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WHAT HAPPENS IF AN ISSUING BANK REFUSES TO PAY UNDER A LETTER OF CREDIT? THE ENGLISH COURT CLARIFIES THE OPERATION OF LETTERS OF CREDIT AS A CONDITIONAL PAYMENT MECHANISM

OVERVIEW

In *Moeve Trading SAU v Mael Trading FZ LLC*,¹ the English High Court (the “Court”) confirmed that in commodity sale contracts, a letter of credit (“LC”) typically functions as conditional payment rather than absolute payment, unless the contract expressly states otherwise. This distinction is significant; if a buyer takes delivery of the goods and the issuing bank fails to pay under the LC, a seller would naturally seek to recover the debt, having parted with the goods but received no payment. When an LC is a conditional payment mechanism, the buyer’s obligation to pay for the goods remains after it arranges for the issuance of the LC. Therefore, a seller can claim in debt or for the price of the goods under section 49(1) of the Sale of Goods Act 1979 (“section 49(1)”), or if that is unavailable, seek damages for non-acceptance. On the other hand, if the contract provides that the LC constitutes absolute payment, the buyer’s obligation to pay for the goods discharges once the LC is issued.

This means the seller’s only recourse is against the buyer’s bank, not the buyer. The Court’s consideration on the LC as a conditional payment mechanism is the focus of this article.

BACKGROUND

The dispute arose out of a sale contract dated 4 April 2024, under which Moeve Trading SAU (the “Seller”) agreed to sell, and Mael Trading FZ LLC (the “Buyer”) agreed to buy 9,000-9,500 metric tons of gasoline and 5,000 metric tons plus 5% of gasoil, both quantities in the Buyer’s option (the “Cargo”) on FOB terms, with title to the Cargo passing to the Buyer on shipment (the “Contract”). US\$13,031,741.54 (the “Purchase Price”) was due to the Seller sixty days after the dates of the bills of lading, by means of LC in favour of the Seller.

The Contract incorporated Cepsa Trading 2021 General Terms and Conditions (the “GTCs”).

¹ *Moeve Trading SAU v Mael Trading FZ LLC* [2026] EWHC 17 (Comm)



The GTCs provided that "unless otherwise agreed to by the Seller and the Buyer in the Sales Contract, payment shall be made by means of an irrevocable Documentary Letter of Credit..." and that payment was to be made against bills of lading, amongst other documents, thereby granting the Seller security over the Cargo.

FACTS

1. On 21 June 2024, the Seller's bank confirmed that the Bank of Africa United Kingdom plc (the "**Buyer's Bank**") issued two LCs in favour of the Seller.
2. On 12 July 2024, the Cargo was shipped and the bills of lading were issued to the order of the Seller (the "**Bills of Lading**"), meaning the Purchase Price fell due on 10 September 2024.
3. A week later, the vessel tendered a notice of readiness at the discharge port in Sierra Leone. Despite the Seller possessing the Bills of Lading, the Cargo was partially discharged and received by or to the order of the Buyer, pursuant to a letter of indemnity issued by the shipowner. As a result, the Buyer acquired title to this portion of the Cargo.
4. In autumn 2024, the Seller presented documents for payment under the LCs. The Buyer's Bank refused to pay under the LCs. The reason for the non-payment is unknown, and the question of whether the Buyer's Bank was entitled to refuse to pay under the LCs was not an issue before the Court. At the time of hearing, the Seller had not received the Purchase Price.

THE PARTIES' POSITIONS

Since title to the Cargo had passed to the Buyer without the Seller receiving payment, the Seller claimed the Purchase Price pursuant to section 49(1), and applied for a summary judgment on the basis that there is no real prospect of the Buyer's defence succeeding.² Section 49(1) provides that:

"Where, under a contract of sale, the property in the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods."

The Buyer resisted the Seller's claim on two grounds:

1. The Buyer's obligation to pay the Purchase Price was discharged by arranging for the issue of the LCs - either absolutely or conditionally. If absolute, the Seller's sole recourse would be against the Buyer's Bank; if conditional, the Seller must first seek payment from the Buyer's Bank, and may only pursue the Buyer if their bank fails to pay.
2. The Buyer is not required to pay the Purchase Price until the Seller has provided the necessary shipping documents, including the Bills of Lading.

THE COURT'S DECISION

Peter MacDonald Eggers KC (sitting as a Deputy High Court Judge) noted there are two requirements for a successful claim under section 49(1): (1) property in the goods has passed to the buyer; and (2) the buyer has wrongfully failed to pay in accordance with the terms of the contract of sale.³ The parties agreed that title to the Cargo had passed to the Buyer, so whether the Seller could claim the price as a debt under section 49(1) hinged on the interpretation of the Buyer's payment obligations under the Contract.

The judgment confirms that LCs normally operate as conditional payment, unless the contract expressly or implicitly provides otherwise.⁴ Where an LC operates as absolute payment, a buyer's obligation to pay the purchase price is discharged once the requisite LC is issued. This makes the LC the exclusive source of payment, and limits the seller's claim to one only against the buyer's bank, even if title had passed to the buyer and the bank's failure to pay against the LC was not caused by the seller. The Court provided helpful guidance on a seller's recourse where an LC operates as conditional payment, which is summarised below:⁵

² See CPR rule 24.3 and [51] of the judgment, where Peter MacDonald Eggers KC explains the principles of the disposal of a summary judgment application.

³ See [96] of the judgment.

⁴ See: *Newman Industries Ltd v Indo-British Industries Ltd* [1956] 2 Lloyd's Rep 219, 236

⁵ See [102] of the judgment.



Situation	The issuing bank's failure or refusal to pay <u>is</u> the seller's fault or responsibility ⁶	The issuing bank's failure or refusal to pay <u>is not</u> the seller's fault or responsibility
The buyer accepts the documents and goods and title has passed	A seller can claim the price from the buyer. ⁷	A seller can claim the price from the buyer. ⁸
The buyer rejects the documents and goods and title has not passed	A seller has no recourse against the buyer for the price. ⁹	A seller can claim the price from the buyer or damages for non-acceptance. ¹⁰

Applying the above principles, the Court held that the Buyer had no real prospect of defending the claim for Purchase Price under section 49(1), and ordered summary judgment in the Seller's favour.

COMMENT

Of course, a seller's primary recourse for payment in international commodity contracts is usually through a documentary LC and this decision may be of little comfort to the seller if the buyer was insolvent. Although care does need to be taken when drafting the means of payment under such contracts, this judgment affirms that, unless the contract expressly provides otherwise, an LC is a conditional payment mechanism; if the LC fails to respond and title to the commodity passes, a seller may pursue a claim against the buyer in debt for the price under section 49(1), or, if unavailable, in damages for non-acceptance.

A seller must ensure the contract terms and the LC are consistent with the LC being conditional payment only. Sellers will also be pleased to hear that the tender of documents under an LC does not require their physical transfer. If a seller is bringing action under section 49(1), it is sufficient for the seller to be ready, willing and able to transfer the required documents.

The full judgment can be found [here](#).

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⁶ For example, if the seller does not present the documents in time or fails to present compliant documents

⁷ See [102(6)] of the judgment.

⁸ See [102(6)] of the judgment. See also: *Newman Industries*, 236

⁹ See [102(5)] of the judgment.

¹⁰ See [102(4)] of the judgment.