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Banque de Commerce et de Placements SA, DIFC Branch & Anor v China Aviation Oil (Singapore) Corporation Ltd [2024] SGHC 145

This case is one instalment of various legal disputes that arose out of the collapse of the Singapore commodities trader, ZenRock Commodities Trading Pte Ltd ("**ZenRock**"), and is yet another example of how financing banks are seeking recovery of or resisting payment under letters of credit on the basis that the underlying contracts are fraudulent.

The key allegation asserted by the plaintiffs, collectively Banque De Commerce Et De Placements SA ("**BCP**"), was that the defendant, China Aviation Oil (Singapore) Corporation Ltd ("**CAO**"), was involved in a sham or fraudulent contract with ZenRock. On that basis, BCP sought to recover the monies paid out to CAO under the letter of credit.

In June 2024, the Singapore Court ruled that the sale contract between CAO and ZenRock was a legitimate one, despite no physical cargo passing from CAO to ZenRock and the other parties in the chain transaction as BCP failed to prove its allegations of fraud, negligent misrepresentation, unjust enrichment and conspiracy.

Background

The dispute arose from a letter of credit issued by BCP (and confirmed by UBS Switzerland AG ("**UBS**")) for ZenRock to purchase a cargo from CAO. The letter of credit named CAO as a beneficiary. Subsequently, CAO presented a letter of indemnity and an invoice to UBS. UBS paid CAO pursuant to the letter of credit, and BCP reimbursed UBS for the same. In the proceedings, BCP sought to recover the monies paid to CAO on various grounds (namely, fraudulent or negligent misrepresentation, breach of contract, unjust enrichment or unlawful means conspiracy) (the "**Main Proceedings**").

CAO resisted BCP's claim in the Main Proceedings, simultaneously bringing third party proceedings ("**3PP**") against Shandong Energy International (Singapore) Pte Ltd ("**SEIS**"), who in turn brought fourth party proceedings ("**4PP**") against Golden Base Energy Pte Ltd ("**GBE**"). These additional parties were parties to the chain of the transactions involving the alleged cargo.

Parties' Arguments

BCP argued that the contract between ZenRock and CAO was a sham and/or a fraudulent transaction. BCP asserted that CAO did not sell any physical cargo to ZenRock. BCP also asserted that the other parties to the chain of transactions (i.e., SEIS and GBE) also did not sell or deal with the physical cargo. BCP relied on expert evidence and interim judicial managers' reports to support its claim that the transactions were fictitious and involved double financing. BCP also asserted various causes of action against CAO, including under the fraud exception, deceit, negligent misrepresentation, breach of contract, unjust enrichment, and unlawful means conspiracy.

In response, CAO denied entering into a sham/fraudulent transaction with ZenRock. It took the position that the transactions formed a single chain, which it had entered into the same for legitimate commercial reasons (although it had not known at the point in time that the transaction engineered by ZenRock was a circular one – i.e., with ZenRock being both the ultimate buyer and seller). Therefore, CAO denied any liability under the various causes of action. Procedurally, CAO also raised a threshold issue as to whether BCP Dubai (the 1st Plaintiff) had standing to sue CAO in the Main Proceedings.

GBE supported CAO's position on the merits, emphasizing the legitimacy of circular trades and questioning BCP's reliance on the interim judicial

managers' reports. SEIS did not take an active part in the proceedings.

The Singapore Court's Decision

On the threshold issue, the Singapore Court agreed that BCP Dubai did not have legal standing to sue CAO, as it had transitioned to a representative office (and was no longer a branch of BCP). BCP Dubai failed to demonstrate how the common law principle of treating branches of a bank as emanations of a bank should be extended to cover a representative office of the bank.

On the merits of the case, the Singapore Court dismissed BCP's assertion that a circular trade is automatically a sham or fraudulent transaction. The Court noted earlier decisions recognising the legitimacy of such trades, and accepted evidence tendered by CAO as to why a trader may choose to design and enter into such trades.

The Court considered evidence of CAO's risk management measures, conduct of personnel, and appointment of Inspectorate. The Court also accepted CAO's explanations that documentation relating to the trade may sometimes not be available due to issues on the ground and/ or as a matter of practice. Accordingly, BCP's assertion that the absence of such key documentation indicated a lack of intention to enter into genuine contracts was rejected.

The Singapore Court also held that BCP was not able to rely on the fraud exception as it had failed to plead the same and had, in any case, failed to satisfy the elements of the exception.

BCP similarly failed to persuade the Court in relation to its claims for deceit, negligent misrepresentation and unjust enrichment. It was held, importantly, that CAO could not be liable for breach of contract when there was no substantive contract between BCP and CAO.

Finally, BCP's claim for unlawful means conspiracy was dismissed as CAO was not party to a conspiracy.

The 3PP and 4PP claims were contingent on BCP's success in the Main Proceedings. Accordingly, they were also dismissed.

Comment

The Singapore Court's decision illustrates the fact intensive inquiry involved in resolving such disputes, particularly where fraud is alleged. Any such

allegation will require a party that asserts the validity or authenticity of a transaction to tender significant evidence. On occasion, documentary evidence may not be available, in which case, that party will likely need to submit witness evidence addressing the commercial and practical considerations behind the transaction.

The decision reaffirms earlier local decisions acknowledging the validity and legitimacy of circular trades even if physical delivery of goods was not contemplated (in contrast with those where no trading was contemplated at all). If a party enters into such a trade by design, then it should keep a record as to the commercial reasons for doing so (for example, relating to profits to be gained on arbitrage or brokerage fees).

Finally, the Singapore Court concluded that Article 3 of UCP 600 (which may be incorporated into a letter of credit) does not create an exception to the common law principle that branches of a bank are considered as separate banks from each other and from the main office¹. This is particularly relevant to banks when considering the management of risk. To date, this position has only been considered in 2 trial cases before the Singapore Courts, and has not yet been confirmed at the appellate level.

The full judgment is available [here](#).

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We hope that you find this update both useful and interesting. If you have any comments or would like to learn more about this topic, please get in touch with either your usual SH contact or any member of our commodities team by clicking [here](#).

¹ This principle was also considered in *Sinopec International (Singapore) Pte Ltd v Bank of Communications Co Ltd* [2024] 3 SLR 476, although there was no express reference in this case.