IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 202

Suit 1565/1994

Between

Lee Feng Steel Pte Ltd

… *Plaintiff*

And

First Commercial Bank

… *Defendant*

GROUNDS OF DECISION

Agency — Third party and principal's relations; Banking — Letters of credit; Tort — Negligence

Version No 1: 29 Oct 2026 (23:45 hrs)

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Lee Feng Steel Pte Ltd v First Commercial Bank

[1996] SGHC 202

Suit 1565/1994
Kan Ting Chiu J
14 September 1996

1 Cur Adv Vult

2 The plaintiff company is a trading company which had a fixed deposit account with the defendant bank in respect of which it executed a fixed deposit agreement and a memorandum of lien on fixed deposits.

3 It was not a very active company. Its director Mr Shy Shinn-Shiu, a Taiwanese, would come to Singapore from time to time, and it had one full-time employee, Doreen Ong Swee Lim (hereinafter referred as `Doreen Ong`). Between 6 March 1992 and 2 July 1992 the defendant issued four letters of credit in favour of a Singapore company Kaoru Kuroki Agencies (hereinafter referred to as `Kaoru`) for an aggregate sum of $490,000. By the letters, the defendant undertook to negotiate Kaoru`s drafts upon presentation with Kaoru`s signed commercial invoices and delivery orders. The four letters of credit were the last four of a series of 13 such credits for the benefit of Kaoru for goods to be supplied by Kaoru. The goods were to be supplied from Kaoru`s warehouse to the plaintiff`s warehouse and did not involve shipment or shipping documents.

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4 The applications for the letters of credit submitted to the defendant by Doreen Ong bore the forged signatures of Mr Shy. Each of the letters stipulated that it must be presented for negotiation together with the

5 (1) signed commercial invoice in five copies indicating this credit number and countersigned by Lee Feng Steel Pte Ltd;

6 (2) delivery order in duplicate indicating this letter of credit number, made out to First Commercial Bank Singapore for account of applicant chopped and authentically countersigned by buyer acknowledging receipt of goods in good order and conditions (sic).

7 After the letters of credit were issued, they were presented for negotiation with the corresponding invoices and delivery orders through the International Bank of Singapore. Subsequently Doreen Ong executed four trust receipts on behalf of the plaintiff in favour of the defendant in connection with those four transactions.

8 Doreen Ong and her husband were charged with cheating the defendant with the 13 letters of credit. She pleaded guilty to five charges and admitted other charges of cheating the defendant`s manager by deceiving him in believing that Mr Shy`s signatures in the applications (including the applications for the letters of credit in these proceedings) were genuine when she knew them to be false.

9 The basis of the plaintiff`s claim is set out in the following paragraphs of the statement of claim:

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4 It was an implied term of the contract between the defendant as bankers and the plaintiff company as customers that the defendant would observe and/or exercise reasonable skill and care in and about negotiating and/or paying on the LCs.

(6) Purporting to act on behalf of the plaintiffs and in breach of her authority, Doreen forged the signature of the authorised signatory, one Mr Shy Shinn-Shiu, on the application forms for the LCs and eight others, which were chronologically prior to the LCs, all in favour of Kaoru. In breach of the plaintiffs` mandate, the defendant issued the LCs.

(10) The plaintiffs further aver that the defendant knew or ought to reasonably know that the signatures on the application forms for the LCs were forged. Notwithstanding the fact that the defendant had prior knowledge and/or notice of the said forgeries, the defendant issued the LCs pursuant thereto.

(11) In the premises, the defendant had no authority to pay the corresponding bills of exchange drawn in respect of the LCs.

(14) At a date or dates unknown to the plaintiffs until discovery and/or interrogatories the defendant negotiated and honoured the LCs in favour of Kaoru notwithstanding apparent irregularities and/or discrepancies in the accompanying documents, and in continuing to negotiate and honour the LCs without any proper enquiry, the defendants were negligent and in breach of their duty of care and terms of the contract between the plaintiffs and the defendants.

Particulars

Failing to discover the irregularities and/or discrepancies on the invoices submitted by Kaoru which indicated the term as `Cash Payment` instead of the relevant `LC number` as required under the terms of the credit.

10 At the trial the plaintiff summarised its case as follows:

(i) The discrepancy between the signature on the application forms and the specimen signature is so pronounced that ordinary visual inspection would be sufficient to see that they did not correspond.

(ii) The terms of the letter of authority clearly and expressly excludes Doreen`s authority to sign any papers in connection with the application of LCs.

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> (iii) At no time thereafter did the plaintiffs expressly or impliedly appoint Doreen as their agent for the purpose of applying for LCs.
>
> (iv) The plaintiffs had never ratified the acts of Doreen in respect of any application for LCs.
>
> (v) The plaintiffs had never acted in such a manner as to lead the defendants to believe that they had authorised Doreen to act on their behalf, and that the defendants were not led into such belief so to accept the application for the LCs as within the scope of such ostensible authority.

11 Essentially, there were two elements in the plaintiff`s claim, firstly, the forged applications for the letters of credit, and secondly, the alleged discrepant invoices accepted for negotiation.

12 The defendant admitted para 4 but denied paras 6, 10, 11 and 14 of the statement of claim. The defendant also pleaded that the plaintiff was estopped from saying that the signatures in the application forms were forged or that the invoices were irregular or discrepant.

13 Beyond denying liability towards the plaintiff`s claim, the defendant made a counterclaim for $5,816.22 and interest, being the amount still outstanding from the sums that the defendant had paid under the letters of credit after setting off the fixed deposit account. The plaintiff`s defence to the counterclaim was a reiteration that no payment was due under the letters of credit.

14 The only witness for the plaintiff was Mr Shy. In his affidavit of evidence-in-chief Mr Shy said that his signatures on the applications were forged. Mr Shy did not allege that Doreen Ong had forged his signatures, and there was no evidence that she did that. She admitted in the criminal proceedings to cheating the bank with the forged applications, and not that she forged the

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applications. To this extent the plaintiff`s claim in para 6 of its statement of claim that she forged the application was not proved.

15 He also alleged that three of the four invoices tendered under the letters did not conform with the terms of the letters of credit in that they did not bear the credit numbers.

16 Mr Shy also referred to the trust receipts Doreen Ong executed. He said that she was not authorized to sign them. The plaintiff had issued a letter of authority to the defendant of 5 January 1991 that:

> *We hereby authorised (sic) Miss Ong Swee Lim of NRIC No 1782901/G to sign all IMPORT & EXPORT DOCUMENTS on behalf of LEE FENG STEEL PTE LTD (except LETTER OF CREDIT APPLICATION) with immediate effect.*

17 Doreen Ong`s signature was appended to the letter against a stamp indicating that she was a director of the plaintiff. Mr Shy contended that the four trust receipts did not come within the authority conferred because they related to local letters of credit which did not involve any goods being imported or exported and were not import and export documents.

18 Mr George Lin Tzuoo Yau was the first witness for the defendant. He is the assistant vice president and deputy general manager of the defendant. Original copies of the invoices relating to the four letters of credit were tendered in evidence through him. The defendant maintained separate files for each of the letters of credit issued, and those invoices were retrieved from those files.

19 Mr Lin disagreed with the suggestion that Doreen Ong was not authorised to sign the trust receipts. He said that the trust receipts come within the meaning of import documents in the letter of authority because that

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expression covers all documents connected with letters of credit, local as well as foreign, established to buy goods.

20 The second witness for the defendant was Miss Yvonne Chan Shu Yuan. She is a clerk in the defendant`s letters of credit opening and advising section. She had checked the applications for the second, third and fourth letters of credit in question after they were submitted by Doreen Ong. She checked the signatures of the applications against Mr Shy`s specimen signature and had found no apparent discrepancies or irregularities.

21 Miss Chan referred to the invoices with no credit numbers. She said that they may be proforma invoices, ie preliminary invoices submitted to show what the buyer intended to buy from the seller, which are tendered with applications for letters of credit.

22 The third witness for the defendant was another employee, Miss Yeo Kah Hwa. At the material times she was attached to the inward documentary bills section of the export bills department of the defendant and her duty was to check documents tendered for compliance with the terms of letters of credit. She explained that when a presenting bank forwards documents to an issuing bank for negotiation it will stamp its name and reference number on the documents and enclose a covering schedule. She checked the documents tendered in respect of the four letters of credit. The invoices bore the credit numbers and the word `Cash` and she accepted them to be in compliance wit the terms of the letters of credit. The invoices also carried the stamp of the presenting bank, the International Bank of Singapore and the bank`s reference numbers.

23 The last witness for the defendant was Mr Cheong Koh Kee. He was a clerk in the employ of the defendant and had checked the application for the

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first of the four letters of credit in question that was submitted by Doreen Ong. He followed the same procedure as Miss Yvonne Chan and found no discrepancy or irregularity.

24 These are the essential facts. The defendant had issued the letters of credit purportedly at the plaintiff`s request. The plaintiff did not apply for them. Both parties were victims of Doreen Ong`s dishonesty, and the plaintiff says that it cannot be accountable for credits it did not apply for.

25 The defence is a denial that the letters of credit were issued in breach of the plaintiff`s mandate. This appeared to be a difficult position to take after the forgery of the applications was established. The defendant relied on the Privy Council`s decision in ***Gian Singh & Co Ltd v Banque de L`Indochine*** [1974] 1 WLR 1234 where Lord Diplock held (at pp 1238-1239):

> *The fact that a document presented by the beneficiary under a documentary credit, which otherwise conforms to the requirements of the credit, is in fact a forgery does not, of itself, prevent the issuing bank from recovering from its customer money paid under the credit. The duty of the issuing bank, which it may perform either by itself, or by its agent, the notifying bank, is to examine documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. The express provision to this effect in art 7 of the Uniform Customs and Practice for Documentary Credits does no more than re-state the duty of the bank at common law. In business transactions financed by documentary credits banks must be able to act promptly on presentation of the documents. In the ordinary case visual inspection of the actual documents presented is all that is called for. The bank is under no duty to take any further steps to investigate the genuineness of a signature which, on the face of it, purports to be the signature of the person named or described in the letter of credit.*

26 Counsel for the defendant recognised that the forgery in ***Gian Singh*** related to a document presented under a letter of credit, and not to the application for a letter of credit, but submitted that in theory there should be no

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difference in the standard of care required of an issuing bank either in checking documents presented under a letter of credit and in checking the letter of credit application itself.

27 There is a significant difference. When a customer applies for and a bank issues a letter of credit, a contractual relationship is established. The contract will probably incorporate the terms of the Uniform Customs and Practice for Documentary Credits (UCP), which sets out the issuing bank`s duties including its duty in checking documents tendered under the letter of credit. In any event, there will be contractual terms, expressed or implied, on the bank`s duty of care. Where no application is made by the customer, no contract is formed, and there are no contractual terms to protect the bank against the consequences of being deceived.

28 However that was not the only defence pleaded. The defendant also contended that the plaintiff was estopped from saying that the applications were forged because the plaintiff had known or ought or is deemed to have known that (a) the defendant would carry out Doreen Ong`s instructions because she was the plaintiff`s servant or agent with apparent authority to deal with the defendant on the plaintiff`s behalf, (b) the defendant would carry out the instructions because she was left in charge of the business, (c) the defendant would act on the trust receipts signed by her, and (d) the defendant was induced into believing that the plaintiff had signed the applications.

29 Doreen Ong was the plaintiff`s sole employee. Mr Shy had brought her with him to the bank when he was there to apply for letters of credit. She was authorised to handle correspondence with the bank. By the letter of authority the plaintiff also gave her the appearance of being a director.

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30 The applications did not purport to be signed by Doreen Ong. Her deceit was that she delivered the applications purported to be signed by Mr Shy when she knew that he did not sign them. No question arises over her authority to ***sign*** such applications. The only question is whether she had the authority, real or ostensible, to ***deliver*** them. How senior need an employee be to hand in applications for his or her employer? When Doreen Ong submitted those four forged applications there was no reason for the defendant to doubt her authority to do that. On the principle that a principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent, the plaintiff is liable for her actions.

31 This principle was first pronounced in ***Barwick v English Joint Stock Bank*** (1867) LR 2 Exch 259, where Willes J held (at p 265):

> *[W]hether a principal is answerable for the act of his agent in the course of his master`s business, and for his master`s benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is, that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master`s benefit, though no express command or privity of the master be proved.*

32 The phrase `and for the master`s benefit` left room for doubt whether the master was also liable when the servant acts for his own benefit. This was considered and resolved by the House of Lords in ***Lloyd v Grace, Smith & Co*** [1912] AC 714, where Lord Macnaghten, in the leading judgment held (at p 731) that `a principal must be liable for the fraud of his agent committed in the course of his agent`s employment and not beyond the scope of his agency, whether the fraud be committed for the principal`s benefit or not.`

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33 Though the principle in ***Lloyd*** `scase overcome the defendant`s difficulty on the question of its mandate to open the letters of credit, the defendant must still show that it had discharged its duty of care when it approved the applications. The plaintiff had alleged the defendant knew, or is presumed to know of the forged signatures in the applications.

34 Whether the plaintiff knew or had reason to know of the forgeries is a question of fact. There is no evidence that the defendant issued the letters of credit with actual knowledge that the applications were forged.

35 The real question then is whether it had reason to know that. This relates to a bank`s duty of care in processing such applications. The plaintiff accepted that the applications did not have to be examined by a document examiner. What is the standard by which the processing is to be done? Should officers who check signatures undergo training? Are they to check with the naked eye? What margins for variation should they allow?

36 No evidence on these matters was adduced. Counsel highlighted differences in the signatures in the applications from the specimen signature. I can see the differences, but I am not able to say that they were such that a reasonable bank officer would have detected the forgery.

37 Having found that the defendant was entitled to receive and approve the applications, it is not necessary for me to deal with the other defences of estoppel.

38 The negligence and breach of contract referred to in para 14 of the statement of claim is particularised to as `Failing to discover the irregularities and/or discrepancies on the invoices submitted by Kaoru which indicated the

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term as `Cash Payment` instead of the relevant `LC number` as required under the terms of the credit.`

39 Counsel for the plaintiff conceded that if it was found that the invoices it relied on were proforma invoices delivered by the plaintiff to the defendant at the time of application, then there is no issue of non-compliance of the invoices with the terms of the letters of credit. Two versions of the invoices were tendered in evidence. First there was the set tendered by the plaintiff which was given by the defendant to Mr Shy when he went to the bank to inquire why the plaintiff was not able to make a withdrawal from its account. Three of the four invoices did not bear the corresponding credit numbers as required by the letters of credit, and all of them had the word `Cash` next to the printed word `Payment`. The defendant did not deny the existence of these invoices. It tendered in evidence another set of invoices which it said were forwarded to it by the presenting bank, International Bank of Singapore. Each of these invoices was kept in the file maintained for each application. However three copies of the invoice for the fourth application were found in the inward bills file. Mr Lin was not able to explain why the bank had four copies of this invoice because the procedure was for four of them to be sent to the customer. These invoices, unlike the photocopies which the plaintiff produced, bore the respective credit numbers and the stamp of the International Bank of Singapore which presented the documents for negotiation on behalf of Kaoru.

40 Miss Yvonne Chan offered an explanation for the copies of the invoices tendered by Mr Shy. She said that such invoices, which she called proforma invoices, may be tendered by applicants to show what they intended to buy but she could not remember if there were proforma invoices when she processed the applications for the second, third and fourth of the letters of credit in question. Mr Cheong corroborated Miss Chan`s evidence on the use of proforma

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invoices, and was also unable to remember if the application be processed was supported by a proforma invoice.37 Counsel for the plaintiff did not cross-examine them on the explanation offered.

41 After reviewing the evidence on the invoices I accept the explanation that invoices may be tendered in two forms and stages, first by the applicant and then by the presenting bank. The presence of International Bank of Singapore`s stamp on the invoices produced by the defendant points to these invoices being the ones presented by the bank which were checked during the negotiation of the drafts. Furthermore Miss Yeo Kah Hwa`s evidence that she checked the invoices bearing the credit numbers and the presenting bank`s stamps was not disputed during cross-examination.

42 The plaintiff`s unexplained retention of four copies of the invoices to the last letter of credit suggests that there was a departure from the practice of retaining only one copy. However the evidence remained that compliant invoices were tendered to the defendant for negotiation. Even if there was a departure from the practice of returning four copies of the invoices to the customer, that did not support the plaintiff`s claim that the invoices checked were irregular or discrepant.

43 In view of the foregoing findings, I dismiss the plaintiff`s claim. The defendant`s counterclaim succeeds and judgment shall be entered for the sum of $5,816.22 and interest at the contractual rate up to the date of judgment and at 6% pa under O 42 r 12, Rules of the Supreme Court thereafter until payment. The defendant will have the costs of the claim and the counterclaim, the latter to be in accordance with the Rules of the Subordinate Courts.

44 ***Plaintiff`s claim dismissed.***

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Kan Ting Chiu J

Francis Ow (Cheong Hoh & Associates) for the plaintiff
Hee Theng Fong and Lee Cheow Ming Doris Damaris (Hee Theng Fong & Co) for the defendant

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