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Commercial Context Trumps Literal Wording: Singapore Court of Appeal's Decision in BCP v China Aviation Oil

1. It is not uncommon to provide trade financing under letters of credit in gasoil circular trades in which a single cargo is shipped, sold and re-sold through a chain of different contracts, often involving different parties.
2. While such letters have typically been treated as being autonomous of the underlying transaction (by virtue of what is commonly known as the principle of autonomy of letters of credit), the Singapore Court of Appeal's recent decision in *Banque de Commerce et de Placements SA, DIFC Branch and another v China Aviation Oil (Singapore) Corp Ltd* [2025] SGCA 33 (the "Appeal") is a cautionary reminder that the underlying transactional context cannot be overlooked when assessing the risk of recovery. Our [Siraj Omar, SC](#), [Larisa Cheng](#) and [Fitzgerald Hendroff](#) had the privilege of being instructed as counsel for the Appellant in the Appeal.

THE BACKGROUND

3. The facts of the dispute are typical of complex circular trade arrangements. Zenrock Commodities, a Singapore-incorporated entity, arranged for a single cargo of 260,000 barrels of gasoil (the "Cargo") to be sold through a chain of contracts in which title to the Cargo would pass instantaneously and sequentially through the following transactions : (1) Zenrock to Golden Base Energy Pte Ltd ("Golden Base"); (2) from Golden Base to Shandong Energy International (Singapore) Pte Ltd ("Shandong"); (3) from Shandong to China Aviation Oil (Singapore) Corp Ltd ("CAO"); and (4) from CAO back to Zenrock.

4. Zenrock had obtained trade financing from Banque de Commerce et de Placements SA (“BCP”) to finance Zenrock’s purchase of the Cargo from CAO – i.e., transaction (4), above. The trade financing arrangement involved:
 - (a) confirmed Letter of Credit issued to CAO (the “LC”), which provided for payment under the LC on presentation of a compliant letter of indemnity “*...in the event that [the] original/[bills of lading] and/or shipping documents ...are not available at the time of presentation.*”
 - (b) the form of the relevant letter of indemnity (the “LOI”) to be used, which required CAO to represent among other things that “*IN CONSIDERATION OF YOUR MAKING FULL PAYMENT [under the LC] ... WE HEREBY REPRESENT AND WARRANT THE EXISTENCE, AUTHENTICITY AND VALIDITY OF THE DOCUMENTS...*” (the “Representation”).
5. Having disbursed payment under the LC after CAO presented the LOI, BCP learnt that at the time the LOI was presented, no bills of lading had been endorsed by Zenrock in favour of CAO. Instead, CAO had in its possession non-negotiable bills of lading endorsed to the order of Natixis, Singapore. BCP subsequently discovered that Zenrock had on-sold the cargo to a third party, Petrolimex Singapore Pte Ltd (“Petrolimex”).
6. BCP sued CAO in the High Court to recover the sums paid under the LC, alleging fraud, negligent misrepresentation, breach of contract, unjust enrichment and unlawful means conspiracy. All these claims were rejected at first instance by the High Court, which also found that the circular trade was not a sham arrangement and that the Cargo existed.
7. In its appeal to the Singapore Court of Appeal, BCP limited its claim to the tort of deceit, alleging that CAO fraudulently made the Representation to BCP when it knew that no bills of lading endorsed in favour of CAO existed at the time the LOI was presented.
8. In a closely reasoned decision dismissing BCP’s appeal, the Court of Appeal has clarified the contours of a lender’s recourse against the beneficiary under a letter of credit which finances circular trades.

THE CONSTRUCTION OF THE REPRESENTATION

9. Central to parties' dispute was the true construction of the Representation. CAO and BCP took opposing views of what the Representation meant:
 - (a) CAO advanced a purposive interpretation and argued that the Representation spoke only to the existence, validity and authenticity of the bills of lading in their unendorsed form. There was then the additional warranty that the bills of lading would be endorsed to the order of BCP Dubai in due course, after they were received from CAO's seller (i.e, Shandong);
 - (b) BCP advanced a literal interpretation of the Representation, and argued that the Representation should be construed literally, i.e., that CAO had represented the actual existence, authenticity and validity of the endorsed bills of lading.
10. The Court of Appeal preferred a purposive interpretation over a literal reading of the Representation and affirmed the centrality of the commercial context in determining the meaning of terms. Thus, "*it will always be open to the court to take into account the context of the underlying transaction to arrive at the proper interpretation of a representation that was made in the course of the transaction*".¹ Perhaps more controversially, the Court also considered that it was also relevant to consider "*CAO's own commercial purpose in presenting the CAO LOI*",² leaving open the possibility that subjective, uncommunicated intentions by beneficiaries may be used to construe the meaning of words in payment documents.
11. Crucially, the Court observed that while BCP was not aware of the identity of all parties in the chain of contracts, BCP was nonetheless aware that in the circular trade's chain of contracts, the bill of lading over the cargo would be endorsed down the chain of parties as and when the bills came to each party's possession,³ and that parties in the chain could take delivery of the cargo even without having been provided with the endorsed bills of lading.⁴ In these circumstances, the time at which the bill of lading was endorsed to BCP was not

¹ Appeal at [72].

² Appeal at [69].

³ Appeal at [86].

⁴ Appeal at [75].

material,⁵ so that the Representation in context meant that CAO would endorse the bills of lading to BCP at some future date after it came into possession of the bills of lading.

12. The Court also rejected two arguments by BCP, which the Court considered were nonetheless *'interesting'*⁶ and *'creative but ultimately misguided'*,⁷ respectively:

(a) BCP argued that CAO could have given documentary instructions to endorse the bills of lading up the chain of contracts, so that it was possible for CAO to have arranged that bills endorsed in CAO's favour in fact existed at the time CAO made the Representation in the LOI. This commercial practice had been referred to in the High Court decision of *The Maersk Katalin* [2025] SGHC 282. However, the Court considered that this possibility was theoretical, and absent any contractual requirement for CAO to do so, the Court was not prepared to accept that this practice would have been reasonably expected by the parties.

(b) BCP also argued that the presentation of the LOI did not itself imply that the required shipping documents, such as the endorsed bills of lading, were unavailable. Instead, relying on the English case of *Trafigura Beheer BV v Kookmin Bank Co* [2005] EWHC 2350 (Comm), CAO could have relied on the letter of indemnity if it was in possession of endorsed but otherwise non-conforming bills of lading. However, the Court rejected this argument because BCP would have nonetheless suffered the same loss by remaining unable to control delivery of the cargo prior to making payment under the LC.⁸

13. The outcome of the Appeal is a timely caution that financing banks under letters of credit cannot always rely on a literal view of the words in letters of credit and documents presented for payment. While it is well established that banks deal with documents and that letters of credit are autonomous to the underlying transactions they finance, the Appeal suggests a greater willingness by the Courts to consider the context of the underlying transactions to construe the meaning of written terms.

⁵ Appeal at [75] and [85].

⁶ Appeal at [76].

⁷ Appeal at [88].

⁸ Appeal at [81].

14. The repercussions of this Appeal and its emphasis on the importance of commercial context remains to be seen. Banks may consider introducing even clearer and unambiguous language into standard form letters of credit and letters of indemnity. In addition, banks may also wish to undertake greater diligence to ensure that the broader structure of transactions are more fully disclosed before letters of credit are issued.

ISSUING BANKS' RELIANCE ON REPRESENTATIONS

15. At the same time, the Appeal brings much needed clarity on the position of issuing banks in confirmed letters of credit.
16. Substantial confusion may have been engendered by two apparently inconsistent prior decisions of the Court of Appeal. In *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corporation Ltd and another appeal* [2024] 1 SLR 1054, the Court of Appeal endorsed the conventional view that banks may rely on, and sue to recover losses from misrepresentations made in letters of indemnity presented for payment under letters of credit.
17. However, language in the Court of Appeal's decision in *UniCredit Bank AG v Glencore Singapore Pte Ltd* [2023] 2 SLR 587 ("*Unicredit*") suggested that misstatements in a letter of indemnity which are addressed only to the trading counterparty but which are presented to a bank for payment under a letter of indemnity would not be actionable by the bank.
18. The Court clarified that *Unicredit* should be read on its facts as a case in which the elements of deceit were not proved. On its facts, the representations made in *Unicredit's* letter of indemnity were true and not fraudulent. Importantly, the Court of Appeal observed that *Unicredit* did not establish a general principle that representations cannot be made to an issuing bank merely because the presented documents are not addressed to it.

CONCLUSION

19. The outcome of this case underscores the risk of accepting letters of indemnity in lieu of original shipping documents to facilitate payment in letter of credit transactions, even in

ostensibly self-liquidating deals. Lenders should understand the underlying risks before they agree to extend credit on such terms.