

judgment no. 10, 1972



No. 26 of 1972

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

GIAN SINGH & COMPANY LIMITED Appellants
(Plaintiffs)

- and -

10 BANQUE DE L'INDOCHINE Respondents
(Defendants)

AND BETWEEN:

BANQUE DE L'INDOCHINE Appellants

- and -

GIAN SINGH & COMPANY LIMITED Respondents

(By Cross Appeal)

CASE FOR THE RESPONDENTS

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20 1. This is an appeal from a judgment of the Court of Appeal in Singapore (Wee Chong Jin C.J. and Tan Ah Tah J., Choor Singh J. dissenting), dismissing with costs the Appellants' appeal from a judgment in the High Court of Singapore dated 11th March 1971, whereby the Appellants' claim was dismissed with costs. pp.77-78
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2. This appeal concerns a letter of dredit opened by the Respondent bank through correspondents in Taiwan at the request of the Appellants. The letter of credit was required in connection with the purchase of a fishing boat, and among the documents pp.79-81

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required to be tendered by the beneficiary of the credit was "a certificate signed by Balwant Singh holder of Malaysian Passport E-13276 certifying that the vessel has been built according to specification and is in a fit and proper condition to sail". Balwant Singh was the Managing Director of the Appellants and it was he who had dealt with the opening of the letter of credit.

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3. In due course documents were tendered to the correspondents in Taiwan of the Respondent bank by a person carrying and producing what purported to be the genuine Malaysian Passport of Balwant Singh which was Passport No. E 13276, including a certificate purporting to comply with the requirement set out in the previous paragraph, and payment was made under the credit. The Respondent bank accordingly debited the Appellants' account with the amount so paid. 10

4. The Appellants claim before Chua J. was for a declaration that the Respondent bank had wrongfully debited the Appellants' account. Two grounds were put forward in support of their claim, as follows :- 20

1. They asserted that the signature of Balwant Singh on the certificate was a forgery.

2. They argued that the certificate was not "signed by" Balwant Singh but by the Appellants because the signature was written on the Appellants' letter paper and was over-stamped with the words "Gian Singh & Co.Ltd., Director", and that the letter of credit required a signature by Balwant Singh in his personal capacity. 30

These two grounds may be taken separately.

5. Forgery

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At first instance Chua J. found that the signature was not proved to have been forged but also held that if the signature had been forged, it would have made no difference. In the Court of Appeal, Wee Chong Jin C.J. and Tan Ah Tah J. both considered that the judge's finding was wrong, but held that the fact that the certificate was forged did not mean 40

10 that the conditions of the credit had not been complied with. Choor Singh J. agreed with the majority as to the forgery, but disagreed as to the legal consequences of the forgery, holding that it "alone is not of much assistance to the Appellants because the paying bank, i.e. the Respondents agent in Taiwan, had no knowledge of the forgery and it was entitled to assume that the certificate was genuine when there was nothing on the face of it to indicate anything to the contrary".

6. The Respondents humbly submit that the Court of Appeal was right in holding that the forgery made no difference, both :

(a) at common law; and

(b) under the terms of the letter of credit.

7. Common Law

20 At common law a banker who makes payment under a letter of credit against a document which is apparently regular and which it does not know to be false is entitled to be reimbursed by his customer, although the document later proves to be a forgery: Woods v. Thiedemann (1862) 1 H. & C. 478, 158 E.R. 973; Ulster Bank v. Synnott (1871) 5 Ir.Rep. Eq.595; Basse & Selve v. Bank of Australasia (1904) 20 T.L.R. 431.

8. Terms of the letter of credit

30 The letter of credit opened at the Appellants' request was expressly made subject to the Uniform Customs and Practice for Documentary Credits (1962 Revision) I.C.C. Brochure No. 222, which provide in part as follows :

pp.81,83
Printed separately

"Article 7. Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit.

Article 9. Banks assume no liability or

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responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents...; nor do they assume any liability or responsibility....for the good faith....of the consignor, the carriers or the insurers of the goods or any other person whomsoever".

p. 56 9. Chua J. expressly found that the Appellants
had failed to show any breach by the Respondents of
p. 59 their duty under Article 7. The Appellants appealed 10
p. 63 unsuccessfully against this find. Tan Ah Tah J.
said "in the circumstances of this case the
Respondent bank's agent in Taiwan, i.e. the
paying bank, was in no position to be aware of the
forgery". Choor Singh J. said "the bank had no
p. 73 reason to believe that the passport or the certificate
was a forgery and in the circumstances they were
entitled to assume that the certificate was signed
by the person whose passport was produced to them."
p. 62 Wee Chong Jin C.J. said "in my judgment...the bank 20
conformed strictly to the instructions it received".

10. In the Respondents' humble submission these concurrent findings were correct and ought not to be reserved. The Respondents are accordingly protected by Articles 7 and 8 of the Uniform Customs and Practice for Documentary Credits.

11. Chua J's finding of no forgery

In case it should be considered relevant whether the signature of Balwant Singh was forged, the Respondents humbly submit that Chua J. was correct 30
in finding that the signature was not proved to have been forged, and that the Court of Appeal ought not to have reversed his finding.

pp.52-53 12. In dealing with the question whether the signature of Balwant Singh was a forgery, Chua J. first directed himself that the burden of proving that the signature was a forgery was on the Appellants. He then directed himself as to the standard of proof required. The Respondents humbly submit that in both matters the learned Judge directed 40
himself correctly.

10 13. The learned judge then went on to point out (as was the case) that the only evidence that the signature was forged was the statement of Balwant Singh himself that the signature on the certificate was not his signature, and remarked on the fact that no expert or other handwriting evidence had been led in support of Balwant Singh's evidence. The learned judge had already said that Balwant Singh was "a most unsatisfactory witness", and he accordingly went on to hold that there was no evidence whatever on which he **could** find that the Appellants' burden of proving forgery had been discharged.

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14. In the Court of Appeal, Choor Singh J. summarised the evidence which tended to show that the signature was a forgery as follows :

1. The evidence of Balwant Singh.
2. The evidence that the passport of Balwant Singh was a forgery.
- 20 3. The fact that the forged certificate and passport were produced by a person of known criminal character who was wanted by the Singapore Immigration Authorities.
4. The fact that the certificate was supposed to be in connection with a newly constructed vessel, whereas the evidence showed it was in fact 14 years old.

30 He went on to say that the surrounding circumstances indicated that a fraud had been perpetrated on the Appellants to which Balwant Singh could not have been a party.

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15. Tan Ah Tah J. likewise held that it was clear from the surrounding circumstances that a fraud was perpetrated on the Appellants and that Balwant Singh was an innocent party in the transaction. Wee Chong Jin C.J. agreed with Choor Singh J.

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16. As Choor Singh J. pointed out, the only primary evidence on the issue of forgery was that of Balwant

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Singh. The learned trial judge had heard and rejected his evidence on this issue. In the Respondents' humble submission the learned judges of the Court of Appeal ought not to have reversed the judge's finding, based as it was on his assessment of the credibility of the only witness of primary fact, by substituting their own inferences from secondary facts: Onassis and Calogeropoulos v. Vergottis/1968/2 Lloyd's Rep.403.

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17. Furthermore, the inferences which the Court of Appeal drew from the secondary facts were not by any means the only inferences which might properly have been drawn from those facts. The circumstances referred to by Choor Singh J. while undoubtedly pointing to a fraud having been committed, are nevertheless wholly consistent with Balwant Singh having signed the certificate, not necessarily as an accomplice in the fraud. The circumstances are quite consistent with Balwant Singh having prepared the certificate in advance, with the certificate then having been used without his authority, and with him then having given untrue evidence about his signature fearing that if he admitted it to be genuine the loss would fall on the Appellants. 10 20

18. The inference drawn by the Court of Appeal that the Appellants were the victim of a fraud of which Balwant Singh was innocent was therefore not the only inference which might properly have been drawn, nor was it inconsistent with Balwant Singh having signed the certificate. The Respondents humbly submit that the inference drawn by the Court of Appeal was accordingly not of sufficient weight to displace the learned trial judge's finding that the signature was not proved to have been forged, and that that finding ought to be restored. 30

19. The Rubber Stamp

pp.54-55

The argument of the Appellants before Chua J. was that the letter of credit required a certificate signed by Balwant Singh as an individual and not in his capacity as director of the Appellants. Chua J. rejected this argument, holding that the letter of credit contained nothing to indicate a restriction on the capacity in which Balwant Singh was to sign. 40

He pointed out that the certificate contained the words "I, Balwant Singh certify", "I, agreed..." and was signed "Your faithfully, I, Balwant Singh" and held that "the signature does not cease to be the signature of Balwant Singh within the meaning of the credit because of the rubber stamp appearing round it or because the certificate was typed on the [Appellants'] letter-head".

10 20. In the Court of Appeal, Wee Chong Jin C.J. held that the letter of credit on its true construction did not mean that the only acceptable and valid certificate was one signed by Balwant Singh in his personal capacity and in no other capacity. It was the identity of the signatory which was of importance. Tan Ah Tah J. likewise held that the addition of the rubber stamp did not prevent the certificate being "signed by" Balwant Singh. p. 62 p. 65

20 21. Choor Singh J. (dissenting) held that the letter of credit required that the certificate should be signed by Balwant Singh in his personal capacity and not in any representative capacity, and that the addition of the rubber stamp made the signature the signature of the Appellants. pp.75-77

22. The Respondents humbly submit that the opinion of Choor Singh J. was wrong and that the opinions of the other judges were correct.

23. Two distinct questions are involved in determining whether the certificate was "signed by" Balwant Singh:

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1. Taking the terms of the certificate as a whole, was it signed by Balwant Singh, or was it signed by the Appellants?
 2. Did the letter of credit preclude a certificate "signed by" Balwant Singh but as agent for the Appellants?

24. Was the certificate "signed by" Balwant Singh?

It was plain from the terms of the certificate that Balwant Singh was signing in a personal capacity and

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not in a representative capacity, because of the expressions "I, Balwant Singh...", "I, agreed..." and "Yours faithfully, I, Balwant Singh". The certificate would have been treated as made by Balwant Singh for the purposes of an action in deceit or for misrepresentation: it would not have been treated as made by the Appellants because it did not even purport to be made by them.

25. An analogy may be drawn with the case of a promissory note, where the rubber stamp would not have relieved Balwant Singh from personal liability. Section 26 of the Bills of Exchange Act 1882 distinguishes between words indicating that the signatory signs for or on behalf of a principal or in a representative character, and words merely describing the signatory as an agent or as filling a representative character: the former exempt the signatory from personal liability, but the latter do not. Taken in conjunction with the certificate as a whole, the words of the rubber stamp are plainly of the latter class; they are merely descriptive of Balwant Singh. 10 20

26. The cases on bills of exchange relied on by the Appellants in argument - Chapman v. Smethurst [1909] 1 K.B. 927 and Alexander v. Sizer (1869) L.R. 4 Ex. 102 - are distinguishable: in both cases it was clear from the terms of the instrument as a whole that the words added to the signature were not merely descriptive.

27. Did the letter of credit preclude a certificate "signed by" Balwant Singh but as agent for the Appellants? 30

Even assuming that the certificate was signed by Balwant Singh as agent for the Appellants, all that the letter of credit required was that the certificate should be "signed by" Balwant Singh, which it was. It did not stipulate that Balwant Singh should sign in his personal capacity, still less that he should not sign in any other capacity. But if there were any doubt as to the meaning of the credit, the bank was entitled to and did act on a bona fide and reasonable interpretation of it: Ireland v. Livingston (1872) L.R. 5 H.L. 395; Sassoon v. International 40

28. The Respondents further argued that the Appellants were estopped from relying on any defect in the certificate because it was signed by Balwant Singh with the authority of the Appellants with the intention that it should be tendered and acted upon as a certificate complying with the letter of credit, and the Respondents did so act to their detriment by honouring the credit through their correspondent bank in Taiwan. Chua J. agreed with this submission, and the Respondents humbly submit that it is correct and in accordance with principle. The point did not arise for decision in the Court of Appeal, the learned judges of that Court having held that the signature of Balwant Singh was a forgery.

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29. AND the Respondents humbly pray that this Appeal should be dismissed with costs for the following, among other

R E A S O N S

- 20 1. BECAUSE the signature on the certificate was apparently regular.
2. BECAUSE the Respondent bank's agent did not know the signature to be forged and had examined the certificate with reasonable care to ascertain that it appeared on its face to be in accordance with the terms and conditions of the credit.
3. BECAUSE the Respondents are protected by Article 9 of the Uniform Customs and Practice for Documentary Credits (1962 Revision) I.C.C. Brochure No. 222.
- 30 4. BECAUSE the Court of Appeal ought not to have reversed Chua J.'s finding that the signature was not proved to have been forged.
5. BECAUSE the addition of the rubber stamp did not prevent the certificate from being "signed by" Balwant Singh.
6. BECAUSE the bank was entitled to and did act reasonably and in good faith in interpreting

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the letter of credit as requiring a certificate signed as the certificate tendered was signed.

7. BECAUSE the Appellants are estopped from relying on any defect in the certificate.
8. BECAUSE the decisions of Chua J. and of the Court of Appeal are correct and ought to be upheld.

M.J. MUSTILL Q.C.

STEWART BOYD

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GIAN SINGH & COMPANY
LIMITED Respondents

(By Cross Appeal)

CASE FOR THE RESPONDENTS

PARKER GARRETT & CO.
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Solicitors for Banque de L'Indochine