

RISK FOR BANKER'S CONNECTED TO CLOSING A CUSTOMER'S ACCOUNT

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Abstract

Financial institutions (banks and building societies) from time to time request customers to close their accounts and make alternative arrangements. This occurs most often if the financial institution is unhappy with the way in which the customer is using the account or it feels that its relationship with the customer has broken down irretrievably. Banks sometimes close a customer's account without the customer's agreement. Most other commercial organisations, banks and building societies included, are under no obligation to continue doing business with someone if they do not consider it appropriate to do so. However when financial institutions decide to close accounts of customers, this should not be on based on an improper reason - for instance, because of unfair bias or unlawful discrimination. And it is an implied term of the contract between the bank and its customer that the bank will not normally close the customer's account without giving reasonable notice. This article seeks to analyse instances where banks have closed their customers' accounts and factors that were considered, if any, for such a decision.

Keywords: Financial Institutions, Banks, Customer, Banking Confidentiality

1. INTRODUCTION

The relationship between a banker and its customers is contractual even though the nature of contract varies from customer to customer, depending on the type of agreement between the customer and the bank. A critical component of this relationship is the principle of confidentiality, which is often implied. Whether or when this principle can be relied upon by the bank in taking a decision to close the customer's account is often problematic. This is well evident in the recent decision by major financial services companies in the Republic of South Africa to end their business ties with Oakbay Investments (Pty) Ltd¹ and its listed entity Oakbay Resources, which have made national headlines on the print and electronic media. While notice was given to Oakbay Investments of the intention to close its account by the banks, Oakbay Investments were not informed of reasons for termination.

The decision has sparked a national debate on whether a banker has the right to close a customer's account without reasons. This debate itself is not new as it has been a subject of judicial consideration. For instance, in a very illuminating judgment on the matter, the Supreme Court of Appeal in the case of *Bredenkamp v Standard Bank*²³ considered the grounds given on behalf of the Standard Bank that it had the right in terms of an express term of its contracts to close the accounts with reasonable notice and the implied term

with the same effect, namely that an indefinite contractual relationship may be terminated with reasonable notice. It weighed those arguments against the contention of the applicant challenging the validity of the implied term and by implication the express term of the contract. The Court then came to the conclusion that in terms of the valid agreement between the Bank and the customer, the Bank was entitled to terminate the account without any cause.

However, the fact that not every banker-customer relationship is the same suggests the need to critically examine the reasons which may inform the decision by a bank to close accounts of customers without reasons. Hence, this article seeks to analyse instances where banks have closed their customers' accounts and factors that were considered, if any, for such a decision.

Following this introduction, section two of the article discusses the nature of the relationship between a banker and its customers. Considering its centrality to the banker-customer relationship, section three considers the principle of confidentiality, highlighting its relevance in the determination of whether or not an account should be closed. With a focus on Oakbay Investments (pty) Ltd, a shareholder in a number of private equity investments and joint ventures, such as Sahara Computers, JIC Mining Services, Shiva Uranium, The New Age newspaper, ANN7 TV and Clifftop Lodge section four examines reasons that may inform closure of an account. Section five is the conclusion.

2. THE NATURE OF THE RELATIONSHIP BETWEEN A BANKER AND ITS CUSTOMERS

The relationship between a bank and its customer is based on contract. In its most basic form, the contract is that of a loan. When the customer deposits money into

1 A company co-owned by Ajay Gupta and Atul Gupta who are also its chairpersons. This company is a shareholder in a number of private equity investments and joint ventures, such as Sahara Computers, JIC Mining Services, Shiva Uranium, The New Age newspaper, ANN7 TV and Clifftop Lodge.

2 (599/09) [2010] ZASCA 75 (27 May 2010).

3 Par 56 *Bredenkamp v Standard Bank*.

his current account, he makes a loan to the bank, which is then repayable on demand (that is when the customer withdraws the money from the account, writes out cheques drawn on the account or makes electronic transfers from the account)⁴.

Moseneke AJ, (as he was then), in *Standard Bank of SA Ltd v ABSA Bank Ltd* and another⁵, discussing the relationship between the bank and its customers, said the following: "[T]o typify the relationship between a bank and its customer as one of agency is to simplify and perhaps to trivialise an inherently and conspicuously complex collection of juristic relationships which exist between a banker and its customer. The relationship between a banker and its customer has been described variously in judicial dicta in the past hundred years or so. This relationship has sometimes been described as one between debtor and creditor in that, as a customer deposits money, such money becomes the property of the bank subject to the obligation by the bank to honour validly drawn cheques by the customer. This relationship has sometimes been characterised as one in which the customer of the bank retains 'a special property or interest in the money deposited, although the customer is no longer the owner thereof'."

Acting justice Moseneke further added that "[t]he relationship between the bank and its customer is one which is sui generis it is a collection of a number of complex juristic relationships which tend to vary from customer to customer, depending on the specific agreement which has been entered into between the customer and the bank. Naturally such relationship would exhibit in varying degrees certain features which have been recognised both in our common law as well as in various judicial dicta. However in any given case the proper course to take is not to apply a rigid and pre-existing characterisation of the customer-banker legal relationship, but to examine the specific legal nexus which exists between a particular banker and its customer. Indeed, some such relationships would have strong features of a principal and an agent; sometimes characteristics of a loan for consumption; and indeed sometimes such relationship is...one between a debtor and a creditor and very often the relationship would be a collection of features of each of these legal institutions I have referred to". The court consequently was not persuaded by the argument that the only way to characterise or typify the relationship between a banker and its customer is by resorting to agency.

3. THE DUTY OF CONFIDENTIALITY BY THE BANK

Confidentiality (in the sense of secrecy) has been recognised as a fundamental pillar of the banker-customer relationship, existing as an implied term in the banker-customer contract, since 1924 in the leading English decision of the Court of Appeal of *Tournier v National Provincial and Union Bank of England* (1924)⁶.

The court in the *Tournier* case had an opportunity to lay down a legal obligation of confidentiality between the banker and customer. Confidentiality became

recognised as being 'at the heart of the banker-customer relationship', existing as an implied term of the banker-customer contract. A majority of the Court of Appeal was of the view that the duty of confidentiality attached to information gained through the banker-customer relationship and therefore included information gained from sources beyond the customer's account. Thus, in *Tournier* itself, the duty extended to the disclosure of information gained through inquiries made of a fellow bank concerning the identity of the drawer of the cheque⁷.

Bankes LJ, who delivered the leading judgment in the *Tournier* case, referred to what are the limits, and what are the qualifications of the contractual duty of secrecy implied in the relation of banker and customer⁸. These limits or qualification are not justifications for a breach but rather situations where the duty itself does not apply⁹.

These qualifications were classified under four heads: where disclosure is made under compulsion by law¹⁰; where there is a duty to the public to disclose¹¹; where the interests of the bank require disclosure¹²; and, finally, where the disclosure is made by the express or implied consent of the customer¹³. Thus it was recognised that a duty of confidentiality existed as an implied term of the contract between banker and customer but that it was not absolute and was subject to these qualifications¹⁴.

Commenting on the decisions of the various financial institutions to terminate their business relationships with Oakbay Investments, the Banking Association of South Africa (BASA) issued a statement that the decisions were "taken separately and independently" and further said that it was incumbent on BASA to make the following point in order to stop such speculation: each bank's respective action was taken "with total respect for customer confidentiality and all relevant regulations".

Background to the ending of business ties between the financial services and the Guptas' Oakbay Investments and its listed entity Oakbay Resources.

Oakbay Investments (Pty) Ltd¹⁵, a private company, which is a shareholder in a number of private equity investments and joint ventures, such as Sahara Computers, JIC Mining Services, Shiva Uranium, The New Age newspaper, ANN7 TV and Clifftop Lodge¹⁶.

7 *ibid* p.281.

8 [1924] 1 KB, at 471 – 472 *ibid* p.282.

9 Roy Goode, 'Banker's Duty of Confidentiality' [1989] *Journal of Business Law* 269 at 270.

10 Section 69 National Credit Act 34 of 2005; s 33 South African Reserve Bank Act 90 of 1989; s 236 (4) Criminal Procedure Act 51 of 1977.

11 Danger to the State or public duty (*Tournier* case) Robert Stokes p.282.

12 The situation where the bank issuing for an overdraft – *ibid* p.282.

13 Where the customer authorises a reference to his banker – *ibid*.

14 *ibid* p.282.

15 Ajay and Atul Gupta (the Guptas) are co-founders and chairpersons of Oakbay Investments.

16 The Guptas are currently at the centre of an African National Congress investigation to determine whether they influence who President Zuma appoints to key government positions to ensure business deals are structured around their businesses, what is termed "state capture". State capture is a type of systematic political corruption in which private interests significantly influence a state's decision-making processes to their own advantage through unobvious channels, that may not be illegal – Wikipedia.

Responding to the ANC investigation Oakbay Investments said: "We welcome this process, which should ultimately allow the truth to be recognised and end this

4 See *Kearney NO v Standard Bank of South Africa Ltd* [1961] 2 SA 647 (T).

5 1995 (2) SA 740 (T) at 746G–747E.

6 [1924] 1 KB 461. See Robert Stokes (2011) *The Genesis of Banking Confidentiality*, *The Journal of*

Legal History, Vol.32 (3), 279–294, for an illuminating discussion of the duty of confidentiality by bank and judgment of *Tournier* and *National Provincial and Union Bank of England*.

During April 2016, First National Bank joined Barclays Africa, which runs South Africa's biggest retail bank, Absa, Sasfin Capital and auditing firm, KPMG, in severing ties with Oakbay Investments and its listed entity. KPMG ended its auditing services to Oakbay Resources on the 29 March 2016 and Sasfin Capital withdrew its corporate advisory services and as JSE sponsor to Oakbay Resources from 1 June 2016. In December 2015, Oakbay Investments received a notification of termination of their accounts from Absa. This notification of termination by Absa remained confidential for over three months until "a couple of days ago", that is, when the other financial services companies made public their similar intentions to terminate their accounts¹⁷. At the time of Oakbay's listing on the JSE in November 2014, Absa was Oakbay's banker.

According to a statement from the JSE, its listings requirements prescribe that companies must appoint a sponsor within 30 business days after the effective resignation of a sponsor. Listed companies need the services of an auditor when they issue their annual financial statement once per annum and in certain cases for interim and provisional financial statements. Companies must ensure that they have an appointed accredited auditor to perform these functions at all the relevant times.

3.1 Reasons for termination of the business ties with Oakbay Investments by the various commercial organisations

3.1.1. KPMG

KPMG was the auditor for all Gupta-owned and Gupta-controlled businesses and performed a variety of other services for the Guptas¹⁸. In an internal email circulated to staff and partners, KPMG Southern Africa CEO Mr. Trevor Hoole said that they had no audit reason in support of the decision¹⁹. "The recent media and political interest in the Gupta family, together with comments and questions from various stakeholders ... has required us to evaluate the continued provision of our services to this group," Mr. Hoole said.

He further said that "we have decided that we should terminate our relationship with the group immediately. I can assure you that this decision was not taken lightly, but in our view the association risk is too great for us to continue. It is with heavy hearts that we have reached our conclusion, and there will clearly be financial and potentially other consequences to this, but we view them as justifiable."

Before making the decision, KPMG is reported having consulted extensively with local regulators, customers, analysts, internally and with its executive committee and policy board.

Oakbay Investments however, said in a note to the JSE on Tuesday 5 April 2016: "The reason for KPMG's resignation is solely based on their assessed association risk and KPMG have indicated that there is no audit reason for their resignation..."

3.1.2. First National Bank (FNB)

According to a statement in "The New Age" a newspaper owned by the Guptas', the chief executive officer of Oakbay Investments, Mr. Nazeema Howa called on Mr. Jacques Celliers: CEO of FNB to explain why the bank closed the company's accounts. Mr. Howa said that Oakbay Investments received no reason justifying FNB's actions. He went on to question the timing of FNB's actions. This comes after about three months after Barclays Africa Group's Absa unit did the same thing. "We find the timing of FNB's decision staggering given Oakbay's accounts are in excellent financial health and we have been a loyal and profitable customer for many years." the statement added.

FNB Risk's Manager Mr. Nainesh Desai said "First National Bank ("FNB") can confirm that it has no banking account with Oakbay Investments (Pty) Ltd. We can further confirm that we have given notice to close various banking accounts of entities that may be associated with Oakbay Investments (Pty) Ltd. Due to the confidential nature of our customer relationships, FNB is not in a position to provide any further details."

3.1.3. Sasfin Capital

Investment bank Sasfin issued a statement saying that it had decided to cut links with Gupta mining firm Oakbay Resources and Energy in March 2016, two days after a newspaper suggested they may have had a hand in President Zuma's sacking of Finance Minister Nhlanhla Nene in December 2015. Sasfin's relationship with Oakbay will formally end on 1 June, a Sasfin spokeswoman said. The decision had not previously been made public.

Oakbay Investments said in a note to the JSE on Tuesday 5 April 2016: "...[t]he termination of Sasfin's services follows a recent decision by Sasfin to align the strategic objectives of Sasfin's Corporate Finance Division more closely with that of the broader Sasfin group."

3.1.4. Absa

During December 2015, Oakbay Investments received a notification of termination of their accounts from Absa Bank. This notification of termination by Absa remained confidential for over three months until, when the other financial services companies made public their similar intentions to terminate their accounts with the company.

4. BANKING ASSOCIATION OF SOUTH AFRICA (BASA)

The banking association on 14 April 2016²⁰ issued a statement that the decisions were "taken separately and independently by some banks to terminate their business relationships with Oakbay Investments", and

current trial by innuendo and slander. We will fully co-operate with the office of the secretary general during the information gathering process".

17 According to a statement released by Oakbay Investments, wherein the company added that it questioned the timing of ABSA making their notice of termination public.

18 Fin 24 April 1 2016.

19 Justin Brown, Dewald Van Rensburg and Susan Comriethe (2016). Gupta ship abandoned. City Press, [online]. 1. Available at: <http://citypress.news24.com/News/gupta-ship-abandoned-20160402>. (Accessed 18 August 2016).

20 Times Live Newspaper - TMG Digital | 14 April, 2016 08:16.

said it was "incumbent on BASA to make the following points in order to stop such speculation":

- Each bank's respective action was taken "with total respect for customer confidentiality and all relevant regulations;
- Banks are one of the most stringently regulated businesses in the country because they hold public deposits in trust and must conduct business in a manner that does not introduce risks into the economy;
- Amongst the array of regulations banks must be governed by are those related to the current Financial Intelligence Centre Act (FICA), impending amendments to this act and anti-money laundering regulations;
- Customers of banks must also follow regulations related to these aspects, and it is incumbent on a bank to ensure its customers do abide by these regulations;
- These regulations make it incumbent on banks to conduct a detailed due diligence on customers, particularly those of a substantive nature and those that are in the public domain. Such due diligence is conducted on an ongoing basis to ensure the bank is aware of any significant changes in the affairs of the customer, particularly to satisfy itself that a customer is abiding by FICA regulations and anti-money laundering regulations;
- A bank will take these matters into account when considering ongoing relationships with customers, and will take appropriate action, based on the circumstances.

BASA managing director Mr. C Coovadia said that the association was moved to issue the statement "to explain, in general terms, regulatory considerations banks would undertake in assessing customer relationships. Each bank will also consider its own business model, risk models and other matters specific to that bank's business in making such decisions".

5. BREEDENKAMP V STANDARD BANK

5.1 Background

This case dealt with the right of a banker to close a customer's account. Mr John Bredenkamp, and his two companies were international commodities traders that required banking facilities in order to conduct business in South Africa. They also required Pound Sterling and US Dollar denominated accounts to make and receive payment for commodities bought and sold internationally. In addition, Mr Bredenkamp required personal banking facilities. Consequently, they opened a number of accounts with Standard Bank of SA Ltd, during 2002. Mr Bredenkamp held a MasterCard credit card, a number of current accounts and two foreign currency accounts. One of his companies held a current account and the other a money market account.

On 8 December 2008, Standard Bank notified Mr Bredenkamp and his companies that it had suspended the credit card facilities and that it intended to withdraw them on 6 January 2009. One of Mr Bredenkamp's current accounts had an overdraft facility attached, and that was likewise suspended and was to be withdrawn on the same date. As far as the other current accounts and the foreign currency accounts were concerned, Standard Bank requested the Mr Bredenkamp and the two companies to make alternative arrangements because these were to be closed on 19 January 2009. At the request of Mr Bredenkamp and his

companies, the Bank gave them extensions from time to time.

Mr Bredenkamp and his companies approached the High Court as a matter of urgency for an interim interdict restraining Standard Bank from cancelling the contracts, which underlie the banking facilities, and from closing the accounts. In the first instance the Court granted the interim interdict. On the return day the Court found that Mr Bredenkamp and his companies had not made out a case for an interdict and discharged the rule and dismissed the application.

Mr Bredenkamp appealed to the Supreme Court of Appeal against the decision.

Standard Bank sought to justify its right to terminate its relationship with Mr Bredenkamp and the two companies on two grounds. The first was that it had the right in terms of an express term of its contracts to close the accounts with reasonable notice. It also relied on an implied term with the same effect, namely that an indefinite contractual relationship may be terminated with reasonable notice. Standard Bank did not initially inform Mr Bredenkamp and the two companies of its reasons for termination.

Mr Bredenkamp and the two companies sought to attack the validity of the implied term and by implication the express term. Apart from a generalized attack on the basis of both being *contra bonos mores*, the constitutional attack was particularized with reference to a breach of rights contained in the Bill of Rights²¹.

5.2 The reasons for termination²²

The Bank disclosed its reasons for termination in its first set of affidavits. The decision came about because of the listing of Bredenkamp and a number of entities owned or controlled by him as 'specially designated nationals' (SDNs) by the US Department of Treasury's Office of Foreign Asset Control (OFAC) on 25 November 2008. OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals. The Bank became aware of the listing on 26 November.

MasterCard, a US company, is not permitted by US law to conduct any business directly or indirectly with any listed person or entity and the Bank, by virtue of its relationship with MasterCard, could not permit an SDN to use a MasterCard. The Bank was, accordingly, obliged to cancel the MasterCard account and Bredenkamp accepted before us that he was not entitled to any relief in relation to this account.

The reason why Bredenkamp was listed by OFAC is because he was said to be a 'crony' of President Mugabe of Zimbabwe and that he had provided financial and logistical support to the 'regime' that has enabled Mugabe 'to pursue policies that seriously undermine democratic processes and institutions in Zimbabwe'. Bredenkamp disputed these allegations. The Bank in turn did not suggest that the grounds for his listing were factually correct or justified and this Court, too, is not called upon to determine whether they are.

21 at para [9] Bredenkamp v Standard Bank viz. 'section 9 (equality); section 10 (human dignity); section 14 (privacy); section 15 (freedom of religion, belief and opinion); section 16 (freedom of expression); section 18 (freedom of association); section 22 (freedom of trade, occupation and profession); section 25 (property); section 32 (access to information); section 33 (just administrative action); [and] section 34 (access to courts).'

22 paragraphs [12]–[19] Bredenkamp v Standard Bank.

An on-line report at the time alerted the Bank to the fact that Bredenkamp was allegedly involved in various business activities, including tobacco trading, grey-market arms trading and trafficking, equity investments, oil distribution and diamond extraction.

Bredenkamp was clearly not an ordinary customer. On one bank form he indicated that his monthly income was R500 000 during 2002. He was reputed to have been one of the 100 richest persons in the UK. He owned residences in several parts of the world. It is accordingly not surprising that the Bank, immediately after the listing (which in itself was evidence of his prominence and wealth), made internal inquiries and discussed his case at the level of senior executives and managers.

The Bank's first concern was that if it were to maintain its relationship with the appellants, 'domestic and foreign onlookers might reasonably believe or suspect that accounts held at Standard Bank would or could be used to facilitate unlawful and/or unethical acts' and its association 'might well undermine a bank's hard-won and fragile national and international reputation'. (My emphasis)

The Bank was also apprehensive of the possibility that any continued relationship with the appellants would create material business risks. Although the Bank itself is not bound to comply with the listing, many financial institutions with which it conducts business internationally are. These financial institutions impose stringent obligations in respect of the correspondent accounts they offer to banks such as the respondent. Any misstep by the Bank concerning a customer who is an SDN could lead to the seizure of funds transferred in bulk on behalf of a number of customers, to a closure of accounts or to an adverse report to OFAC. It follows that it was not only the Bank's reputation that it felt was at risk but that there were also material business risks.

Subsequently, but while the termination was suspended and before the filing of the answering affidavit, the Bank made further inquiries about Bredenkamp and established that, apart from his listing, he had an unenviable and dubious reputation locally and internationally. The allegations included the following: He was a sanctions buster not only of US but also of UN arms embargoes; he smuggled cigarettes and thereby circumvented customs and tax laws; he benefitted from the war in the Congo; he was the subject of serious fraud investigations in the UK and of police raids and tax evasion investigations in South Africa; his Dutch citizenship had been withdrawn; and that he was a 'paymaster of irregular commissions to SA government officials'. Once again, it must be assumed, as the Bank did, that these allegations may not be true: unfortunately, reputation is not necessarily based on fact but often on perception.

To add to Bredenkamp's woes the UK soon followed the US and Bredenkamp was placed on a consolidated list of financial targets in relation to the Zimbabwe 'regime'. The European Union followed suit on 20 February 2009. Bredenkamp has launched review proceedings in relation to the EU listing but there is nothing on the papers to indicate that he has taken any formal steps to set aside the other listings.

The Court found that "the appellants' argument is in many respects circuitous, self-destructive and, in any event, without merit"²³.

For the purposes of this article the, Supreme Court of Appeal made the following findings:²⁴

- "...in terms of the valid agreement the Bank was entitled to terminate without any cause;

- It is difficult to see how someone can insist on opening a banking account with a particular bank and, if there is an account, to insist that the relationship should endure against the will, bona fide formed, of the bank".

- The Court found "it is difficult to see how someone can insist on opening a banking account with a particular bank and, if there is an account, to insist that the relationship should endure against the will, bona fide formed, of the bank.

- The Court also found it difficult to perceive the fairness of imposing on a Bank the obligation to retain a customer simply because other banks are not likely to accept that entity as a customer. The appellants were unable to find a constitutional niche or other public policy consideration justifying their demand. There was, accordingly, in the words of Moseneke DCJ no 'unjustified invasion of a right expressly or otherwise conferred by the highest law in our land'.

- "The Bank's cancellation was not premised on the truth of the allegations underlying the listing; it was based on the fact of the listing and the possible reputational and commercial consequences of the listing for the Bank".

- "The Bank did not seek to rely on the factual accuracy of the reports but on Bredenkamp's reputation itself. Their other complaint was that a bank is not entitled to take moral considerations into account when deciding to close an account. The answer is that the Bank did not make any moral judgment; it made a business decision to protect its reputation".

- "This leaves for consideration the question whether the Bank had (in terms of the relief presently sought) good cause to close the accounts. The Bank had a contract, which is valid, that gave it the right to cancel. It perceived that the listing created reputational and business risks. It assessed those risks at a senior level. It came to a conclusion. It exercised its right of termination in a bona fide manner. It gave the appellants a reasonable time to take their business elsewhere. The termination did not offend any identifiable constitutional value and was not otherwise contrary to any other public policy consideration. The Bank did not publicise the closure or the reasons for its decision. It was the appellants who made these facts public by launching the proceedings and requiring the Bank to disclose the reasons.

- The appellants' response was that, objectively speaking, the Bank's fears about its reputation and business risks were unjustified. I (Deputy President Harms) do not believe it is for a court to assess whether or not a bona fide business decision, which is on the face of it reasonable and rational, was objectively 'wrong' where in the circumstances no public policy considerations are involved. Fairness has two sides. The appellants approach the matter from their point of view only. That, in my view, is wrong".

- The appeal was accordingly dismissed with costs, including the costs of two counsel.

6. CONCLUSION

Taking into consideration the judgment in the Bredenkamp case, one finds it very difficult to see how Oakbay Investments can insist on having a banking account with a particular bank and insist that the

23 Para 56 Bredenkamp v Standard Bank.

24 Para 57-61 *ibid*.

relationship should endure against the will, bona fide formed, made by that bank to terminate the business relationship with Oakbay. Banks sometimes close a customer's account without the customer's agreement. Financial institutions are under no obligation to continue doing business with someone if they do not consider it appropriate to do so. However when financial institutions decide to close accounts of customers, this should not be on based on an improper reason. Reasonable notice was given to Oakbay Investments of the intention to close its account by the banks.

The banks did not inform Oakbay Investments of its reasons for termination. One would assume that in the ordinary course of events the motive of a party in exercising a right - contractual in this case - is irrelevant, a possible exception could be the abuse of rights. It is obvious that the banks reasons for the termination of the business relationship with Oakbay Investments may never be known due to the confidentiality duty which rests upon the banks. However the bank may disclose the reasons for the termination where the duty of confidentiality does not apply under any of the four heads, namely, where disclosure is made under compulsion by law; where there is a duty to the public to disclose; where the interests of the bank require disclosure and, finally, where the disclosure is made by the express or implied consent of the customer.

Commercial organisations, banks and building societies included, are under no obligation to continue doing business with someone if they do not consider it appropriate to do so. However when financial institutions decide to close accounts of customers, this should not be on based on an improper reason - for instance, because of unfair bias or unlawful discrimination. And it is an implied term of the contract

between the bank and its customer that the bank will not normally close the customer's account without giving reasonable notice.

The public may never know the reasons why the banks decided to close the bank accounts of Oakbay Investments due to the duty of confidentiality attached to information gained through the banker-customer relationship and therefore included information gained from sources beyond the customer's account unless any of the four occurrences mentioned above are triggered.

REFERENCES

1. Bredenkamp v Standard Bank [2010] 599/09 (ZASCA) 75.
2. Kearney NO v Standard Bank of South Africa Ltd [1961] 2 SA (T) 647.
3. Standard Bank of SA Ltd v ABSA Bank Ltd and another [1995] 2 SA 740 (T) 746G-747E.
4. Tournier v National Provincial and Union Bank of England [1924] 1 (KB) 461.
5. Banking: when a firm decides to close a customer's account: <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/48banking-closing-accounts.htm>.(Accessed 18 August 16).
6. Justin Brown, Dewald Van Rensburg and Susan Comriethe (2016). Gupta ship abandoned. City Press, [online], 1. Available at: <http://city-press.news24.com/News/gupta-ship-abandoned-20160402>.(Accessed 18 August 2016).
7. Goode, R. (1989), Banker's Duty of Confidentiality, *Journal of Business Law* 269 at 270.
8. Stokes, R. (2011), The Genesis of Banking Confidentiality, *The Journal of Legal History*, Vol.32 (3), 279-294.