

Case Commentary - *Moeve Trading SAU v Mael Trading FZ LLC* [2026] EWHC 17 (Comm)

[International Trade & Finance - Letters of Credit - absolute or conditional payment]

In international trade contracts for the sale and purchase of commodities, parties often agree that payment for the commodities is to be made by way of an irrevocable documentary letter of credit. The question may then arise as to whether the Buyer's obligation to pay is satisfied *completely* by procuring the opening of the documentary letter of credit, such that the Seller has no recourse to the Buyer if, for whatever reason, the Seller is unable to obtain payment on the documentary letter of credit from the issuing bank.

In *Moeve Trading SAU v Mael Trading FZ LLC* [2026] EWHC 17 (Comm), the English High Court (Commercial Court) clarified that the Buyer's procurement of the documentary letter of credit will usually operate as *conditional payment* only, unless the sale contract expressly or impliedly provides that the procurement of the documentary letter of credit operates as *absolute payment*.

Background Facts

Moeve Trading S. A. U. (the "**Seller**") and Mael Trading FZ LLC (the "**Buyer**") entered into contract for the sale and purchase of gasoline and gas oil (the "**Cargo**"). The terms of the contract provided for, among other things, the Buyer's obligation to open an irrevocable letter of credit based on the Seller's wording "*to cover the total cargo amount*". The Buyer duly procured the issue of 2 letters of credit (the "**Letters of Credit**") in favour of the Seller from the issuing bank (the "**Issuing Bank**").

The Cargo was subsequently shipped. Pursuant to the terms of the contract, title to the Cargo passed to the Buyer upon shipment. The Cargo was also duly discharged into the possession of the Buyer's sub-buyer.

Payment fell due 60 days after shipment. The Seller duly presented documents, but the Issuing Bank did not pay the purchase price to the Seller. The reasons for the Issuing Bank's non-payment were not disclosed to the court, however, and it remained possible that the Seller had not presented all of the documents required under the Letters of Credit.

The Seller thereafter tendered the documents to the Buyer and demanded payment of the purchase price. The Buyer refused to make payment, arguing inter alia that the Buyer's procurement of the Letters of Credit constituted absolute payment and discharged its obligations under the contract. The Seller sued and applied for summary judgment against the Buyer.

Decision

The English High Court granted the Seller's application for summary judgment, holding that properly construed, the terms of the sale contract provided that the procurement of the Letters of Credit operated only as **conditional payment** and not absolute payment. The English High Court found that the terms of the sale contract indicated that parties had intended that the Buyer be primarily responsible for the payment of the purchase price, although the Buyer was obliged to arrange for the issue of letters of credit to "*cover*" this payment.

In arriving at its decision, the English High Court elucidated the following principles:

- A letter of credit will normally operate as a **conditional payment**, as opposed to an absolute payment. I.e., the issuance of the letter of credit does not normally discharge the Buyer's payment obligation. The Buyer's payment obligation is only discharged when the Issuing Bank pays on the letter of credit. There is no presumption, however either in favour of the letter of credit functioning as a conditional payment or absolute payment.
- An L/C only functions as an **absolute payment** when the contractual terms clearly have this effect, whether by express terms or through implied terms.
- Where a letter of credit operates as an absolute payment, the Buyer's obligation to pay the purchase price is discharged once the letter of credit is issued, and the letter of credit becomes the Seller's exclusive source of payment.
- Where a letter of credit operates as a conditional payment, but the Issuing Bank refuses to pay on the letter of credit, 3 scenarios may arise:
 - If the Seller is not at fault for the Issuing Bank's refusal to pay, the Seller may proceed against the Buyer for payment of the purchase price;
 - If the Seller is at fault (e.g., for non-compliant presentation) and title has not passed to the Buyer, Seller has no recourse against the Buyer & Buyer is entitled to reject the goods;
 - If the Seller is at fault but title has passed to the Buyer and the Buyer has accepted the goods, the Seller is entitled to pursue the Buyer for payment of the purchase price.

On the facts of the case, it was undisputed that title to the Cargo had passed to the Buyer and the Buyer had accepted the Cargo. **Hence, regardless of whether the Seller had been at fault for the Issuing Bank's refusal to make payment on the Letters of Credit, the Seller was still entitled to pursue the buyer for the purchase price of the Cargo.**

The English High Court further explained that this conclusion was consistent with both statute and logic:

- The notion of a conditional payment is that payment is conditional on the letter of credit paying the Seller. For example, if a person makes payment to a seller by way of a cheque and the cheque "bounces", the person is still liable to make payment to the seller if the person retains the goods.
- It is the passing of property in the goods for which the Buyer had contracted for, in exchange for his payment of purchase price.
- Section 49(1) of the Sales of Goods Act 1979 provides that the seller is entitled to maintain an action for the price of goods against the buyer where *"property in the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract"*.

Comments

This decision presents the following learning points for participants in international trade transactions:

- There is no general presumption in law as to whether a letter of credit operates as a conditional payment, or absolute payment. In this regard:
 - Contracting parties should always study the terms of the contract (including any applicable General Terms & Conditions) to see if there are express terms that indicate whether the issuance of the letter of credit operates as a conditional payment or absolute payment, or whether such a term may arise by necessary implication.
 - If the terms of the contract are unclear, the contracting parties should consider negotiating an express term to make it clear in the sale contract whether the letter of credit is intended to function as an absolute payment (i.e., that the Seller's recourse for payment is to the Issuing Bank), or as a conditional payment.
- Where the parties agree that the letter of credit operates as a conditional payment, the Buyer must be aware that the Seller will have recourse to the Buyer for the purchase price if the Buyer accepts the Goods and the Issuing Bank refuses payment under the letter of credit, regardless of the reasons for the Issuing Bank refusing payment.
- If the Issuing Bank refuses payment under the letter of credit and the Buyer does not wish to be liable for payment of the purchase price, the Buyer will have to reject / return the goods.

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