IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 31

OS 1205/1995

Between

Kumagai-Zenecon Construction Pte Ltd (in liquidation)
Another

… Plaintiff

And

Arab Bank plc

… Defendant

And

Low Hua Kin

… Third Party

GROUNDS OF DECISION

Banking — Letters of credit

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

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Kumagai-Zenecon Construction Pte Ltd (in liquidation) and Another v Arab Bank plc (Low Hua Kin, Third Party)

[1997] SGHC 31

OS 1205/1995
Judith Prakash J
11 February 1997

1 **The facts**

2 The first plaintiff, 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 third party (Low). Subsequently, the second plaintiff, Kumagai Investments Pte Ltd (KIP) was incorporated as a wholly owned subsidiary of KZC.

3 Following a shareholders` dispute, Kumagai Gumi Co Ltd commenced Originating Petition No 9/92 in the High Court (the OP) claiming relief under s 216 of the Companies Act (Cap 50). The plaintiffs and Low were named as three of the respondents to the OP. On 15 July 1994, on giving judgment after hearing the OP, the trial judge made, inter alia, the following orders:

> (1) that each of KZC and KIP be wound up and that M/s Peter Chi Man Kwong and Michael Ng Wei Teck be appointed the liquidators of each company;

> (2) that Low do pay KIP the sum of $2,982,517.17;
>
> (3) that Low purchase or procure the purchase of 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 the cost to [KIP] of the purchase, whichever is the higher`;
>
> (4) that Low do pay KIP the whole amount of tender deposits which had been made using the funds of KIP, less such amounts that had already been refunded.

4 On 1 August 1994, Low filed an appeal against the above and other orders made by the trial judge in the OP. Two weeks later the plaintiffs, who were both then in liquidation, commenced execution proceedings against Low. Low then filed an application to stay all execution proceedings pending the hearing of his appeal. The parties negotiated a settlement and on 24 August 1994 it was ordered, by consent, that unless Low provided a standby letter of credit or guarantee from the defendant herein, Arab Bank plc (the bank), in the amount of $4,316,354.17, the plaintiffs would be at liberty to proceed with execution on the judgment in the OP. It was further ordered that upon provision of the specified security the execution of the court orders would be stayed pending disposition of the appeal.

5 The terms of the standby letter of credit were settled by the parties before the court. The sum of $4,316,354.17 as the maximum sum payable under the standby letter of credit was agreed upon by adding the sum of $2,982,517.17 ordered to be paid by Low to KIP under the judgment to the sum of $1,333,837 as being the estimated cost to KIP of its purchase of shares in KZ Investments Pte Ltd. On 7 September 1994, the bank issued its standby letter of credit no STBY940035 (the credit) in the agreed terms. The credit was stated to be valid for a period of one year from its issue date or for a period of up to three weeks

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after the date on which the decision of the Court of Appeal had been entered in the Registry of the Supreme Court.

6 The Court of Appeal heard Low`s appeal in January 1995. Its reserved judgment was delivered on 24 May 1995. Low`s appeal was allowed in part. The orders that he pay KIP the sum of $2,982,517.17, and that he reimburse KIP with the amount of tender deposits made using its funds, were set aside. On the other hand, the Court of Appeal affirmed the order that Low was to purchase KIP`s shares in KZ Investments Pte Ltd on the terms determined by the trial judge. This decision was entered at the Registry of Supreme Court on 3 November 1995.

7 On 23 November 1995, just one day before the expiry of the credit, the liquidators of KZC demanded payment from the bank of the sum of $3,793,000 under the credit. The demand was accompanied by the two documents specified in cl 2 of the credit, viz legal sealed copies of each of the High Court judgment and the order of the Court of Appeal. The amount demanded was the fair price for KIP`s shares in KZ Investments Pte Ltd as valued by an independent valuer. The next day the bank rejected the liquidators` demand and, three days later, the plaintiffs` solicitors wrote to the defendant demanding payment pursuant to KZC`s original demand. On 28 November 1995, the bank`s solicitors defended their client`s rejection of the plaintiffs` demand and gave their reasons for that rejection.

8 On 9 December 1995, the plaintiffs commenced the present action against the bank to enforce payment under the credit. Low applied to be added as a third party to the action on the ground that he had an interest in its outcome.

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I allowed his application and at the hearing of the originating summons proper he was represented and opposed the plaintiffs` application.

9 **Terms of the credit**

10 As the proceedings turned on the true construction of the terms of the credit, it is necessary to set out its provisions in some detail. The credit was dated 7 September 1994 and it was addressed to KZC and/or its liquidators. In cl 1 the bank established the credit in favour of KZC for the account of Low. Clauses 2, 3 and 4 are the significant clauses in the present context and, so far as material, they read as follows:

> 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 [credit] of the sum or sums payable pursuant to or under the judgment debtor`s [ie Low`s] obligations to Kumagai Investments Pte Ltd pursuant to or under the High Court judgment [ie in the OP] 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 [credit] 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).
>
> 4 This [credit] shall be valid for a period of one (1) year from the date hereof (the validity period), or for a period extending up to three weeks after the date the decision has been entered at the Registry of the Supreme Court … We undertake that all

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> demands made in accordance with this [credit] or any renewal thereof would be met on demand.
>
> 5 This [credit] is subject to the Uniform Customs and Practice for Documentary Credit (1993 revision) ICC Publication No 500 (UCP-500).

11 **Basic issue: what did the credit call for?**

12 The plaintiffs` fundamental argument was that in a letter of credit situation, the issuing bank would be concerned only with documents and not with the underlying transaction between the bank`s customer who had applied for the credit and the beneficiary of the same. They contended that this same principle also applied to a standby letter of credit like the credit in this case. They pointed out that whilst, as stated in ***Documentary Credits*** (2nd Ed, 1993) by Raymond Jack at p 264, `a standby credit performs the function of a guarantee in that it enables the beneficiary, in accordance with its terms, to obtain money from the issuing bank, or any confirming bank, in relation to the performance, or non-performance, of a contract between the beneficiary and the party who has arranged for the opening of the credit`, as the same author goes on, `the important feature of such a credit is that the bank gives an undertaking to pay against documents which creates a primary obligation on the bank which is independent of the underlying transaction. Thus although the function is different from ordinary credits, the form of the transaction and the substance of the undertakings are the same as ordinary credits`.

13 The plaintiffs submitted that in the present case there was an arrangement whereby the bank, acting at the request and on the instructions of its customer, Low, was to make payment to a third party, KIP, against stipulated documents ie the orders made in the OP dated 15 July 1994 and by the Court of Appeal in Civil Appeal No 131/94. They asserted that it was clear from cl 2 of

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the credit that the bank was to pay the liquidators of KIP upon demand being made by the liquidators of KZC accompanied by the two specified documents and subject to the amount demanded not exceeding the prescribed maximum limit (cl 3) and the demand being made within the lifespan of the credit (cl 4).

14 They pointed out that on the facts, the question of fraud had never been raised and it was not an issue. No attempt was made by Low to restrain the plaintiffs from demanding payment pursuant to the credit nor was any attempt made to seek an injunction against the bank to restrain them from paying on the credit. As KZC`s demand was made within the validity period of the credit and was accompanied by the specified documents, there was absolutely no basis for the bank not to have paid pursuant to the terms of the credit.

15 It was apparent from the argument as formulated above that in essence the plaintiffs were construing the credit and contending that as all requirements which they construed the credit to impose had been complied with, payment should have been made. Counsel for the bank and Low agreed that the issue had to be determined by a construction of the terms of the credit but they argued for a very different interpretation to be put on the document.

16 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 in any specific case lead to an absolutely pre-ordained 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. This approach has been endorsed by the Court of Appeal in a passage relating to performance bonds. As such bonds are contractual instruments much akin to standby letters of credit in that they are generally construed as unconditional

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payment instruments, I thought that that passage would be equally applicable in the present situation. In **Bocotra Construction Pte Ltd & Ors v A-G (No 2)** [1995] 2 SLR 733 Karthigesu JA delivering the judgment of the Court of Appeal stated at p 738:

> *As regards the substantive issues arising under prayer 2, some analysis of the terms of the guarantee was required at the outset. It was not disputed that the guarantee was, in substance, a performance bond which had been issued by the bank to secure the appellants` due performance under the contract. The tendency of the English courts has been to treat performance bonds as unconditional provided there is a clear statement that the amount guaranteed is payable by the bank simply upon a written demand being made, even though there may be some indications to the contrary elsewhere in the document. In the present case, the judge below adopted the reasoning of the court of* ***Esal (Commodities) Ltd & Anor v Oriental Credit Ltd & Anor*** *[1985] 2 Lloyd`s Rep 546. In this case, the bank undertook `to pay the said amount on your written demand in the event that the supplier fails to execute the written performance`. The court held that the reference to the stipulated `event` of default in execution did not alter the fact that the money would become payable upon a written demand being made. The beneficiary of the bond was under no obligation to show a failure to perform by the supplier in order to call for payment. It may be noted that the court held this to be an unconditional performance bond despite the absence of any provision that contractual liability (or default) was to be determined by the beneficiary.*
>
> *In* ***IE Contractors Ltd v Lloyd`s Bank plc*** *[1990] 2 Lloyd`s Rep 496, Staughton LJ opined that in cases of ambiguity there was `a bias or (rebuttable) presumption in favour of the construction which holds a performance bond to be conditioned upon documents rather than facts` (at p 500). In the case of unconditional bonds, this would simply require the making of a written demand rather than proof of the facts, for example, of default or failure to perform. Ultimately, this raises a question of construction, and of examining the intent of the document. This approach is clearly borne out in numerous cases, including the two cited above. A recent authority for this proposition emanating from a source closer to home is that of the Malaysian Supreme Court in* ***Esso Petroleum Inc v Kago Petroleum Sdn Bhd*** *[1995] 1 MLJ 149 . Peh Swee Chin SCJ, delivering the court`s judgment, opined that the real issue was one of contractual interpretation of the performance bond and not of the nature of*

> *the transaction. We consider this to be the correct approach to adopt.`*

17 In fact Raymond Jack himself recognises that the nature of each letter of credit has to be construed from the provisions of the document and not from the label attached to it. As he states at p 147:

> *The rights and obligations created by a credit are to be found from its terms, and whether they are or are not typical of a particular type of credit must be treated with caution as a guide to their understanding. For a label may be helpful or it may be misleading if the credit is typical in some respects but not in others.*

18 The bank`s submission that the claim of the plaintiffs should be rejected was based on the construction of the credit. It contended that the demand which the plaintiffs had made was bad as not complying with the terms of the credit. In the bank`s letter of 24 November 1995, the bank expressed its rejection of the demand in the following terms:

> *Having examined your said letter and the accompanying documents, we hereby reject and return the same to you as your said letter is not in compliance with the [credit] 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 [Low`s] obligations to [KIP] 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 131/94.*

19 The bank`s stand was further explained by its lawyers four days later in the following terms:

> *Our clients [ie the bank] are required under the terms of [credit] to make payment only of sum or sums payable pursuant to or under [Low`s] obligations to [KIP] pursuant to or under the Orders of Court referred to in the [credit]. Your clients` demand dated 23rd 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 copies of the Orders of Court*

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> *accompanying the demand. In the circumstances, our clients are entitled to reject the demand and return the documents.*

20 The demand which the liquidators of KZC had made was brief. The material paragraph, para 2 read:

> *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 same sum drawn in favour of Kumagai Investments Pte Ltd (in liquidation) on an urgent basis.*

21 The third paragraph of the letter stated that forwarded with it were legal sealed copies of the High Court judgment and the order of the Court of Appeal.

22 The plaintiffs` contention was that they had, by this demand, complied in every respect with the requirements of cl 2 of the credit and that the bank had to pay since the credit was conditioned on documents rather than on facts. The documents called for by the credit had been furnished and the bank had no cause to make any further inquiry as to whether the sum demanded was in fact payable by Low. The bank`s job was an administrative rather than an investigative one. The credit having been expressly made irrevocable and payable on sight, the bank had given an undertaking under art 9(a) of the UCP-500 to pay on sight once the stipulated documents had been presented and the terms and conditions of the credit had been complied with.

23 The question was whether cl 2 of the credit in fact lent itself to such a straight forward interpretation. There is no question that any contract has to be construed within the context of the factual matrix which led to its conclusion. While the cases do say that in a letter of credit situation the bank is not obliged to look into the actual facts of the matter in the absence of fraud, this holding, as demonstrated by the facts of the various cases which counsel for the plaintiffs

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cited (see for example **Brody, White & Co Inc v Chemet Handel Trading (S) Pte Ltd** [1993] 1 SLR 65 and **Amixco Asia (Pte) Ltd v Bank Bumiputra Malaysia Sdn Bhd** [1992] 2 SLR 943), has been enunciated in situations where the letter of credit concerned was issued in respect of a commercial transaction. The whole purpose of the credit in such a situation would be for the beneficiary to obtain quick and prompt payment and therefore the bank is charged with payment on the basis of the documents alone.

24 In the present case, however, the intention of the credit was to provide security for the judgment creditor ie KIP during the period between the decisions of the High Court and of the Court of Appeal. The parties were trying to secure KIP against the possible insolvency of Low in that interregnum and they were concerned not so much with the documents that were to be presented under the credit but with the facts which those documents would establish: the fact in question being exactly what Low`s obligation to KIP under the order of court would be at the end of the appeal process. Counsel for Low submitted and I agreed that in those circumstances the court was entitled to take a purposive view of the credit.

25 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

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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. In this very peculiar instance, it appeared to me that the bank had to establish two facts, ie the facts of the existence of the obligation and its quantum, before making payment and was not entitled to pay simply because the documents named in the credit had been presented and complied with their description.

26 As the bank submitted, when documents are presented to an issuing bank for payment under a credit, that bank has to exercise reasonable care in examining them in order to ascertain whether they appear on their face to be in accordance with the terms and conditions of the credit, see **Gian Singh & Co Ltd v Banque de l`Indochine** [1974] 2 All ER 754 ; [1972-1974] SLR 16. If the documents do not conform with the credit, they must be rejected. However, as the Court of Appeal stated in **Indian Overseas Bank v United Coconut Oil Mills Inc** [1993] 1 SLR 141 , the requirement of conformity is not a requirement of literal compliance:

> *On these authorities, 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 (per LP Thean J at p 151).*

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27 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. 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. In my view, since the documents tendered did not establish the basic fact required by the credit ie that the amount demanded was Low`s obligation under the judgment, there was a discrepancy which called for an inquiry or an investigation by the bank and the bank was accordingly entitled to reject the documents.

28 **Were the non documentary conditions nullified by art 13 of UCP 500?**

29 The plaintiffs` objection was that by taking that view the bank was in effect, of its own volition, requiring a document which was not specified in the credit (ie the report of the independent valuers) to be tendered to enable it to make payment. Counsel relied on arts 13a and 13c of UCP-500 as prohibiting the bank from taking that position. These articles provide:

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

> on their face, to be in compliance with the terms and conditions of the credit.
>
> …
>
> Documents not stipulated in the credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.
>
> c 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.

30 It was therefore submitted for the plaintiffs that even if they had tendered the valuation report together with their demand, the bank would have been bound not to examine the report but to return it without responsibility. In this connection the plaintiffs relied on the rationale behind art 13a as explained in the International Chamber of Commerce publication, ***Documentary Credits, UCP 500 & 400 Compared*** (1993) which stated:

> ***Non-Stipulated Documents*** *- The second paragraph in sub-art 13(a) reading `Documents not stipulated in the credit will not be examined by banks …` is new and is intended to address a vexing and growing problem of documentary examination: what is to be done with documents not stipulated in the credit, especially when these unspecified documents contain inconsistencies with the required compliance documents? This new provision expressly directs banks not to examine the unspecified documents and sets forth the method of their disposition. Banks must realise that they are concerned only with documents required in the credit and that they should have no duty to examine any additional document presented by the beneficiary.*

31 It has to be remembered, however, that the provisions of UCP-500 were not expressly repeated in the credit. Instead they were incorporated by reference. It is a well known principle of construction of contracts that the express terms of the contract are capable of overriding terms incorporated by reference if inconsistent with such incorporated terms. This position was recognised by

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Raymond Jack during his discussion of the effect of art 13c. He said (at p 149, para 8.17):

> *The second problem arises in connection with the construction of a credit which contains a non-documentary condition and incorporates art 13c. It arises because the parties to a contract are free to make their own bargain within the limits of the law, and the Uniform Customs do not have the force of law. It is clear that, if a credit expressly provided that art 13c should not apply, it would not. It can be strongly argued that the same result can be achieved by implication in appropriate circumstances. For the inclusion of a term in the credit that payment is only to be made if a non-documentary condition is satisfied is an expression of the parties` intention which is specific to that credit and to which it may be assumed from the circumstances that the parties have directed their attention. It is a principle of English law relating to the construction of contracts that, where there is a conflict between an express term of the contract and a standard incorporated terms the express term should be given preference on the ground that it is a term to which the parties have given their attention. Where a credit is issued containing a non-documentary condition among those to be satisfied before payment, it can certainly be argued that it is art 13c which must give way. The strength of the argument will be increased the greater the importance of the condition to the working of the credit. Nonetheless it is suggested that in many situations which are likely to arise an English court will seek to uphold the intention of the Uniform Customs. For the desirability of upholding the internationally chosen solution is plain.*

32 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.

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33 **Were there two bites at the cherry?**

34 The other objection that the plaintiffs raised to the bank`s argument was that its first rejection of the plaintiffs` demand did not in fact specify the discrepancy on which they later relied in court. Counsel argued that this discrepancy was only pointed out in the bank`s solicitors` letter of 28 November 1995 and that the bank was not allowed to rely on the second letter on the basis of what has been described as the `no second bite at the cherry` principle. This principle was accepted by the courts of Singapore in cases dealing with earlier versions of the Uniform Commercial Practice (see **United Bank Ltd v Banque Nationale de Paris** [1992] 2 SLR 64 and **Amixco Asia (Pte) Ltd v Bank Bumiputra Malaysia Bhd** [1992] 2 SLR 94).

35 Article 14d.ii of UCP-500 dealing with the notice of rejection of documents which the issuing bank has to give to the presenter provides:

> *Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.*

36 In my opinion, this language is even stronger than that which appeared in previous versions of the article in question and further strengthens the legal view that the issuing bank gets only one chance to point out the reasons why it is rejecting documents and cannot in later litigation rely on any discrepancies which it has subsequently discovered. With respect, I agreed entirely with the opinions expressed in the cited cases that there can be no second bite of the cherry in this regard.

37 The issue that arose was whether in fact the bank was attempting a second bite of the cherry by virtue of its solicitors` letter. The plaintiffs` position

was that when the bank said in its original letter of rejection that the plaintiffs` demand was `not in compliance with the [credit] 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 [Low`s] obligations ...` it was simply making an objection to the form of the letter of demand. The plaintiffs pointed out that there was nothing in the credit which provided that the demand made had to comply with any particular form or had to contain any particular wording. They went on to contend that their demand did not have to refer to any particular obligation as there was only one obligation which Low was under. Whilst the credit did not lay down the phraseology of the demand letter, I could not accept the submission that no reference at all to Low`s obligation was required, since in my construction the precise matter which the credit required the bank to determine was whether the demand was in relation to an obligation of Low pursuant to the judgments. The bank`s original rejection therefore went to substance and not simply to form.

38 The plaintiffs also contended that the subsequent letter of 28 November 1995 from the bank`s solicitors gave two additional reasons for rejecting the plaintiffs` demand. These were that the demand had made no reference to Low`s obligations and, secondly, that the sum of S$3,793,000 demanded did not appear to be referred to in any orders of court which accompanied the demand.

39 As I construed both the original rejection and the solicitors` letter, however, it did not appear to me that the latter had enhanced the first rejection by giving additional reasons for it. In my opinion, the second letter was, as submitted by counsel for Low, simply a clarification of what was in the original rejection in that it made explicit what was implicit in the bank`s own letter. As I read the material paragraph of the bank`s letter, it did say that the sum of

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$3,793,000 had not been stated to be Low`s obligation to KIP under the High Court order as varied and it also clearly implied that this sum had not been mentioned at all in the two orders of court. Thus the bank was still entitled to make the arguments it had propounded before me.

40 For the above reasons I concluded that the bank was justified in rejecting the plaintiffs` demand and I therefore dismissed the originating summons with costs.

41 ***Application dismissed.***

Judith Prakash J

Yee Kwok Hon (Bih Li & Lee) for the plaintiffs
Harry Elias SC and Lawrence Quahe (Harry Elias & Partners), and Gan Choon Beng and Leo Cheng Suan (Chu Chan Gan & Ooi) for the defendants
Alvin Yeo (Wong Partnership) for the third party

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