IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 31

Suit 424/1995

Between

Agritrade International Pte Ltd

… *Plaintiff*

And

Industrial and Commercial
Bank of China

… *Defendant*

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; Conflict of Laws — Choice of law — Contract

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

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Agritrade International Pte Ltd v Industrial and Commercial Bank of China

[1998] SGHC 31

Suit 424/1995
G P Selvam J
31 January 1998

1 **Judgment:**

2 1.**GP SELVAM J**

3 **The letter of credit**

4 This case concerns a banker`s documentary letter of credit. It was issued at Guangxi by the defendants, a bank incorporated in the People`s Republic of China. The defendants have a branch in Singapore; but it would appear that they do not have a branch in Hong Kong. The credit was issued in favour of a Hong Kong company, namely Wah Tat Fung (HK) Ltd (Wah Tat). It was an irrevocable credit available by negotiation and its purpose was to pay for steel products which Wah Tat had contracted to sell to the applicants of the credit who were Quinzhou Prefecture Foreign Economic Relations and Trade Corp of Guangxi (the Chinese buyers).

5 2.Wah Tat, the immediate beneficiaries of the credit, were not the suppliers but the resellers of the products. Wah Tat purchased the goods from

Agritrade International Pte Ltd (the plaintiffs), a Singapore company, who in turn had secured the merchandise from Sytco Pte Ltd of Singapore. Wah Tat, however, did not establish a separate back-to-back credit in favour of the plaintiffs. They arranged for a transfer of the credit in favour of the plaintiffs. There was a provision in the credit instrument that it was transferable to the plaintiffs.

6 3.It would be apt now to say that the word `transfer` with its cognates in the context of this case does not bear the ordinary meaning of the term. In effect the term meant that the right to draw under the credit could be transferred wholly or partially to another person. In this case the transfer was effected by the issue of a sub-credit. Further the credit was not transferred in its entirety in the sense that Wah Tat, the direct beneficiaries, dropped out of the transaction substituting the transferee in their stead. Wah Tat retained part of the credit so that they could draw the differential in the sale price they charged to the Chinese buyers and the sale price of the plaintiffs` to Wah Tat. It was, therefore, a divisible credit. It should be noted that the word `transferred` was used instead of `divisible` because art 54(b) of the Uniform Customs and Practice (1985 Revision) (the UCP), which governed the credit, forbade the use of words like `divisible`, `fractionable`, `assignable` and `transmissible` because they `added nothing to the meaning of the term "transferable"`. The bankers concerned, however, had no difficulties in understanding the term as a word of art and the mechanism of transferring part of it to the plaintiffs. The important effect of the transfer was to create a direct contractual relationship between the plaintiffs and the defendants for the amount available to the plaintiffs.

7 4.I will call the credit to Wah Tat as the `mother credit` and the credit transferred to the plaintiffs as the `sub-credit`.

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

8 5. **The mother credit**

9 The mother credit was established in the following manner. The defendants communicated the text of the credit to Nanyang Commercial Bank Ltd of Hong Kong who therefore were the advising bank. The credit in its amended form provided, inter alia and in effect, as follows: (i). The credit was available by negotiation at the advising bank in Hong Kong (ie Nanyang Commercial Bank). Negotiation was to be by draft at sight for 70% of the invoice value drawn on the applicants and the 30% of the invoice value by draft at 90 days` at sight. Because of the partial transfer of the credit in reality there were two credits and two beneficiaries namely Wah Tat and the plaintiffs.

10 (ii). Shipment was from Odessa CIS to Huangpu, Guangzhou partial shipment was not allowed. Transhipment allowed. A special condition provided that the goods would be inspected and would be delivered to the buyer at warehouse of Huangpu Port of Guangzhou, China. This was because the goods had already been discharged at Huangpu Port before the credit was issued.

11 (iii). The total amount of the credit was US$2,937,384.50 covering a total quantity of 10,557.10 metric tons broken up as follows:

12 (a). 803 pieces of cold rolled sheets at $320/MT(weight: 4678.60 MT);

13 (b). 151 coils of hot rolled coil at US$245/MT (weight: 2242.10 MT);

14 (c). 503 pieces of hot rolled at US$245/MT (weight: 3636.40 MT).

15 (iv). The delivery date was latest 30 September 1993.

16 (v). Third party documents were acceptable.

17 6.The aggregate quantity of cargo was 10,557.10mts. The total amount of the credit was US$2,937,384.50 (5% more or less allowed).

18 7.The full terms of the mother credit, in particular the price changed by Wah Tat to the buyers, were not revealed to the plaintiffs before the latter negotiated the credit.

19 8. **The sub-credit**

20 Nanyang Commercial Bank issued the sub-credit to the plaintiffs by asking its Singapore correspondents, Bank of China`s Singapore office, to advise the plaintiffs` bankers Rabobank Nederland, Singapore Branch. The material communication from Nanyang Commercial Bank to Bank of China, Singapore read as follows:

> *Pls advise the following transfer credit via Rabo Bank Nederland Singapore Branch 50 Raffles Place 32-01 Shell Tower Singapore 0104*
>
> *Without any responsibility on our part pls advise transferee that we have transferred the following credit in their favour at the request of the transferor under our transfer ref OBT93/0475*
>
> Transferor: Wah Tat Fung (H.K.) Ltd Room 2112 21/F Hoking Comm Ctr 2-16 Fa Yuen St Kowloon Hong Kong
>
> Transferee: Agritrade International Pte Ltd 6 Battery Road 16-06/7 Singapore 0104
>
> Amount: USD2,556,492 (US dollars two million five hundred fifty six thousand four hundred and ninety two only
>
> Expiry Date: 10 January 1994 at our counter

21 9.The prices, c and f Shanghai, mentioned in the sub-credit were as set out below. The plaintiffs` own purchase price per metric ton are shown in parenthesis. (a). 803 pieces, cold sheets:US$270/MT (USD275)

22 (b). 151 coils, hot coils:US$220/MT(USD205)

23 (c). 503 pieces, hot plates:US$220/MT (USD205)

24 10.The total amount in favour of the plaintiffs was US$2,556,492 (5% more or less allowed). This was the sale price in the contract between Wah Tat and the plaintiffs.

25 11.The difference in the total value of the mother credit and the sub-credit was US$2,937,384.50-US$2,556,492=US$380,892.50. The difference, of course, was Wah Tat`s gross profits. It must be iterated that the plaintiffs, at the time the sub-credit was established in their favour had no knowledge the huge price difference in Wah Tat`s contract with the Chinese buyers.

26 12.Special instructions in the mother credit and the sub-credit provided that interest on 30% of invoice was payable by the buyer at 5.4% per month, that is 64.8% per annum.

27 13.The sub-credit contained the following important provision: `Notwithstanding any instruction to the contrary that appear in the foregoing credit it is essential that all documents must be presented to Nanyang Commercial Bank, Hong Kong, in one lot.` The purpose of this provision was to enable and require the plaintiffs and Wah Tat to effect a negotiation concurrently and so that Nanyang Commercial Bank and subsequently the

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

defendants would have sight of documents of Wah Tat and the plaintiffs and confirm that they were mutually consistent.

28 14. **No contract between plaintiffs and ultimate buyers**

29 The first and foremost feature of the above arrangement was that there was no underlying contract between the plaintiffs and the buyers at Guangxi. There were two relevant contracts: one was the underlying contract between the Chinese buyers and Wah Tat and the other between Wah Tat and the plaintiffs. If there was a breach of any term in the underlying contract between the Chinese buyers and Wah Tat the plaintiffs could not be made liable in contract to the Chinese buyers or the defendants. The contractual position between Wah Tat and the plaintiffs was an entirely independent relationship and it could not in any way influence the rights and obligations of the parties to this case. These conclusions are dictated by the principle of privity of contract.

30 15. **The negotiation**

31 In this situation, on or about 8 October 1993 Rabobank, the plaintiffs` bank in Singapore tendered the documents on behalf of the plaintiffs, to Nanyang Commercial Bank Ltd at Hong Kong claiming immediate payment of 70% of the total value, that is US$1,789,525.50. It was paid to and received by Rabobank, on behalf of the plaintiffs for value 21 October 1993 without any objection or outcry from the defendants. In other words neither the buyers nor the defendants had any objection to the propriety and conformity of the documents tendered by the plaintiffs. It should be observed that between the negotiation and the payment of 70% there was a time lag of 13 days. This means

that the defendants and the Chinese buyers had almost two weeks to reject the documents but did not do so.

32 16. **Defendants` promise to pay the balance**

33 The remaining 30% of the price amounting to US$779,363.91 was payable at 90 days sight ie on or about 25 January 1994. Time for payment of this amount was deferred at defendant`s request to 25 March 1994 and interest was agreed on 19 January 1994 to accrue at 6.0% per annum from 25 January 1994 until date of receipt of funds. Subsequent events will show that there was an ulterior motive in asking for extension for payment until 25 March 1994.

34 17.At this point it should be stated that Rabobank after it presented the documents to Nanyang Commercial Bank and received payment of 70% of the invoice value had discounted the draft without recourse in respect of the balance of 30% and therefore had a lien on the balance due from the defendants.

35 18. **Defendants renege on their promise**

36 On 22 March 1994, the defendants by a telex to the plaintiffs` bank, Rabobank, desired to know the amount of interest payable on maturity date. Rabobank replied on same day stating that the total amount payable inclusive of interest was US$785,837.16. The time for payment came but no payment came from the defendants. Instead Rabobank received a communication on that day from the defendants stating that:

> *We are sorry to inform you that we have received the court written notice. The court inform us to stop the payment of 30% under the L/C No LC54193110. And the proceeds of the said L/C are still under our control.*

37 19. **Defendants raise spurious defences**

38 In the event the defendants failed to honour their undertaking. This compelled the plaintiffs to institute this action. Why did the defendants negate their solemn undertaking in such a tardy fashion? Their grounds were outlined in their amended defence as follows:

> *Firstly, the defendants` Guangxi branch (which issued the letter of credit) was bound to comply with Chinese law and/or that the proper law of the letter of credit was Chinese law. On or about 2 February 1994, the letter of credit was cancelled at the request of the applicant of the credit and the beneficiary.*
>
> *Secondly, on or about 25 March 1994, the defendants received a notice of assistance in execution dated 24 March 1994 enclosing a copy of civil judgment dated 24 March 1994 issued by the Nanning Intermediate People`s Court for the Guangxi Zhuang Tribe Autonomous District which ordered that payment of the balance of 30% goods money by Guangxi Industrial & Commercial Bank be stopped in the Letter of Credit (L/C 54193110) opened by the applicant with the said bank and that the said letter of credit be cancelled. The defendants were under Chinese law duty-bound to comply with the first judgment.*
>
> *Thirdly, on 11 April 1994, the defendants received another notice of assistance for enforcement dated 11 April 1994 enclosing a judgment (award) of the China International Economic and Trade Arbitration Commission dated 23 March 1994 which required the defendants to pay US$264,655.75 to Wah Tat Fung (HK) Ltd.By reason of these matters the defendants were under no obligation to make payment of the balance of the 30% as the letter of credit was cancelled by the first judgment. By the terms of the first judgment, the defendants were prohibited under Chinese law from making payment of the balance of the 30% to the plaintiffs.*
>
> *Fourthly, there was no privity between the plaintiffs and the defendants. The plaintiffs therefore have no cause of action against the defendants.*
>
> *Fifthly, the defendants` obligation to honour the letter of credit arose only if all drafts drawn thereunder complied with the terms thereof and were presented at the defendants` Guangxi branch. As the drafts were not presented at the defendants` Guangxi Branch, the defendants were under no obligation to pay.*

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

> *Finally, if, notwithstanding the foregoing, the defendants were liable to the plaintiffs, which they denied, the defendants said they were entitled to a reduction of the amount for which they were liable to the plaintiffs.*

39 These were, it will be demonstrated later, disingenuous defences designed to delay the proceedings.

40 20. **Incontrovertible facts**

41 It would be apt now to state certain other salient facts. The defendants` Guangxi branch did in fact receive the documents from the plaintiffs and Wah Tat after the negotiation at Hong Kong. Important among these documents were the relevant bills of lading which essentially were documents of title. There was an implied affirmation that the documents tendered and received by the defendants were in accordance with terms and conditions of the credit as nothing to the contrary was asserted. Admittedly the defendants passed the documents to the applicants of the credit, the Chinese buyers, who took possession of the cargo and thereby received value. It was thereafter that the defendants on the Chinese buyer`s instigation and initiation attempted to renege on their undertakings to pay the remaining 30%. The Chinese buyers` intention was to renegotiate the price with Wah Tat. It can be inferred that the defendants when they asked for an extension of time to 25 March 1994 their purpose was to enable the buyers to obtain a court order to stop payment of the 30% balance of the credit amount. It can be further inferred that when the Chinese buyers and Wah Tat had reached a settlement between them the Chinese buyers withdrew from the scene leaving the defendants to fend for themselves. It was those circumstances that the defendants in order to ward off the plaintiffs` claim raised the disingenuous defences. The defendants` real right of recompense was

against the Chinese buyers and not the plaintiffs. The Chinese buyers however were not worth powder and shot. Hence their decision to defend this action.

42 21. **A meta-principle**

43 I shall now outline an important meta-principle of law governing letters of credit. Banks` letters of credit were designed to operate within a narrow sphere. It is that banks and beneficiaries do not have any obligations or rights outside the four corners of the terms of the credit. The direct effect of this is that banks turn a blind eye to the underlying contract and the substance of the transaction even though there may be a reference to the underlying transaction. Thus the law erects a wall of separation between the credit contract and the sale contract. It is done to facilitate the smooth operation of international trade. This principle of autonomy is expressed in the following articles of the UCP.

> Article 3 Credits, by their nature, are separate transactions from the sales or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the credit.
>
> Article 4 In credit operations all parties concerned deal in documents, and not in goods, services and/or other performances to which the documents may relate.

44 22.A necessary corollary of the above two articles is that the contractual relationship between the issuing bank and the applicant for the credit cannot affect the relationship between the issuing bank and the beneficiary and his assignee.

45 23.The principle of autonomy of credit, excepting fraud, is sacrosanct in the law of letter of credit. Any inroad into the principle will undermine and

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

annihilate the trust and confidence in the use of documentary credits in international trade. The court must therefore do its utmost to preserve its integrity.

46 24. **Freedom to include essence of underlying transaction in the credit document**

47 It should be added that the autonomy principle in no way detracts from the right of the issuing bank to incorporate in the letter of credit any essential term of the underlying contract it deems necessary to protect itself or the applicant. Such incorporation will impose on the beneficiary an obligation to comply with that term and reflect such compliance in a document called for by the credit. If the merchandise in respect of which a letter of credit is issued is required to be of a specified grade, quality or description it can be included in the credit and the credit can call for an inspection certificate stating that the merchandise meets the specified grade, quality or description. However, it is of vital importance that this should be done at the front end of the transaction. The courts will not permit it to be introduced by the backdoor in the guise of an implied term after the beneficiary has taken up the credit.

48 25. **Defendants make a volte-face**

49 When the case came up for trial before me on 8 September 1997 the defendants, no doubt after receiving legal advice, made a volte-face and abandoned the dubious defences outlined above. That was a well advised course of action for the reasons stated below.

50 26.First, as the credit was irrevocable the defendants could not revoke it. In any event, as the sub-credit was a contract between the plaintiffs and the

defendants neither the Chinese buyers nor Wah Tat acting alone or together could revoke the credit or instruct the defendants to revoke it. It was not their credit. It follows therefore that the defendants could not act on any request or directive from them to revoke what was irrevocable. Further as the credit had already been negotiated the credit was no longer executory. It had been accomplished by performance. There was therefore no credit to retract, cancel or revoke. The defendants were under a new obligation to effect payment on 25 March 1994.

51 27. **Proper law of credit**

52 Next, the proper law governing a cross border banker`s letter of credit unless some other law is expressly provided is the law of the country where the beneficiary is entitled to present the documents and become entitled to payment. This is implied by the very nature of cross-border credit. Where a credit provides for negotiation in a country other than the country from which it emanates the beneficiary impliedly intimates that he does not wish to be bound by the law of the country of origin of the credit. The opening bank by agreeing to issue the credit impliedly accepts such an intimation. A case in point is ***European Asian Bank AG v Punjab and Sind Bank*** [1981] 2 Lloyd`s Rep 651 and [1982] 2 Lloyd`s Rep 356, CA. In that case the defendants, Punjab and Sind Bank, a bank established in India, issued a credit on behalf of Indian buyers in favour of Singapore sellers. It was confirmed by a bank in Singapore and negotiation was restricted to the confirming bank. The plaintiffs, the Singapore branch of a European Bank, having discounted the documents, presented them directly to the defendants in India. The buyers in India alleging fraud obtained an injunction in India ordering the defendants not to effect payment on the credit. Later the plaintiffs brought an action against the issuing bank in England. An

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

application was made to stay the action. The application was refused. The question of proper law of the credit came up for discussion. Goff J rejected the contention that Indian law was the governing law and said `most probably it was the law of Singapore`. In the Court of Appeal Ackner LJ affirmed the view of Goff J in the following words at p 368:

> *I do not accept that the contract was governed by Indian law, although the letter of credit was issued by an Indian Bank. It was notified through a correspondent bank in Singapore, which confirmed the credit, and it was issued in favour of sellers in Singapore, who were advised of it through another bank in Singapore. Negotiation was contemplated in Singapore, as was payment. In these circumstances the proper law was probably that of Singapore - see* ***Offshore International SA v Banco Central SA*** *[1976] 2 Lloyd`s Rep 402, [1977] 1 WLR 399 approved in* ***Power Curber v National Bank of Kuwait****.*

53 28.Subsequently the plaintiffs were given summary judgment by the Court of Appeal. The House of Lords refused leave to appeal against the judgment. Be it noted that the judgment was given notwithstanding the injunction prohibiting payment granted by the Indian Court.

54 29.In the present case the proper law of the credit was that of Hong Kong and not that of People`s Republic of China. It is common knowledge that at the relevant time the relevant law of Hong Kong and that of Singapore were the same. In any event as it was not pleaded that the law of Hong Kong was different a Singapore court must assume that the laws of both were the same. Eventually counsel for the defendants conceded that the proper law of the credit was the law of Hong Kong.

55 30.Counsel for the defendants gracefully and readily conceded that the orders of the courts in People`s Republic of China were not binding on this court and accepted that the defendants must justify their refusal to honour their

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

undertaking to pay according to the law of Singapore. To this end the defendants raised two points at the outset of the trial and introduced them by following amendments to the defence:

> 14.1 Further or in the alternative, the defendants say that the plaintiffs are precluded from demanding payment under the letter of credit by reason of fraud on the part of the plaintiffs, their servants or agents.
>
> PARTICULARS
>
> (a) The plaintiffs tendered a document viz the invoice covering the goods, which document they knew to be false. The plaintiffs knew that the goods should have truthfully and accurately been described as `OFF GRADE`, but had knowingly omitted the description `OFF GRADE`.
>
> In the premises, the documents tendered by the plaintiffs did not cover the goods which were in fact shipped.
>
> 14.2 The defendants say that it was an implied term of the letter of credit that the statements made in documents tendered by the plaintiffs should in fact be true and accurate. In breach of such implied term, the plaintiffs tendered documents which were in fact untrue and inaccurate, by reason whereof the plaintiffs are not entitled to payment.

56 The true meaning and effect of these assertions was to convert the credit contract into a sale of goods contract and affix to it the fraud label because without it the defendants would be out of court.

57 31.In addition to the above, the defence as it stood before the trial began made reference to the arbitration between the plaintiffs and Wah Tat in China. It took place before and after the commencement of this action and it was first ordered the plaintiffs to pay the sums of US$608,694.70, US$13,330.50 and RMB30,000 to Wah Tat. This was an order made in the absence of the plaintiffs.

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

Subsequently in another arbitration Wah Tat was ordered to pay the plaintiffs the balance of 30% under the contract of sale between them amounting to US$766,947.60 plus interest thereon at 5.4% pa from 26 March 1994. After set-off, it was pleaded, US$254,438.80 and RMB30,000 were payable by Wah Tat to the plaintiffs. It was asserted that by an implied term of the credit the plaintiffs could not claim from the defendants more than those amounts and it would be `plainly and obviously dishonest and/or fraudulent` to do so.

58 32. **Fraud**

59 Conceptually the claims based on fraud and implied term in the context of a banker`s commercial letter of credit are tautological. The only implied term in the letter of credit contract is that the beneficiary who tenders documents must not personally be guilty of fraud. In this context the fraud must be in respect of the documents called for by the credit. These must be dishonesty appertaining to the documents. The implied term pleaded in para 14.2 of the defence is part of the law of sale of goods: See ***Hindley & Co Ltd v East Indian Produce Co Ltd*** [1973] 2 Lloyd`s Rep 515. It is not part of the law of letters of credit in addition to the exception of fraud. It is to be observed that the defendants` counsel in his written submissions accepted the principle of autonomy of credit and conceded that fraud is the only established exception to that general principle.

60 33.Fraud in the context of letters of credit means common law fraud. Its elements are the same as those of the tort of deceit. To clarify, it does not mean fraud and dishonesty in equity when the act of a fiduciary is under consideration as in **Royal Brunei Airlines Sdn Bhd v Philip Tan Kok Ming** [1995] 2 AC 378. It would be salutary now to quote the essence of the legal position as stated

by Lai Kew Chai J in **Brody, White & Co Inc v Chemet Handel Trading (S) Pte Ltd** [1993] 1 SLR 65 CA:

> *An irrevocable credit constitutes an independent contract between the issuing banker and the beneficiary, which is not affected by any irregularities in the underlying contract in pursuance of which the credit is issued. This rule is crucial to the smooth functioning of the world of international trade and trade-financing. The only exception to the autonomy of the documentary credit transaction is therefore fraud.*
>
> *The kind of fraud sufficient to constitute an exception to the autonomy of irrevocable credits is fraud in the presentation of the required documents to the bank, ie where the beneficiary, for the purpose of drawing on the credit, fraudulently presents to the bank documents that contain material representations of fact that to his knowledge are untrue. Fraud in respect of the underlying contract of sale would not affect the contract of documentary credit between the seller and the issuing/confirming bank.*

61 34.Now I shall consider the case based on fraud. First a preliminary remark. This was an extraordinary case where the defendants called no witnesses to give evidence of how they were defrauded. The scarce evidence shows that if there was any fraud it probably was on the part of Wah Tat. Nothing conclusive can be said in that regard because there was insufficient evidence on it and the parties were not before the court.

62 35. **Case based on fraud**

63 The facts in relation to the assertion of fraud are as follows. The plaintiffs purchased the steel products from Sytco Pte Ltd. The sale and purchase contract described the goods as `STEEL MATERIALS (OFF GRADE)`. Payment was made by an irrevocable letter of credit at 120 days. Documents tendered by Sytco to receive payment did not bear an indorsement of `off grade`. The documents were accepted by the plaintiffs without protest.

The documents received by the plaintiffs and tendered by them in essence were similar.

64 36.The contract between the plaintiffs and Wah Tat also included the words `OFF GRADE`. It was sold ex warehouse as the goods had already been discharged at Huangpu Port and warehoused them. Wah Tat had indeed inspected the goods before the contract. Wah Tat asked the plaintiffs to delete the words `OFF GRADE` as it was necessary to establish the letter of credit. The plaintiffs agreed to and issued a fresh contract without the words `OFF GRADE` as it was necessary to establish the letter of credit. This of course did not detract from the fact that Wah Tat was aware of the true condition of the cargo. There was evidence before me that the goods were not prime perfect products. That they were not prime perfect products could be inferred from the price the plaintiffs were charging Wah Tat as shown in the sub-credit. There can therefore be no question of the plaintiffs deceiving anyone. What happened thereafter between the buyers and Wah Tat was undisclosed to the plaintiffs until 25 March 1994 when the plaintiffs were notified that they would not be paid. In the meantime unbeknownst to the plaintiffs Wah Tat had agreed to pay US$443,559 to the buyers as compensation. Further I was told that Wah Tat had agreed to the cancellation of the credit for the balance of 30%. The defendants themselves were shocked to see that happen. It was in these circumstances that the ex parte stop order was served on the defendants in China. Subsequently Wah Tat obtained a judgment against the plaintiffs for US$608,694.70, US$13,330.50 and RMB30,000. The plaintiffs then challenged the judgment Wah Tat obtained against them. In the result there was the set-off order referred to earlier.

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

65 37.The thrust of the defendants` case was that the plaintiffs were guilty of fraud because they agreed with Wah Tat to change the contract by omitting the words `off grade` and the rights between them and Wah Tat had been adjudicated in China.

66 38.I could not agree with the above contention. First what happened between the plaintiffs and Wah Tat or Wah Tat and the Chinese buyers had no bearing on the rights and obligations of the plaintiffs and defendants in this case. This court was precluded from taking cognizance of those events not only by the principle of autonomy of credit but also by the general principle of ***res actus inter alios*** . Additionally the conduct of both the buyers and Wah Tat was much to be desired and it bordered on fraud. As the buyers and Wah Tat were not before the court and no one gave evidence on their behalf I make no finding adverse or favourable to either of them.

67 39.Next, the omission of the words from the documents presented for negotiation was not a fraudulent act. The credit did not stipulate any particular quality grade of the goods or that they must be prime perfect products. Having not stipulated any requirements regarding grade or quality it was not open to them to complain about quality. Fraud involves an element of gain on the part of the perpetrator. In this case the plaintiffs believed they gave value for the price indicated in the credit. There was unchallenged evidence before me that the market price of prime quality product in perfect condition was much higher, namely between US$330 to US$350 for the cold rolled sheets, US$300 to US$310 for the hot rolled coil and US$310 to US$320 for the hot rolled plates. These were not the plaintiffs` prices.

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

68 40.This is not a case where the goods were worthless rubbish. Value required by the sub-credit was given by the plaintiffs. It would not be out of context to note here that it was quoted in the defence part of a surveyors finding that `The total value of the three types of rolled sheets actually delivered was US$2,772,249.75. That is US$165,134.75 less than the total contract value.` The contract value of US$2,772,249.75 was not that of the sub-credit. As mentioned earlier the value of the credit to the plaintiffs was US$2,556,492. The plaintiffs therefore supplied goods worth much more than what they received. It may be that Wah Tat short changed the Chinese buyers but that, by the principles of autonomy and ***res actus inter alios*** , cannot affect the rights of the plaintiffs. Additionally the defendants by parting with the documents of title to the Chinese buyers and enabling them to take delivery of the cargo were precluded from saying that there was fraud in respect of an implied warranty which was not part of the credit contract. They cannot be allowed to renegotiate the terms of the letter of credit because their right of recompense against the applicants became valueless. For these reasons I gave judgment to the plaintiffs with interest at 6% pa and costs.

G P Selvam J

Herman Jeremiah and Florence Ong (Helen Yeo & Partners) for the plaintiffs
Yang Lih Shyng and Lian Chin Chiang (Khattar Wong & Partners) for the defendants

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