

Case Update

30 August 2024

Winson Oil Trading Pte Ltd v Overseas-Chinese Banking Corp Ltd and another appeal [2024] SGCA 31

Introduction

In its recent decision in *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] SGCA 31, the Singapore Court of Appeal (“**CA**”) clarified a key principle of the fraud exception to the payment obligation under letters of credit (the “**Fraud Exception**”).

In particular, the CA confirmed that the common law definition of fraud as enunciated in *Derry v Peek* (1889) 14 App Case 337 (“**Derry v Peek**”) and which extends to recklessness in making a false representation applies in considering if a presentation under a letter of credit falls within the Fraud Exception.

Decision below

The appellant in both appeals was Winson Oil Trading Pte Ltd (“**Winson**”), a Singapore energy trading company involved in oil trading, bunkering, and supply chain services. There were two respondents involved, Oversea-Chinese Banking Corporation Limited (“**OCBC**”) and Standard Chartered Bank (Singapore) Limited (“**SCB**”).

The disputes centered around the last leg of a circular trade which involved the purported sales of two shipments of gasoil from the beleaguered Hin Leong Trading (Pte) Ltd (“**Hin Leong**”) to Trafigura Pte Ltd (“**Trafigura**”), from Trafigura to Winson, and finally from Winson back to Hin Leong, all of which took place on a single afternoon on 27 March 2020 (the “**Subject Transactions**”).

Both OCBC and SCB had refused to pay under the letters of credit (“**LCs**”) issued by them in favour of Winson which was the agreed means for Hin Leong to pay for the cargo of gasoil purportedly purchased from Winson upon Winson’s presentation of commercial invoices and letters of indemnity (“**LOIs**”) to the banks.

In the High Court, both OCBC and SCB had successfully resisted Winson’s suit against them for non-payment under the LCs by relying on the Fraud Exception. In particular the banks had contended that no cargo of gasoil had ever been shipped pursuant to the Subject Transactions and further, that the copy non-negotiable bills of lading that purportedly showed such shipments were forgeries. Accordingly, the banks also contended that the LOIs that Winson had

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presented for payment under the LCs were nullities as these had been prepared by relying on the forged copy BLs.

In the High Court decision (*Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd and another suit* [2023] SGHC 220), Andre Maniam J (the “**Judge**”) had found that:

- (a) The representations in the LOIs that there had been cargo shipped pursuant to valid BLs were false as not only were the relevant BLs forgeries but also the cargo described in Winson’s LOIs as having been shipped onboard the Ocean Voyager and Ocean Taipan had in fact, never been shipped pursuant to those forged BLs;
- (b) Winson did not believe in the truth of the representations in its LOIs – at the very least it was indifferent to whether its representations were true or not, which amounted to a lack of belief in their truth. Therefore, Winson had acted fraudulently and the Fraud Exception had been established by the banks.

Decision on Appeal

On appeal, Winson argued that the Judge below had erred: (a) in law in the formulation of the Fraud Exception; (b) in finding that the LOI representations were false; and (c) in concluding that Winson had made the LOI representations fraudulently.

Importantly, Winson contended that the Judge had wrongly imported the principles of the tort of deceit into the Fraud Exception and that recklessness should not be included as part of the test, primarily because the beneficiary under an LC owed no duty of care to the issuing bank in the presentation of documents. Winson also contended that the evidence showed that Winson did not know that the LOI representations were false and had not made those representations recklessly.

On their part, OCBC and SCB argued that the general principle that “fraud unravels all” that undergirded the Fraud Exception would entail the same test as that in *Derry v Peek* and that there should be no distinction in the operation of the Fraud Exception whether for letters of credit or for demand guarantees. They also contended that Winson had overstated the impact that the Judge’s formulation of the Fraud Exception would have on international trade.

In dismissing Winson’s appeals against the banks, the CA made the following key findings:

(a) Formulation of the Fraud Exception

- Although the Fraud Exception has a different juridical basis from the tort of deceit, it nevertheless called for an examination of the beneficiary’s knowledge of the fraud or an evaluation of the beneficiary’s conduct that he could not have honestly believed in the accuracy of material facts stated in the documents presented for payment.

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- Recklessness did not require the existence of any duty of care on the beneficiary's part toward the banks. It would be established when a person made a statement without caring. Without caring here did not mean not taking care but meant an indifference to the truth.

(b) Winson made the LOI representations fraudulently

- The Judge below was correct in concluding that the Subject Transactions were pre-structured. This was important context in assessing Winson's knowledge or awareness at the time of its presentations to the banks and its response to various red flags as summarised below.
- All parties involved in the circular trades were based in Singapore. Moreover, as the purported carrier, Ocean Tankers was owned and controlled by Hin Leong, there was no reason to explain the absence of the original BLs. In these circumstances an honest trader would have been expected to query why the original BLs were not available.
- At the time Winson made its second presentation to OCBC on 21 April 2020, about two weeks had passed from the date of the purported loading. In this context, Winson's failure to chase Hin Leong for the original BLs and loading documents was inexplicable. This was especially since in other trades done by Winson, the loading documents were received within two to three days from the shipment date.
- Despite OCBC having rejected Winson's presentation on the serious allegation that there was no physical cargo, Winson did not query OCBC as to its basis for this assertion or approach Hin Leong or Ocean Tankers for the original BLs, as an honest beneficiary would have done.
- Another red flag was the change in the quantity of gasoil in the Ocean Taipan copy BL despite the fact that this would have been issued *after* the cargo was loaded and loading documents had been issued. Yet Winson did not seek any explanation for the change.
- When asked by OCBC to consider buying back the Ocean Voyager cargo or to find a third party buyer for it, Winson's Executive Director asked OCBC to check if the title to the cargo was clean. This indicated that Winson's Executive Director had doubts as to whether Winson had itself obtained and passed clean title to the cargo.

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- Winson claimed it had carried out checks after OCBC's rejection. However, the evidence indicated that some of these purported checks never took place. As for those checks which had been carried out, these were aimed at checking if there was *any* cargo on board rather than whether the specific cargo represented to have been loaded, had in fact been loaded. Overall, Winson's checks did not address the banks' concerns and it was troubling that Winson had resorted to these rather than approach Hin Leong or Ocean Tankers for the loading documents.

Key Takeaways

Key takeaways from the decision can be summarized as follows:

- The Fraud Exception will operate to prevent beneficiaries of letters of credit from obtaining payment where it is found that the documents presented for payment contain false representations which the beneficiary either knew was false or was recklessly indifferent about.
- While beneficiaries under letters of credit would not generally be under a duty to carry out investigations as to the truth or authenticity of documents such as bills of lading upon which any representations to an issuing bank are based, their responses and reactions in the face of red flags will be scrutinised to evaluate if they can be said to have been recklessly indifferent to the truth of the representations.

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