



8 April 2025

COMMODITIES IN FOCUS WEEKLY - ISSUE 122

MARKETLEND PTY LTD AND ANOTHER V QBE INSURANCE (SINGAPORE) PTE LTD [2025] SGHC(I) 1 - KEY LESSONS FOR TRADE CREDIT INSURERS AND TRADE FINANCE PARTICIPANTS

The decision in the case between Marketlend Pty Ltd ("**Marketlend**") and another vs QBE Insurance (Singapore) Pte Ltd ("**QBE**") made by the Singapore International Commercial Court (the "**Court**") provides key lessons to trade credit insurers and trade finance participants.

BACKGROUND

In this case, the claimants sought to recover a total sum of more than USD9million under a trade credit insurance policy (the "**Policy**") issued by the defendant, QBE, to the original insured party, Novita Trading Limited ("**Novita**"), pursuant to which QBE agreed to indemnify Novita against certain losses arising out of its sale and shipment of goods with certain buyers approved by QBE.

The claims were brought by the first claimant, Marketlend, an online platform which provided facilities to Novita for certain trades in 2019 (the "**Facilities**"), and the second claimant, Australian Executor Trustees Limited ("**AETL**"), which funded the Facilities.¹ As part of the arrangement of the Facilities, amongst other things:

- (1) a power of attorney was granted by Novita to Marketlend pursuant to which Marketlend and each receiver may exercise the powers granted to it thereunder **in the name of Novita or in the name of Marketlend and each receiver** (emphasis added) (the "**POA**");
- (2) the Policy was assigned by Novita to Marketlend; and
- (3) AETL was included as a joint insured under the Policy by way of a banker's endorsement issued by QBE.

¹ The claims were originally brought in the name of Marketlend alone pursuant to the POA (as defined below). After QBE objected to Marketlend's standing to bring a claim under the Policy (see further below), Marketlend made an application to join AETL as a co-claimant and the Court ordered AETL to be added as a co-claimant.

In total, the claimants brought eight separate claims (the "**Claims**") in respect of eight purported trades between Novita as seller and various buyers (the "**Trades**"). It was the claimants' contention that there had been a relevant insured event giving rise to an "insured debt" under the Policy (being (1) the issuance of a winding up order in respect of one of the buyers for one of the Claims and (2) the failures of each of the remaining buyers to pay the relevant amount due under the respective Trade within the relevant "default period" under the Policy for the rest of the Claims).

QBE denied liabilities for all Claims on the basis of various defences:

- (1) Marketlend had no standing to claim under the Policy and/or Novita was in breach of the assignment language under the Policy, whereby "[Novita] shall not assign any rights or benefits under this Policy unless [QBE]'s prior written consent to the assignee and the form of assignment has been obtained. Any assignment made or purported to be made by [Novita] without such consent will entitle [QBE] to avoid liability under this Policy." (the "**Assignment Clause**");
 - (2) QBE was entitled to avoid and had validly avoided the Policy on grounds of (a) material nondisclosures/misrepresentation; (b) assignment of the Policy without QBE's prior written consent; and/or (c) pursuit of claims known to be false or fraudulent;
 - (3) certain conditions precedent for QBE's liability under the Policy had not been satisfied; and
 - (4) the claimants could not prove the existence of an "insured debt" under the Policy.
- (1) although Marketlend had standing to claim under the Policy in its own name pursuant to the POA, it was clear that the assignment of the Policy in favour of Marketlend was made without the requisite prior written consent from QBE. The breach of the Assignment Clause entitled QBE to avoid liability under the Policy as against Marketlend and AETL, which was fatal to the claimants' case;
 - (2) even if the Court's decision on the Assignment Clause was incorrect, Novita or Marketlend on its behalf failed to provide QBE with documentation and information QBE reasonably required to investigate and assess the validity of the Claims.² In particular, the Court decided that a significant part of the documentation or information QBE requested³ was reasonably necessary if not essential to enable QBE to carry out that exercise. The failure to provide such documentation and information constituted a breach of condition precedent for QBE to assume liabilities under the Policy;
 - (3) once again, even if the Court's decision above was incorrect, the Policy only covered "genuine physical trades" which, on a plain reading, required actual physical sales and shipments of goods by Novita to its insured buyers (as opposed to fictitious or "paper" trades), and the claimants had failed to demonstrate on the balance of probabilities that the Trades were "genuine physical trades". Having considered the evidence put forward to the Court, the Court went as far as finding two of the Trades to be fictitious;
 - (4) apart from the above, Novita also breached its duty to disclose all material facts and information that it knew and that a reasonable person in the circumstances could be expected to know which would be relevant to QBE's decision on whether to issue a policy and, if so, on what terms; and

DECISION BY THE COURT

On 8 January 2025, the Court decided in favour of QBE that all Claims should be rejected and dismissed, based on the following:

² The documentation and information requested by QBE were categorised into two groups: documentation and information relating to (a) Novita's inward purchases in which Novita acted as the buyer (i.e. upstream materials) and (b) Novita's outward sales in which Novita acted as seller (i.e. downstream materials) respectively.

³ While the Court was prepared to assume in favour of the claimants that there was no breach in failing to provide the upstream materials, the Court decided that there was an obligation for the claimants to provide the downstream materials to QBE.

- (5) it follows that the failure to disclose that the one or more of the Trades were fictitious and the failure to disclose all material facts and information regarding the relevant buyers and the relevant contracts (a) constituted breaches of conditions precedent of the Policy which would forfeit the right to make any claim under the Policy and (b) entitled QBE to avoid its liabilities under the Policy.

OBSERVATIONS

While the Policy was governed by Singapore law, the Court's decision provides key lessons to trade credit insurers and trade finance participants on various globally applicable issues.

First, trade credit insurers should ensure that the terms of its trade credit policies clearly specify the circumstances which would entitle them to avoid their liabilities under the Policy. Meanwhile, where policy terms are widely drafted (e.g. disclosure clauses), trade credit insurers should be aware that courts may be prepared to construe these terms in favour of the insured. For example, insurers must be prepared to demonstrate that, in handling claims, the documentation and information request are reasonably necessary to assess the validity of the claims.

Second, businesses should ensure that they:

- (1) take out appropriate trade credit insurance policies, taking into account their business models (e.g. whether the businesses engage in physical trades or paper trades where different insurance policies may be appropriate); and
- (2) have disclosed to insurers all material facts and information which may be relevant to the insurers' decision on whether to issue the policies and, if so, the relevant terms, when they apply for the policies.

Third, traditional banks, financial institutions as well as other financiers (e.g. online platforms and fintech companies) who rely on trade credit insurance policies to cover their credit risks in various financing products, must carefully examine the terms of the relevant trade credit insurance policies to ensure that:

- (1) the insured businesses have indeed taken out appropriate trade credit insurance policies taking account into their business models (see above); and
- (2) they can enjoy the benefits of the policies as intended (be it via (a) becoming an assignee of the policies or the rights to claim the policies, (b) becoming a co-insured or loss payee of the policies through insurers' endorsements or (c) otherwise as permitted by the policies).

More importantly, financiers should take steps to ensure that:

- (1) the insured businesses have complied and continue to comply with the terms of the trade credit insurance policies taken out before the inception of the policies and throughout the life of the policies respectively;
- (2) they have independently conducted due diligence on (a) the buyers of the goods being sold by the insured businesses and (b) the trades between the buyers and the insured businesses and have monitoring mechanisms in place to satisfy themselves that the trades are in fact at arm's length and legitimate, both before committing to finance the insured businesses and while any financing remains outstanding; and
- (3) provisions have been made to allow them to submit claims to insurers independently and to submit documentation and information requested by insurers to advance their claims under the insurance policies, in case the insured businesses become uncooperative in future.

We hope that you find this update both useful and interesting. Our team has ample experience in assisting financiers to make successful claims under trade credit insurance policies and assisting trade credit insurers in the drafting and interpretation of their insurance policies. 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](#).

CONTACT US



ANNA KWONG

Partner

+ 852 2533 2854

anna.kwong

@stephensonharwood.com



ANTHONY WONG

Associate

+ 852 2533 2832

anthony.wong

@stephensonharwood.com