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LLOYD'S LAW REPORTS

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Singh & Co. v. Banque de L'Indochine

PART 1

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Mar. 18, 19, 1974

GIAN SINGH & CO. LTD.
v.
BANQUE DE L'INDOCHINE

Before Lord WILBERFORCE,
Lord DIPLOCK,
Lord CROSS OF CHELSEA,
Lord KILBRANDON and
Sir HARRY GIBBS

Banking — Banker's commercial credit — Sale of fishing vessel — Credit to be opened by buyer in favour of seller — Payment to be made to seller by bank on production of certificate by buyer's agent that vessel was satisfactory — Payment made by bank — Allegation by buyer that certificate was forged — Whether proof of forgery established — Whether buyer liable to reimburse bank for sum paid — Uniform Customs and Practice for Documentary Credits (1962 revised), arts. 7, 9.

The plaintiffs, who were desirous of getting T. to build for them a new fishing boat to be called the *Wei Ching No. 6*, instructed the defendant bank to open a banker's commercial credit in favour of T. under which payment was to be made to T. on production of a certificate signed by S., the plaintiffs' managing director, holder of Malaysian passport no. E.13276, that the vessel had been built according to specification and was in a fit and proper condition to sail. The credit was subject to the Uniform Customs and Practice for Documentary Credits (1962 revised) which stated (inter alia):

7. Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit.

9. Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents . . .

The defendants paid T. under the credit. The plaintiffs discovered that the vessel was 14 years old, and now sought a declaration that the defendants had wrongfully debited their account with the sum of \$139,496.43, because (i) S.'s signature to the certificate stating that the vessel had been built according to the specification and was in a fit and proper condition to sail had been forged; and (ii) S.'s signature ceased to be his signature within the meaning of the credit in view of the fact that he had signed between the rubber stamped words stating the name of the plaintiffs and the word "director".

—*Held*, by Supreme Ct. of Singapore (CHUA, J.), that (1) the burden of proving that the signature was a forgery lay on the plaintiffs; and this burden had not been discharged;

(2) the signature was that of S., as required under the credit, and not that of the plaintiffs; and, in any event, the plaintiffs were estopped by their conduct in presenting the certificate to the defendants from maintaining that it did not comply with the requirements of the credit and that it was not signed by S.;

(3) (obiter) even if the forgery had been proved, the defendants would have been entitled either at common law or under arts. 7 and 9 of the Uniform Customs and Practice for Documentary Credits, to debit the plaintiffs' account provided that they had exercised reasonable care in the examination of the certificate.

Application dismissed.

On appeal by the plaintiffs:

—*Held* by Court of Appeal of Singapore (WEE CHONG JIN, C.J., TAN AH TAH and CHOO SINGH, JJ.), that, (1) the certificate had been forged and (2) (CHOO SINGH, J., dissenting) the certificate complied with the terms of the credit.

On appeal by the plaintiffs:

—*Held*, by P.C. (Lord WILBERFORCE, Lord DIPLOCK, Lord CROSS OF CHELSEA, Lord KILBRANDON and Sir HARRY GIBBS), that (1) on the evidence, the certificate had been forged (*see* p. 11, cols. 1 and 2);

(2) the plaintiffs had not succeeded in making out any case of negligence against the defendants (*see* p. 11, col. 2; p. 12, col. 1);

(3) the rubber stamped words were words of description only and S. had signed the certificate

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in his personal capacity (*see* p. 13, col. 1); and the certificate therefore complied with the terms of the credit (*see* p. 13, col. 1);

— *Equitable Trust Co. of New York v. Dawson Partners Ltd.*, (1927) 27 Ll.L.Rep. 49, considered.

Appeal dismissed.

The following case was referred to in the judgment:

Equitable Trust Co. of New York v. Dawson Partners Ltd., (H.L.) (1927) 27 Ll.L.Rep. 49.

This was an appeal by the plaintiffs, Gian Singh & Co. Ltd. from the decision of the Court of Appeal of Singapore (WEE CHONG JIN, C.J. and TAN AH TAH, J.: CHOOR SINGH, J., dissenting) affirming the decision of the Supreme Court of Singapore (CHUA, J.), which had given judgment ([1974] 1 Lloyd's Rep. 56), dismissing the plaintiffs' claim for a declaration that the defendants, Banque de l'Indochine, had wrongfully debited their account with the sum of \$139,496.43 which they had paid to a third party beneficiary under a banker's commercial credit arranged for the plaintiffs by the defendants, the plaintiffs contending that one of the documents, which was required to be produced before payment could be validly made under it, was forged.

The Court of Appeal of Singapore delivered the following judgments:

Wee Chong Jin, C.J.: The facts relevant for the determination of this appeal have been fully set out in the judgment of Mr. Justice Choor Singh, but although I am in entire agreement with him that the trial Judge ought, on all the evidence, to have held that the appellant had proved that the certificate in question was a forgery, I am unable to agree with him that the certificate produced to the negotiating bank in Taiwan was not in strict compliance with the condition stipulated in the letter of credit.

The condition is that there was to be produced to the negotiating bank in Taiwan

a certificate signed by Balwant Singh, holder of Malaysian Passport E. 13276 certifying that the vessel has been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the Letter of Credit is not to be allowed negotiation.

The certificate that was produced to the bank in Taiwan was typed on the letter-head of the appellant and was in the following terms:

Reference to the letter of credit No. 2693, U.S. dollars forty-five thousand, issued by the Bank of BANQUE DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat "M/V WEI CHING NO. 6" Gross tonnage 80 tons, Main engine 5 cylinders diesel engine, Horsepower 220, built in wood.

I, Balwant Singh, Holding the Malaysian Passport No. E-13276, certify that, the fishing boat had been inspected and built according to the specifications and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, 3rd Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,

I, Balwant Singh,

Passport No. E. 13276

issued at 11th Nov. 1964

GIAN SINGH & CO. LIMITED.

Sd. Balwant Singh

DIRECTOR.

It is settled law that where a letter of credit calls for the production of specific documents, its requirements in that regard must be exactly and strictly complied with, there being no room for any degree of inexactitude. The negotiating bank in Taiwan must therefore conform strictly to the instructions which it receives.

In the present case, it is necessary in the first place to determine what the condition stipulated in the letter of credit means exactly and having done so to determine whether the certificate produced to the negotiating bank in Taiwan complied exactly and strictly with the exact meaning of the condition. In my judgment the condition laid down in the letter of credit means exactly that the bank could only allow negotiation of the letter of credit if there is produced to the bank a certificate certifying that the vessel described in the letter of credit has been built according to the specifications and is in fit and proper condition to sail and which certificate is signed by a person whose name is "Balwant Singh" and who holds a Malaysian passport E. 13276.

The certificate that was produced to the bank contained everything that was required by the condition but in addition it was typed on a piece of paper which is a letter paper of the appellant and it had the words "Gian Singh & Co. Ltd." and the word "Director" stamped on it by means of a rubber stamp. By reason of the letter-head and the additional stamped words appearing in the certificate, it is contended by the appellant that the certificate was not in strict and exact compliance with the condition

stipulated by the appellant in the letter of credit. It is submitted that the letter-head and the additional words rendered the certificate that was produced to the bank a certificate of Gian Singh & Co. Ltd. and not the certificate of Balwant Singh. In my judgment, this argument is fallacious because the requirement is not the production of a certificate of Balwant Singh but the production of "a certificate signed by Balwant Singh" (the underlining is mine). Looking at the certificate that was produced to the bank there can be no doubt at all that to the question "Is this certificate signed by Balwant Singh?" the answer must be in the affirmative. It seems to me that had the condition stipulated in the letter of credit required "a certificate signed by Balwant Singh in his personal capacity" there would be much force in the contention put forward on behalf of the appellant or, had the condition required "a certificate of Balwant Singh", it would be difficult, having regard to the authorities referred to in the judgment of Mr. Justice Choor Singh to hold that the certificate produced to the bank complied strictly with the condition in the letter of credit.

In my opinion the condition stipulated in the letter of credit authorizes the bank to allow negotiation if there is produced to the bank the requisite certificate signed by a person whose name is "Balwant Singh", and who is the holder of Malaysian passport E. 13276. The condition, on its proper construction, does not and is clearly not intended to mean that the only acceptable and valid certificate is a certificate signed by Balwant Singh, holder of Malaysian passport E. 13276 in his personal capacity and in no other capacity. In other words, it is the identity of the person who is to certify which is of importance and this requirement must be strictly adhered to.

In my judgment the certificate that was produced complied exactly and strictly with the condition stipulated in the letter of credit and the bank conformed strictly to the instructions it received. Accordingly I am of the opinion that the trial Judge was right in dismissing the appellant's claim and I would dismiss the appeal with costs.

Mr. Justice Tan Ah Tah: In this appeal which concerns, *inter alia*, the signature on a certificate which was produced to the defendant bank's agent in Taiwan in connection with a letter of credit, it is contended by Counsel for the plaintiff company that the signature which purported to be that of Balwant Singh was a forgery and that the trial Judge erred in finding that the signature was not a forgery. It is abundantly clear from the surrounding circumstances that a fraud was perpetrated on the plaintiff company and that Balwant Singh was

an innocent party in the transaction. In my view, the finding of the trial Judge that the signature was not a forgery was against the weight of evidence. I have reached the conclusion that the plaintiff company has proved that the signature on the certificate was a forgery.

However, the fact that the signature on the certificate was not the genuine signature of Balwant Singh does not avail the plaintiff company as in the circumstances of this case the defendant bank's agent in Taiwan, i.e., the paying bank was in no position to be aware of the forgery.

The crucial question to be decided in this appeal is whether the certificate which was tendered to the paying bank complied with the terms of the letter of credit.

One of the special conditions contained in the letter of credit was that there was to be produced to the paying bank in Taiwan

a certificate signed by Balwant Singh holder of Malaysian Passport E. 13276 certifying that the vessel had been built according to specifications and is in fit and proper condition to sail. In the absence of such a certificate the Letter of Credit is not to be allowed negotiation.

The certificate which was duly produced to the paying bank in Taiwan was typed on the letter-head of the plaintiff company and was in this form:

Reference to the Letter of Credit No. 2693, U.S. Dollars Forty-Five Thousand, issued by the Bank of BANQUE DE L'INDOCHINE Singapore, covering shipment of one Fishing Boat "M/V WEI CHING NO. 6" Gross tonnage 80 Tons, Main Engine 5 Cylinders Diesel Engine, Horsepower 220, Built in wood.

I, Balwant Singh, Holding the Malaysian Passport No. E. 13276, certify that, the Fishing Boat had been inspected and built according to the specification and in the fit and proper conditions to sail.

I, agreed Messrs. Thai Lung Ship Machine Manufactory, No. 51, 3rd Chung Cheng Road, Keelung, Taiwan to Negotiate the Letter of Credit No. 2693 without any objection.

Yours faithfully,
I, Balwant Singh,
Passport No. E-13276
issued at 11th Nov. 1964
GIAN SINGH & CO. LIMITED,
Sgd. Balwant Singh
DIRECTOR.

The name "Gian Singh & Co. Limited" and the word "Director" were stamped on the certificate by means of a rubber stamp. The signature "Balwant Singh" was in writing.

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In the judgment of Mr. Justice Choor Singh, a number of cases are referred to in which it has been laid down that the law requires strict and exact compliance with the stipulated conditions in a letter of credit. It is contended by Counsel for the plaintiff company that the certificate does not comply with the special condition in this case in that the certificate although bearing the signature "Balwant Singh" should be regarded in law as the certificate of Gian Singh & Co. Ltd. and not that of Balwant Singh. In view of this argument put forward by Counsel for the plaintiff company, it is necessary to remind oneself that the stipulated condition requires a certificate signed by "Balwant Singh holder of Malaysian Passport E. 13276." The reference to the passport number means that the certificate is to be signed by that particular person named Balwant Singh who is the holder of Malaysian passport E. 13276 and not any other person whose name happens to be Balwant Singh.

When the certificate and passport were produced to the paying bank in Taiwan it would have been clear and obvious, in the view of the officers of that bank, that the certificate had been signed by Balwant Singh holder of Malaysian passport E. 13276. In my opinion, the fact that the name "Gian Singh & Co. Limited" and the word "Director" were stamped on the certificate by means of a rubber stamp does not lead to the conclusion that the certificate was not signed by Balwant Singh holder of Malaysian passport E. 13276. It follows that there has been strict and exact compliance with the special condition contained in the letter of credit.

I would accordingly dismiss the appeal with costs.

Mr. Justice Choor Singh: This appeal concerns the tender of documents by a beneficiary under a letter of credit and the main point in issue before the trial Judge was whether or not a stipulated document, on the face of it, conformed to the instructions given for the opening of the credit.

The facts are these. The plaintiff company requested the defendant bank to open an irrevocable letter of credit in favour of Thai Lung Ship Machine Manufactory of Taiwan for a sum of U.S. \$45,000. The credit was required to meet the purchase price of a fishing vessel to be constructed by the beneficiary. It was a specific condition of the letter of credit that a certificate signed by Balwant Singh, holder of Malaysian passport no. E. 13276 and countersigned by the defendant bank, certifying that the vessel had been built according to specifications and was in a fit and proper condition to sail must be produced to the defendant's agent in Taiwan before payment

could be made under the letter of credit. Later at the insistence of the beneficiary the plaintiff requested the defendant to delete the stipulation that the certificate was to be countersigned by the defendant. This was done by the defendant and the defendant's agent in Taiwan was informed of it. The letter of credit was negotiated in due course and the defendant debited the plaintiff's account with the sum of \$139,496.13 being the equivalent of U.S. \$45,000. The plaintiff commenced this action, claiming a declaration that the defendant had wrongfully debited the plaintiff's account with the said sum and that the said sum was due and owing by the defendant to the plaintiff.

Before the High Court, ([1974] 1 Lloyd's Rep. 56), the plaintiff's case was that the stipulated certificate produced to the defendant's agent in Taiwan was not signed by Balwant Singh. This contention was based on two grounds, first, that the purported signature of Balwant Singh was a forgery and secondly, that the said signature was the signature of Gian Singh & Co. Ltd. and not of the individual Balwant Singh as required by the terms of the letter of credit. The trial Judge found for the defendant on both grounds. He held (at p. 60) that the signature was not a forgery and that the signature

did not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp of the plaintiff appearing around it or because the certificate was typed on the plaintiff's letter-head.

In my view the trial Judge's finding on the issue of forgery was clearly against the weight of evidence. First, there was the evidence of Balwant Singh who maintained that the signature was a forgery and his evidence was the only primary evidence on this issue. Secondly, there was conclusive evidence before the Court that the passport of Balwant Singh produced to the defendant's agent in Taiwan together with the certificate in question was a forged passport. Thirdly, the certificate and the forged passport were produced by a person of known criminal character who was wanted by the Singapore immigration authorities. Furthermore the certificate was supposed to be in connection with a newly constructed vessel but the evidence shows that the vessel sold by the beneficiary was in fact 14 years old. The surrounding circumstances and all the known and undisputed facts indicate that a fraud was perpetrated on the plaintiff to which Balwant Singh could not have been a party and that the defrauder, who undoubtedly used a forged passport, also utilized a forged certificate. In my opinion the plaintiff successfully proved that the certificate in question was a forgery but

that fact alone is not of much assistance to the plaintiff because the paying bank, i.e., the defendant's agent in Taiwan, had no knowledge of the forgery and it was entitled to assume that the certificate was genuine when there was nothing on the face of it to indicate anything to the contrary.

The main issue before the trial Court was, as in this appeal, whether the certificate tendered was in accord with the terms of the letter of credit. It is therefore necessary to examine the law relating to the imposition and compliance therewith of specific conditions in a letter of credit.

The right of a customer to impose terms or special conditions and to have them complied with precisely by the bank establishing the credit was explained by Lord Justice Goddard (as he then was) in *Rayner & Co. Ltd. v. Hambros Bank Ltd.*, [1942] 2 All E.R. 694 at p. 703:

There are three people concerned where a banker's credit is in question: there is the person who requests the bank to establish the credit, there is the bank who establishes it, and there is the beneficiary who has the opportunity of drawing on the credit. The person who requests the bank to establish the credit can impose what terms he likes . . .

The bank, if it accepts the mandate to open the credit, must do exactly what its customer requires it to do . . . If the bank wants to be reimbursed by the customer, it must show that it has performed its mandate.

It is settled law that where a letter of credit calls for the production of a specific document, its requirements in that regard must be "strictly" and "exactly" complied with. In *Equitable Trust Company of New York v. Dawson Partners Ltd.*, (1927) 27 Ll.L.Rep. 49, Viscount Sumner said, at p. 52:

. . . It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorized to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and prima

facie they were right in refusing to take them . . .

And Mr. Justice Rowlatt, was of the same view in *South African Reserve Bank v. M. Samuel & Co. Ltd.*, (1931) 39 Ll.L.Rep. 87, where he observed, at p. 93:

. . . It is, of course, abundantly clear that the plaintiff bank must fulfil with perfect literalness and accuracy the terms of the letter of credit; it will not do to say, as has been pointed out many, many times — Sir John Simon reminded me of one of the many passages — that they did something which was just as good; but that does not mean that, when one is considering whether such and such document, or such and such an operation, is or is not within the meaning of the letter of credit, one cannot consider whether a restriction which is suggested is not entirely devoid of commercial importance. He never meant to rule that out. One has always to look at it sensibly; but when one has discovered what exactly the letter of credit means, then I think the person acting under it is bound to act under it quite literally . . .

Strict compliance by a bank with the instructions was emphasised again by Mr. Justice Devlin, in *Midland Bank Ltd. v. Seymour*, [1955] 2 Lloyd's Rep. 147, at p. 151:

. . . There is, of course, no doubt that the bank has to comply strictly with the instructions that it is given by its customer. It is not for the bank to reason why. It is not for it to say: "This, that or the other does not seem to us very much to matter." It is not for it to say: "What is on the bill of lading is just as good as what is in the letter of credit and means substantially the same thing." All that is well established by authority. The bank must conform strictly to the instructions which it receives.

There is further emphasis at p. 153:

. . . In my judgment, no principle is better established than that when a banker or anyone else is given instructions or a mandate of this sort, they must be given to him with reasonable clearness. The banker is obliged to act upon them precisely. He may act at his peril if he disobeys them or does not conform with them.

Similarly, in *English, Scottish and Australian Bank Ltd. v. Bank of South Africa*, (1922) 13 Ll.L.Rep. 21, Mr. Justice Bailhache, said at p. 24:

. . . It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not