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Case summary: Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd and another appeal [2024] SGCA 31

Summary

In this recent Court of Appeal decision of *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd and another appeal*¹ [2024] SGCA 31, the Singapore Court of Appeal held that where documents are presented for payment to a financial institution, the Fraud Exception will be made out where a beneficiary makes a false representation of material fact, without belief in its truth, or is reckless in the sense that there is no belief as to the truth of the representation.

This decision has clarified that the same threshold would apply regardless of the financial instrument i.e. whether the obligation to make payment arose out of a letter of credit transaction, performance bonds or on-demand guarantees etc, the same test will be applied.

Another key takeaway from this decision is that, for the purposes of deciding on whether the Fraud Exception should be invoked, the Singapore Courts will examine a party's response to "red flags" that have arisen in the course of the transaction to determine if the party has made the false representations fraudulently.

Background

The case concerned a dispute over letters of credit between Winson Oil Trading Pte Ltd ("**Winson**") and

two banks: Oversea-Chinese Banking Corp Ltd ("**OCBC**") and Standard Chartered Bank (Singapore) Limited ("**SCB**") (collectively, the "**Banks**").

Winson brought claims in respect of two letters of credit ("**LCs**") issued by the respective Banks which they had subsequently refused to pay under. The LCs were issued to Winson on the application of Hin Leong Trading (Pte) Ltd for the financing of the sale of gasoil by Winson to Hin Leong. The sale of gasoil took place through a circular trade, where Hin Leong sold two shipments of gasoil to a third party, who then sold the same quantity of gasoil to Winson, who sold it back to Hin Leong.

Winson presented the LCs to the Banks under two letters of indemnity ("**LOIs**"), one to OCBC and one to SCB, for the cargo shipped on board the vessels Ocean Voyager and Ocean Taipan respectively. However, the Banks refused to pay under the LCs, contending that no cargo of gasoil pursuant to the LOIs were shipped for the Winson – Hin Leong Sale, and that the non-negotiable bills of lading (the "**BLs**") which evidenced the shipments and were relied upon in preparing the LOIs, were forgeries.

The High Court dismissed Winson's claim against the Banks on the basis that the Fraud Exception had been made out i.e. that false representations were made by Winson in the LOIs that there was cargo shipped pursuant to valid BLs, and that Winson had acted fraudulently because it did not have belief in the truth of its representations by the time of the second presentation, or at the very least, was indifferent as to whether its representations were true.

¹ "As there were two banks sued by Winson, there were therefore two civil suits commenced. The "another appeal" refers to the appeal against the High Court decision involving Standard

Chartered Bank (Singapore) Limited, of which we have covered in this issue."

Winson appealed against the High Court's dismissal of its claim. Winson proceeded on the basis that the evidence showed that it did not know that the representations were false, and it did not make the representations recklessly.

The Singapore Court of Appeal's Decision

In determining the proper formulation of the Fraud Exception for LCs, the Court of Appeal held that subjective recklessness could engage the Fraud Exception since there would be an actual indifference to the risk of which the beneficiary of the LC was actually conscious of. Recklessness would thus fall under the second limb of the longstanding common law rule in *Derry v Peek* of which the test for fraud was that there has to be a false representation made (a) knowingly, or (b) without belief in its truth, or (c) recklessly, careless whether it be true or false.

On the question of whether Winson had made the LCs fraudulently, the Judge identified multiple "red flags" which had arisen in the course of the circular trade involving the Winson – Hin Leong Sale up until Winson's second presentation. The Court of Appeal agreed with the High Court Judge that these "red flags" and Winson's responses thereto showed that Winson was reckless and did not honestly believe in the truth of its representations.

The Court of Appeal clarified that the findings were not made on the basis that Winson had any duty to carry out investigations. The point made was that Winson's reaction to the "red flags" reflected an undeniable reflection of their indifference, which led to the finding that the Fraud Exception was successfully invoked against Winson. Winson thus could not compel the Banks to pay under the LCs.

Comment

The Court of Appeal clarified that the Fraud Exception in relation to an issuer's obligation to pay under a Letter of Credit does not bear a higher threshold than the standard applicable to other financial instruments.

This case also highlights the importance of responding correctly to any "red flags" or circumstances that might put a party to a financing transaction on notice. A failure to respond appropriately to such circumstances would be held against the party in the context of the invocation of the Fraud Exception. This brings some measure of assurance to banks, and signals to beneficiaries of financial instruments that one cannot pretend to be unaware of "red flags" which will be uncovered by the Court.

The Court of Appeal was of the view that there was no basis of principle, precedent or policy to decide on a different standard of fraud for the Fraud Exception in contrast to independent guarantees. In particular, the Court of Appeal was mindful of keeping the balance between not facilitating fraud and ensuring confidence in the operation of letters of credit, and was of the view that its ruling on recklessness would not lead to dire policy consequences concerning international trade in Singapore.

As such, parties to financing transactions should not underestimate the level of scrutiny by the Singapore Courts of the underlying arrangements and surrounding circumstances in deciding on the validity of such financial transactions.

Please click [here](#) for a copy of the full judgement.

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