in *DBS Bank (Hong Kong) Ltd v Sit Pan Jit* has today given its reasons for dismissing Sit's application for leave to appeal against the Court of Appeal's judgment last summer. The dispute concerned the purchase of Equity Linked Notes and misrepresentations alleged to have been made to Sit by a DBS employee. In the Court of First Instance, Sit was ordered to pay DBS more than US\$3.4 million with interest and costs. Sit's counterclaim for misrepresentation at common law and under section 108 Securities and Futures Ordinance (SFO) was dismissed on the basis that there had been no misrepresentation made by DBS. The Court of Appeal concurred with the findings of the Court of First Instance.

The CFA found no reason to overturn the lower courts' concurrent findings and noted the courts' comments about Sit's lack of credibility as a witness. The CFA found that Sit had come nowhere near to meeting the high threshold for leave to appeal to be granted. As a result, there will be no opportunity for the CFA to consider a number of potentially interesting legal questions, namely (1) the proper juridical basis of the doctrine of contractual estoppel, (2) the application of the *Interfoto* principle and (3) the requirements under section 108 of the SFO (all of which would only arise if the challenge on the concurrent findings of facts by the lower courts had succeeded).

Today's ruling can be found [here](#).

Our previous briefings on the case and its implications given the changes to the SFC's Professional Investor Regime and the new client agreement requirements can be found [here](#):

[Hong Kong High Court confirms the effectiveness of non-reliance clauses in bank-customer contracts](#)

[Hong Kong Court of Appeal confirms win for bank in mis-selling case](#)

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