IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1997] SGCA 41

CA 143/1996

Between

Kumagai-Zenecon Construction Pte Ltd (in liquidation)
Another

… *Appellant*

And

Arab Bank plc
Another

… *Respondent*

GROUNDS OF DECISION

Bills of Exchange and Other Negotiable Instruments — Letter of credit transaction; Bills of Exchange and Other Negotiable Instruments — Letter of credit transaction; Contract — Contractual terms; Insolvency Law — Bankruptcy; Land — Development — Housing developers

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Kumagai-Zenecon Construction Pte Ltd (in liquidation) and Another v Arab Bank plc and Another

[1997] SGCA 41

CA 143/1996
Karthigesu JA; L P Thean JA; Yong Pung How CJ
08 September 1997

1 (delivering the grounds of judgment of the court)

2 **Introduction**

3 This was an appeal against the decision of Judith Prakash J, dismissing the appellants` claim against the first respondent for the sum of $3,793,000 under a standby letter of credit issued by the latter (see [1997] 2 SLR 805). The second respondent was the party for whose account the standby letter of credit was issued, and was joined as a party in the proceedings below. At the conclusion of the hearing of the appeal, we dismissed it. We now give our reasons.

4 **The facts**

5 The first appellant, Kumagai-Zenecon Construction Pte Ltd (KZC) was formed pursuant to a joint venture between Kumagai Gumi Co Ltd, a company incorporated in Japan, and Zenecon Pte Ltd, a company incorporated in Singapore and controlled by the second respondent, Low Hua Kin (Low). The

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second appellant, Kumagai Investments Pte Ltd (KIP), was a wholly owned subsidiary of KZC.

6 Following a shareholders` dispute, Kumagai Gumi Co Ltd commenced proceedings in OP 9/92 in the High Court claiming relief under s 216 of the Companies Act (Cap 50, 1990 Ed). In those proceedings, KZC, KIP and Low were named as three of the respondents. On 15 July 1994, the court made, inter alia, the following orders:

> (i) that KZC and KIP each be wound up and that M/s Peter Chi Man Kwong and Michael Ng Wei Teck be appointed the liquidators in the winding up of the companies respectively;
>
> (ii) that Low pay KIP the sum of $2,982,517.17;
>
> (iii) that Low purchase or procure the purchase of all the shares which KIP owned in KZ Investments Pte Ltd (another company controlled by Low) at a fair price to be fixed by independent valuers or at cost, whichever is the higher; and
>
> (iv) that Low pay KIP the whole amount of tender deposits, which had been paid out of the funds of KIP, less such amounts that had already been refunded.

7 On 1 August 1994, Low filed an appeal against the decision of the High Court. Two weeks later, KZC and KIP, both then in liquidation, commenced execution proceedings against Low. Low immediately applied for a stay of execution of the judgment against him pending the hearing of his appeal. Following that, the parties negotiated a settlement, and as a result on 24 August 1994, by consent, it was ordered that, unless Low provided a standby letter of credit or guarantee from the first respondent, Arab Bank plc (the bank) or a first class local bank, in an amount of $4,316,354.17, KZC and KIP would be at liberty to proceed with the execution of the judgment. This sum of $4,316,354.17 was arrived at by adding the sum of $2,982,517.17, which was

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specifically ordered to be paid by Low to KIP, to the sum of $1,333,837 being the estimated cost to KIP for the acquisition of the shares in KZ Investments Pte Ltd. It was further ordered that upon provision of the specified security the execution would be stayed pending the disposal of the appeal.

8 The terms of the standby letter of credit were subsequently settled by the parties before the court. On 7 September 1994, the bank issued a standby letter of credit No STBY940035 (the letter of credit) on the agreed terms which, so far as relevant, were as follows:

> 1 We, by this letter, establish in your favour our irrevocable standby letter of credit no STBY940035 (SBLC) for the account of Low Hua Kin [commat] Loo Wah Kim of 39 Victoria Park Road, Singapore 1026 (the judgment debtor). This SBLC is issued in connection with an order of the High Court of the Republic of Singapore (the High Court) dated the 15 July 1994 in Originating Petition No 9 of 1992 (the High Court judgment), and a consent order dated the 24 August 1994 granting a stay of execution of the High Court judgment upon the provision of a satisfactory standby letter of credit or guarantee. An appeal has been lodged by the judgment debtor in the Court of Appeal of the Republic of Singapore in Civil Appeal No 131 of 1994 (the appeal). An appeal against the High Court judgment has also been lodged by Kumagai Gumi Co Ltd in Civil Appeal No 121 of 1994.
>
> 2 Subject to cll 3 and 4 below, we shall make payment to Kumagai Investments Pte Ltd or their liquidators and to no other party under this SBLC of the sum or sums payable pursuant to or under the judgment debtor`s obligations to Kumagai Investments Pte Ltd pursuant to or under the High Court judgment as affirmed in whole or in part and/or varied by the decision (as defined in cl 2.2 below) on your written demand or demands for payment when such demand or demands is/are presented to us at 80 Raffles Place [num]55-01 UOB Plaza 1 Singapore 0104 accompanied by the following documents:
>
> 2.1 A legal sealed (LS) copy of the High Court judgment;

> 2.2 A legal sealed (LS) copy of the order of the Court of Appeal in which orders are made in respect of the appeal (the decision), whether or not any order or orders in respect of any other appeal or matters are included therein;
>
> 3 Our maximum aggregate liability under this SBLC in respect of any and all demands made hereunder shall not exceed the sum of Singapore dollars four million three hundred and sixteen thousand three hundred and fifty four and cents seventeen only (S$4,316,354.17).

9 As for the remaining clauses of the letter of credit, they were briefly as follows: cl 4 stipulated the period during which the letter of credit would remain valid and an extension of that period; cl 5 provided that the letter of credit was subject to the Uniform Customs and Practice for Documentary Credits (1993) ICC Publication No 500 (the UCP); cl 6 provided that it was irrevocable and not transferable or assignable; cl 7 provided that it was governed by Singapore law and that the parties submitted to the non-exclusive jurisdiction of the Singapore courts; and cl 8 provided for the service of process.

10 Low`s appeal to the Court of Appeal was heard in January 1995, and in a reserved judgment delivered on 24 May 1995 (reported in [1995] 2 SLR 297) the court allowed his appeal in part. It set aside the orders of the High Court (i) that Low pay KIP the sum of $2,982.517.17, and (ii) that he pay to KIP the amount of tender deposits. However, the court affirmed, inter alia, the order that Low purchase KIP`s shares in KZ Investments Pte Ltd on the terms as determined by the High Court. This decision was entered in the Registry of the Supreme Court on 3 November 1995.

11 On 23 November 1995, just one day before the letter of credit was due to expire, the liquidators of KIP (the liquidators) demanded from the bank payment of a sum of $3,793,000 under the letter of credit in the following terms:

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> *Standby Letter Of Credit No STBY 940035*
>
> *Dated 7 September 1994 (The letter of credit)*
>
> 1 We refer to the above matter.
>
> 2 Pursuant to cl 2 of the letter of credit, we hereby demand payment of the sum of S$3,793,000 to Kumagai Investments Pte Ltd (in liquidation). Please let us have a bank draft for the said sum drawn in favor of Kumagai Investments Pte Ltd (in liquidation) on an urgent basis.
>
> 3 We enclose herewith the following documents:
>
> (i) a legal sealed copy of the High Court judgment; and
>
> (ii) a legal sealed copy of the order of the Court of Appeal in which orders are made in respect of Civil Appeal No 131 of 1994.

12 The demand was accompanied by the two documents required by the letter of credit, ie sealed copies of the High Court judgment and the Court of Appeal judgment respectively. Low was told of the demand on the same day, and his solicitors immediately wrote to the bank on the following day, stating that Low was disputing the payment and instructing the bank not to make payment as demanded.

13 Accordingly, on 24 November 1995, the bank wrote to the liquidators rejecting the demand and giving the following explanation:

> *Having examined [the letter of 23 November 1995] and the accompanying documents, we hereby reject and return the same to you as your said letter is not in compliance with the SBLC on the ground, inter alia, that the sum of S$3,793,000 demanded in your said letter does not appear to be the sum or sums payable pursuant to or under the judgment debtor`s obligations to Kumagai Investments Pte Ltd pursuant to or under the High Court judgment as affirmed in whole or in part and/or varied by the order of the Court of Appeal in Civil Appeal No 131 of 1994.*

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14 On 27 November 1995, the appellants` solicitors again demanded payment. On the following day, the bank`s solicitors replied defending their client`s rejection of the demand in the following terms:

> *Our clients are required under the terms of the SBLC to make payment only of sum or sums payable pursuant to or under the judgment debtor`s obligations to Kumagai Investments Pte Ltd pursuant to or under the orders of court referred to in the SBLC. Your clients` demand dated 23 November 1995 makes no reference to such obligation or obligations. Further, the sum of S$3,793,000 demanded does not appear to be referred to in any of the copies of the orders of court accompanying the demand. In the circumstances, our clients are entitled to reject the demand and return the documents.*

15 On 9 December 1995, the appellants commenced an action in the High Court against the bank seeking to enforce payment under the letter of credit. The claim was resisted. Low applied successfully to be joined as a third party in those proceedings on the ground that he had an interest in the outcome, and he too opposed the appellants` claim. The action was heard before Judith Prakash J, and in a reserved judgment delivered on 23 August 1996, she dismissed the appellants` claim with costs. We shall revert to her judgment in some detail in a moment.

16 **The appeal**

17 Before us three main issues were raised. First, what was the nature of the bank`s obligation under the letter of credit? Second, did the liquidators` demand dated 23 November 1995 for the sum of $3,793,000 accompanied by the documents conform to the terms of the credit, and more particularly when the demand and the documents were properly read and understood was there a discrepancy that called for an inquiry or investigation or invite litigation? Third, having regard to the terms of the letter of credit ought the liquidators to furnish

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a copy of the valuation report by the independent valuers of the fair price of the relevant shares which Low was obliged to purchase?

18 **The bank`s obligation**

19 The first issue turned on the construction of the letter of credit. In construing the terms the learned judge adopted the following approach in [para] 13 of her judgment:

> *I accepted that although there are established legal principles on the function and operations of a letter of credit, the label `letter of credit` by itself cannot lead to an absolutely preordained result. Instead, the terms of the credit have in each case to be examined and construed so that one can determine what it is that is required by that particular credit.*

20 The learned judge was clearly right in taking this approach. What a letter of credit calls for depends on its terms and the basic question is one of construction of those terms. In this case, the letter of credit was by far different from standard or usual letters of credit in commercial transactions, eg sale of goods, under which banks undertake to honour drafts for stated amounts drawn thereunder accompanied by certain stipulated documents. In this case, the terms of the credit were highly unusual and were the result of negotiations between the appellants and Low. The crucial term is cl 2, under which the bank undertook to pay `the sum or sums ***payable*** pursuant to or under the judgment debtor`s [Low]`s obligations to Kumagai Investments Pte Ltd [KIP] pursuant to or under the High Court judgment as affirmed in whole or in part and/or varied by the decision [of the Court of Appeal]`. The learned judge considered this term in [para] 20 of her judgment as follows:

> 20 The payment obligation in cl 2 was not the usual bank undertaking to make payment of a stated amount on

> presentation of documents. Instead it called for the bank to make payment of `the sum … payable pursuant to … [Low`s] obligations to [KIP] pursuant to` the judgments. Therefore it was an undertaking focused on the obligation of Low to make the payments due to KIP under a court order. It was, also, clearly contemplated that Low`s obligation under the original order of the High Court could be varied or negated altogether by the subsequent judgment of the Court of Appeal. Thus the bank receiving the documents would, at the least, have had to check one document against the other to ascertain whether after the Court of Appeal decision Low was under any obligation at all to KIP. The requirement that the judgments be tendered supported the inference that in this instance the duty of the bank was not simply to receive the documents and check to see whether they were the correct documents but also to look into the judgments before paying because it had to determine by reference to them what Low had been ordered to do in order to determine the payment which it had to make.

21 We agree entirely with the learned judge. These terms were quite clear, and there was no ambiguity. The bank`s obligation was only to pay what Low was obliged to pay under the High Court judgment as affirmed or varied by the Court of Appeal. Clearly, the bank`s obligation was not merely to pay the amount demanded upon the presentation of the sealed copies of the two judgments respectively. The terms of cl 2 required more than that: it imposed on the bank a further duty to ascertain the amount payable by Low to KIP under the combined effect of the two judgments. The production of these documents was precisely for such purpose.

22 **The tender**

23 The next issue is whether the documents tendered to the bank by the liquidators on 23 November 1995 were in compliance with the terms of the letter of credit, bearing in mind the payment obligation of the bank under cl 2. In this respect, the respondents relied on the doctrine of strict compliance, which was succinctly enunciated in Viscount Sumner`s classic statement in **Equitable**

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Trust Company of New York v Dawson Partners Ltd [1926] 27 Lloyd LR 49 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 authorised 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.*

24 In **Indian Overseas Bank v United Coconut Oil Mills Inc** [1993] 1 SLR 141 , this court said, at p 151:

> *... it seems to us that the standard of conformity required of the documents tendered under a letter of credit is one of strict conformity to its terms but not one of literal conformity. Very minor and inconsequential discrepancies between the documents and the terms of the credit may be disregarded, but any discrepancy which calls for an inquiry or investigation or `such as to invite litigation` would render the tender of the documents bad or defective.*

25 This point was not really disputed by the appellants. What was in dispute was the extent of the bank`s obligation upon receipt of the demand and the accompanying documents. The appellants` argument was that they had complied strictly with the terms of the credit, in that their demand was accompanied by the sealed copies of the judgment of the High Court and that of the Court of Appeal and these were precisely the documents stipulated in the letter of credit. Hence, on receipt of these documents the bank`s obligation was to verify if the documents complied with what was required and, if so, to pay the sum as demanded. The respondents` countervailing argument was that by virtue of cl 2 of the letter of credit the bank had to examine the documents and ascertain the amount payable by Low under the two judgments, and only if there was no discrepancy had the bank to pay the amount demanded.

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26 We refer first to the demand. In the liquidators` letter dated 23 November 1995, they merely demanded payment of the sum of $3,793,000 pursuant to cl 2 of the letter of credit, but this sum was not stated either in the letter of credit or in the two judgments of the courts. Counsel for the bank therefore argued that the letter of credit, read with the High Court judgment, contemplated that the amount payable thereunder was $4,316,354.17, and as Low`s obligation to pay the sum of $2,982,517.17 under the High Court judgment was set aside by the Court of Appeal judgment, the cost of purchase of the shares would amount, at most, to only $1,333,837. There was therefore a discrepancy on the face of the documents which entitled the bank to refuse payment. Counsel for Low submitted that, at the very least, a valid demand would have to specify: (i) that it was in payment of Low`s obligations under the High Court judgment as varied by the Court of Appeal; and (ii) that the figure of $3,793,000 represented the `fair price` of the shares which Low was obliged to purchase or procure the purchase of. The learned judge appeared to have accepted these arguments. She said in [para] 22 of her judgment:

> *Nothing in the documents which were presented by the plaintiffs to the bank, neither the judgment of the Court of Appeal nor the judgment of the High Court nor the demand of the liquidators of KZC itself, indicated that the obligation of Low to KIP pursuant to the two judgments was S$3,793,000, the amount demanded by the liquidators. All that could be gleaned from them was that the only payment obligation of Low that remained intact was his obligation to pay the higher of the purchase price and the fair price of the relevant shares. No figure was assigned in the judgments to either of these prices.*

27 The question is what was the extent of the duty of the bank on receipt of the documents. In this connection, art 13 of the UCP, in so far as relevant, provides:

> *Banks must examine all documents stipulated in the credit with reasonable care, to ascertain whether or not they appear, on their*

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> *face, to be in compliance with the terms and conditions of the credit. Compliance of the stipulated documents on their face with the terms and conditions of the credit, shall be determined by international standard banking practice as reflected in these articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the credit.*

28 In this instance, in examining the documents the bank had to verify two things. First, it had to verify if the documents tendered were precisely those as stated in the letter of credit. So far as this aspect is concerned, clearly the documents tendered complied with what was required. Secondly, and it is this that gave rise to the present dispute, the bank had to examine the contents of the two judgments and ascertain the extent of Low`s ***payment obligation*** thereunder. This was dictated by cl 2 of the letter of credit. As we have said, the obligation of the bank was to pay what Low was obliged to pay under the combined effect of the two judgments. This can only be verified and determined by reference to the terms of the two judgments.

29 Although the maximum limit of the amount payable under the credit was $4,316,354.17, it was apparent from the High Court judgment that this amount represented (i) the amount of $2,982,517.17 specifically ordered to be paid by Low to KIP, and (ii) the amount of S$1,333,837, being the remaining of Low`s obligations under the judgment. That was clearly the position at the time the terms of the letter of credit were settled. After all, the whole purpose of the letter of credit as gleaned from the preamble in cl 1 was to secure the amount payable by Low under the High Court judgment pending the outcome of the appeal before the Court of Appeal.

30 Now, by the Court of Appeal`s judgment, Low`s obligations to pay KIP the specific sum of $2,982,517.17 and the amount of tender deposits, the latter

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also ordered by the High Court judgment, were set aside and no new obligation was ordered in their place. What remained therefore was the amount of $1,333,837 representing the balance of Low`s obligations under the High Court judgment. The only payment obligation of Low under the High Court judgment was to purchase the shares of KIP in KZ Investments Pte Ltd at cost or at a fair price fixed by independent valuers, whichever was the higher. Consequently, when the appellants demanded payment of a sum of $3,793,000 simpliciter, the demand on the face of it appeared to be in excess of the amount originally contemplated. In our judgment, this apparent excess gave rise to a discrepancy which called for an inquiry or investigation or such as to invite litigation: **Indian Overseas Bank v United Coconut Oil Mills Inc** [1993] 1 SLR 141 . In **The Galatia; Golodetz (M) & Co Inc v Czarnikow-Rionda Co Inc** [1980] 1 WLR 495 at p 510, Donaldson J said:

> *A tender of documents which, properly read and understood, call for further inquiry or are such as to invite litigation is clearly a bad tender. But the operative words are `properly read and understood.`*

31 In our judgment, the documents tendered when `properly read and understood` certainly called for further enquiry or were such as to invite litigation. In the circumstances, the bank was entitled to reject them and refuse payment.

32 **Articles 13a and c of the UCP**

33 That, however, was not the end of the matter. Counsel for the appellants pointed out that if the demand made by the liquidators accompanied by the sealed copies of the two judgments respectively was held not to be in compliance of the terms of the credit, as we have held, then no demand under the letter of credit could ever be good. Hence there arose the third issue which

gave rise to some difficulty. The main difficulty here was that the bank was not permitted by the UCP to have recourse to other documents not stipulated in the letter of credit to determine the amount payable by the bank. Under the relevant provisions of the UCP, documents not stipulated in the credit shall not be examined by the bank. The second para of art 13a, which was added in the most recent revision of the UCP, states:

> *Documents not stipulated in the credit shall not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.*

34 And art 13c - also added in the last revision - states:

> *If a credit contains conditions without stating the document(s) to be presented in compliance therewith, banks will deem such conditions as not stated and will disregard them.*

35 The learned judge dealt with this point as follows. She took the view that the liquidators in making the demand should have produced the valuation report of the fair price of the shares which Low was obliged to purchase. She said in [para] 22:

> *All that could be gleaned from them [the judgments of the High Court and Court of Appeal] was that the only payment obligation of Low that remained intact was his obligation to pay the higher of the purchase price and the fair price of the relevant shares. No figure was assigned in the judgments to either of these prices. The liquidators did not furnish the bank with a copy of the valuation report (a document which was in fact contemplated by the High Court judgment) from which it could have determined that that figure represented the fair price of the shares.*

36 Applying the well known principle of construction of contracts that express terms were capable of overriding terms incorporated by reference, if the latter were inconsistent with the express terms, the learned judge held that, as the provisions of the UCP were incorporated by reference and art 13a was

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inconsistent with cl 2, the former was excluded by the express terms of the latter. She concluded thus in [para] 26:

> *Whilst I recognised the desirability of upholding the provisions of UCP-500 in general, it appeared to me that in this instance the circumstances were such that the credit could only be operated if the non-documentary conditions, ie the ascertainment of the fact and quantum of Low`s obligation were satisfied. Otherwise the credit did not make sense since the implication was that any amount within the maximum limit of the credit could have been demanded irrespective of the effect of the two judgments. I therefore found that in this case art 13c had been excluded by implication because of the express wording of cl 2 of the credit.*

37 This conclusion was challenged by the appellants. It was pointed out that the valuation report was not a document stipulated in the letter of credit, and under the second para of art 13a of the UCP, which was incorporated into and became part of the letter of credit, such document should not be examined by the bank. Hence, even if such document were furnished, the bank would not be permitted to examine it. Finally, it was submitted that the learned judge was in error in holding that the second para of art 13a and art 13c had been excluded by implication because of the express wording of cl 2 of the letter of credit.

38 The appellants relied on the decision of the Court of Appeal in England in **Forestal Mimosa Ltd v Oriental Credit Ltd** [1986] 1 WLR 631. There, five irrevocable letters of credit were issued by Dubai Bank and were confirmed by the defendants as the confirming bank. Each of the letters of credit was expressed to be issued in favour of the plaintiffs and available by acceptance of the plaintiffs` drafts drawn on the respective buyers named in the letters of credit. The defendants as confirming bank refused to accept and honour the drafts. The plaintiffs brought proceedings against them and applied for summary judgment. However, unconditional leave to defend was given by Bingham J. The main issue was whether art 10(b)(iii) of the Uniform Customs and Practice

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for Documentary Credits (1983) ICC Publication No 400 which obliged the defendants as confirming bank to accept and pay the drafts on maturity was incorporated into the letters of credit. On appeal, the Court of Appeal, reversing the decision of Bingham J, held that the express terms of the credit had to be read together with art 10(b)(iii) under which the defendant bank being the confirming bank was responsible both for the acceptance and the payment of the drafts on maturity. Accordingly judgment was entered against the defendants. Sir John Megaw delivering the main judgment of the court said, at p 639:

> *The marginal note which I have cited provides unambiguously that, except insofar as otherwise expressly stated, this documentary credit is subject to the Uniform Customs. Unless, therefore, there is some express provision which excludes the Uniform Customs terms, they have got to be brought in. There is no such express provision excluding any relevant part of the Uniform Customs. It might be that, if it could be shown that there was some irreconcilable inconsistency between the Uniform Customs terms and the other terms of the document, the Uniform Customs terms would have to be ignored. In my judgment, there is no justification for reading into the contract any implied exclusion; and, I think that is probably part of the same proposition, there is no inconsistency between the terms which the Uniform Customs would incorporate and the terms which appear on the face of the document itself. On the contrary, those terms have been included by reference to the Uniform Customs terms, and are to be interpreted by reference to the relevant parts of the Uniform Customs terms.*

39 Reverting to the instant case, we do not think that what the learned judge here decided was inconsistent with the decision of the Court of Appeal in ***Mimosa*** . As we have said, the terms of cl 2 of the letter of credit were clear: the bank undertook to pay to the appellants what Low was obliged to pay under the judgment of the High Court as affirmed or varied by the judgment of the Court of Appeal. As affirmed or varied, the only remaining obligation of Low

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as regards payment under the High Court judgment was [para] 6 thereof, which provided:

> 6 The third respondent [Low] do purchase or procure the purchase of the seventh respondent`s [KIP`s] shares in KZ Investments Pte Ltd at a fair price to be fixed by independent valuers or at the cost to the seventh respondent of the purchase, whichever is higher.

40 In order to make payment under cl 2 the bank had to ascertain the extent of Low`s obligation under [para] 6. As the learned judge said, there was nothing in the demand or in the judgment of the High Court or the Court of Appeal stating that the sum as demanded represented the fair price of the shares which Low was obliged to purchase. The only way the bank could ascertain if the amount demanded represented Low`s obligation under the judgment of the High Court was by reference to the valuation report. Having regard to the payment obligation of the bank as expressed in cl 2 of the letter of credit and [para ] 6 of the High Court judgment, the operation of the credit gave rise to `some irreconcilable inconsistency` between the express terms of cl 2 and the second para of art 13a. In our judgment, by reason of this inconsistency, the second para of art 13a (which directed the bank not to examine documents not stipulated in the credit), in so far as the valuation report is concerned, had to be ignored by the bank.

41 It follows, therefore, that the way out of the difficulty was for the liquidators to state in their demand that the sum of $3,793,000 as demanded represented (i) the fair price of the shares in KZ Investments Pte Ltd as fixed by independent valuers pursuant to [para] 6 of the High Court judgment, and (ii) Low`s obligation under [para] 6 of the High Court judgment. In support of the demand, they should tender also a copy of the valuation report made by such

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independent valuers, a document contemplated in [para] 6 of the High Court judgment, fixing the fair price for the shares in KZ Investments Pte Ltd. Regrettably, they did not provide such document. In the circumstances, for the reasons given, there was a discrepancy which entitled the bank to reject the documents tendered, which they did.

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Anthony Lee and Yee Kwok Hon (Bih Li & Lee) for the appellants
Harry Elias SC, Lawrence Quahe and Leo Cheng Suan (Chu Chan Gan & Ooi) for the first respondents
Alvin Yeo and Emiley Yeow (Wong Partnership) for the second respondent

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