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“The law should call a fraud a fraud” – Singapore Court of Appeal holds that recklessness amounts to fraud in the context of letters of credit

Amidst the spate of recent decisions touching on the fraud exception and the tort of deceit, the Court of Appeal’s recent decision in *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corporation and Standard Chartered Bank (Singapore) Limited* [2024] SGCA 31 provided much needed clarification on the knowledge requirements for establishing fraud. In so doing, the Court of Appeal dismissed the beneficiary’s appeal and upheld the Banks’ defences for non-payment under the letters of credit, on grounds of fraud.

Significantly, the Court of Appeal observed that “*the law should call a fraud a fraud*”, and confirmed that a consistent approach should be taken in the treatment of fraud across various causes of action and factual contexts. The Court therefore clarified that the knowledge requirements for establishing fraud are **the same** when applying the Fraud Exception to different types of financial instruments, including letters of credit, performance bonds, and demand guarantees – recklessness, without belief as to the truth of the representations, is sufficient to establish fraud. These knowledge requirements are also the same as those required to establish fraud under the tort of deceit.

This case was heard before the Honourable Chief Justice Sundaresh Menon, the Honourable Justice of the Court of Appeal Steven Chong, and the Honourable Justice of the Court of Appeal Belinda Ang. Our Shook Lin & Bok LLP team, comprising our Partner Sarjit Singh Gill, SC and Associates Daryl Cheng and Suresh Viswanath, represented Standard Chartered Bank (Singapore) Limited, one of the successful respondent Banks.

Factual Background

Winson, the beneficiary under the letters of credit issued by the banks, commenced proceedings against the banks for payment of around US\$30.4 million each under the letters of credit. These letters of credit were issued by the banks to finance Hin Leong’s purchase of two parcels of gasoil from Winson. However, it was later discovered that the sales by Winson to Hin Leong were the final legs of circular trades that all took place on or around the same day, including, *inter alia*, the following trades:

- (a) Hin Leong sold a quantity of gasoil in two shipments, on board the vessels Ocean Taipan and Ocean Voyager respectively, to Trafigura Pte Ltd;
- (b) Trafigura sold the same quantity of gasoil in two shipments to Winson;
- (c) Winson sold the same quantity of gasoil in two shipments back to Hin Leong.

The banks relied on the fraud exception to resist Winson’s claim. They took the position that:

- (a) Winson had made false representations when making presentations to the banks for payment under the letters of credit, namely:
 - (i) No cargo of gasoil was in fact shipped under these transactions, in particular for the final leg (which was financed by the banks). Among other things, the banks argued that there was no evidence that any loading took place; and
 - (ii) The original counterparts of the copy non-negotiable bills of lading relied upon by Winson in its LOIs were forgeries, and
 - (b) These false representations were made by Winson fraudulently, i.e. with the knowledge that they were false, or recklessly without care as to whether they were true or not.
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The High Court dismissed Winson's claim, and held that Winson was not entitled to payment under the letters of credit because the fraud exception was established (see our [earlier article](#) on the High Court's decision in *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corporation and another* [2023] SGHC 220). The High Court found that:

- (a) Winson had made false representations as to the validity and existence of the bills of lading and the passage of good title to the cargo. The bills of lading referenced in Winson's LOIs were found to be based on forgeries and therefore the representations as to their validity and existence were false. In addition, contrary to the representations in Winson's LOIs that the cargoes were shipped on the relevant vessels, the Court found that there was no evidence that any loading took place.
- (b) These false representations were made fraudulently because Winson did not believe in the truth of its representations, or at the very least was indifferent as to whether its representations were true or not.

Winson appealed the High Court's decision. Among other things, Winson argued that:

- (a) The High Court Judge erred in importing the principles of the tort of deceit into the Fraud Exception, which led the Court to err in finding that the Fraud Exception can be made out where the beneficiary made a false representation recklessly, without caring whether it is true or false.
- (b) On the facts, Winson argued that the representations in its LOIs were not false, and Winson did not make these representations fraudulently.

The appeal was heard by the Court of Appeal.

Court of Appeal's Decision

The Court of Appeal dismissed Winson's appeal. The Court upheld the High Court's findings that the representations in Winson's LOIs were false, and that these representations were made fraudulently.

The Court of Appeal also upheld the High Court's legal findings in relation to the Fraud Exception. In so holding, the Court of Appeal provided a welcome clarification on the ambit of the Fraud Exception.

First, the Court of Appeal found that the earlier decision by the Singapore International Commercial Court in *CACIB v PPT* [2022] 4 SLR 1 was **incorrect** in its finding that recklessness could not engage the Fraud Exception in the context of letters of credit. Notably, the Court of Appeal held that the SICC's premise was flawed as it was incorrect to rely on the proposition expounded in *DBS Bank Ltd v Carrier Singapore (Pte) Ltd* [2008] 3 SLR(R) 261 that "*there is no duty of care owed by a beneficiary to the bank when presenting documents*" to draw the conclusion that recklessness will not engage the Fraud Exception. This erroneously conflated negligence with recklessness. Instead, recklessness is only made out where there is an actual indifference to the risk which the party is actually conscious of, and in such a situation, there can be no honest belief.

Second, the Court of Appeal clarified that a consistent approach should be taken in the treatment of fraud. Fraud is proved where it is shown that a false representation has been made (a) knowingly, or (b) without belief in its truth, or (c) recklessly, careless whether it be true or false. These requirements are **the same** whether in the context of (i) the Fraud Exception in respect of letters of credit; (ii) the Fraud Exception in respect of other financial instruments such as performance bonds and demand guarantees; or (iii) common law fraud (i.e. tort of deceit).

Indeed, it is only logical that a consistent approach be taken. As observed by the Court of Appeal, it would defy good sense and logic if a bank which had grounds to believe that a beneficiary was reckless or indifferent to the truth of the representations contained in the presentation, would have to comply and pay under the letter of credit. This incongruity is further amplified by the fact that the same bank can then, upon paying the beneficiary, mount a claim in the tort of deceit to recover the same amount from the beneficiary.

It therefore bears emphasis that the ambit of the Fraud Exception was not expanded in this case, but simply clarified to be consistent with the treatment of fraud in other civil contexts. Indeed, as the Honourable Justice of Appeal Steven Chong held in this judgment, "*the law should call a fraud a fraud*".

Significance

Banks can take comfort in this Court of Appeal decision which provided clarity on the precise requirements of the Fraud Exception (for financial instruments) and the tort of deceit, both of which are potential recourses against the fraudulent beneficiary. The Court's decision ensures that the beneficiaries cannot simply feign ignorance and bury their head "*ostrich-like in the sand*". What is clear from the line of decisions concerning the Fraud Exception is that the Singapore courts do not tolerate fraud, and will not assist a fraudulent party.

On the other hand, beneficiaries under letters of credit should also take note of any red flags that may require them to perform the necessary checks in order to satisfy themselves that their representations (in the presented documents) are true. This would ultimately be a fact-specific exercise, and would depend on the material facts in each case.

Partner Sarjit Singh Gill, SC and Associates Daryl Cheng and Suresh Viswanath of Shook Lin & Bok LLP represented Standard Chartered Bank (Singapore) Limited in these proceedings. Please feel free to contact the undersigned if you have any queries.

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