

Did PPT act fraudulently in connection with its claim under the LC?

CACIB's Allegations	PPT's Defence	SICC's Decision	Reasoning
<ul style="list-style-type: none"> • PPT's personnel were reckless as to the nature of the transactions and should have realised that something was amiss due to their circular nature and the abnormally high prices in the PPT Sale Contract. • PPT knowingly participated in the round-tripping transactions. PPT's demand for payment under the LC was part of a fraudulent scheme to inflate the value of the cargo and procure double financing for Zenrock by means of sham transactions. • PPT had actual knowledge of, or was at least wilfully blind to, the fact that this was a fraudulent scheme as, among other reasons: <ol style="list-style-type: none"> i. PPT was offered a pre-structured deal. ii. The prices offered by Zenrock to PPT were not negotiated and were much higher than the prevailing market price of crude oil. iii. The cargo was offered to PPT two to three days before loading and without Zenrock nominating the vessel to PPT. iv. Another market participant had been the intended purchaser from PPT but pulled out when its demands for original shipping documents or an LOI countersigned by PPT's bank proved impracticable given Zenrock's desire to hide certain facts from CACIB 	<ul style="list-style-type: none"> • PPT often acted as a gobetween in situations where clients faced difficulty obtaining an LC from banks or wanted to keep a low profile or fill a payment gap. It was not unusual for PPT to be offered prestructured transactions with agreed prices and to create a so-called 'credit sleeve'. • PPT's personnel did not appreciate the nature of the roundtripping transactions at the time, nor the fact that the prices in this transaction were much higher than the market price. They also did not know the true value of any traded products. Instead, they were more interested in the experience to be gained in trading and with the margin they would gain from the deal. 	<ul style="list-style-type: none"> • PPT knew of the round-tripping nature of the transactions and that Zenrock was part of the chain above and below PPT. • PPT had no actual knowledge of, and was not wilfully blind to, the fact that the price had been inflated, and PPT could not be said to be part of Zenrock's fraudulent scheme. • PPT personnel (a) never questioned the reason for the circular trading by Zenrock, (b) believed they could pass good title to Zenrock under the PPT Sale Contract and (c) did not know that prices had been inflated. They therefore did not know that they were facilitating CACIB's provision of credit over and above the true value of the cargo. • As the deal had been restructured by Zenrock, it was not significant that the cargo was being offered two to three days before loading and without Zenrock nominating a vessel to PPT. • The fact another market participant had demanded original shipping documents or a countersigned LOI was a comment on PPT's creditworthiness rather than any problem with the PPT Sale Contract. 	<ul style="list-style-type: none"> • PPT did not act fraudulently and therefore CACIB was not entitled to refuse to pay or recover payment under the LC against PPT. • A bank will only be entitled to refuse payment under an LC if it can prove fraud by the beneficiary. This requires proof that a beneficiary acted dishonestly as part of a scheme to defraud the bank, or that it presented compliant documents for payment knowing they contained a false representation or without belief that the representation was true. • A failure (even if reckless) to verify representations within presented documents, which are made with the honest belief they are true, will not entitle an issuing bank to refuse payment under an LC for reason of fraud. • The PPT Sale Contract was similar to prior pre-structured deals in which PPT had participated, none of which had given rise to issues of fraud or been the subject of questions as to their purpose.

Were the transactions in the chain a 'sham'?

CACIB's Allegations	PPT's Defence	SICC's Decision	Reasoning
<ul style="list-style-type: none"> In presenting the invoice and LOI to CACIB, PPT represented to CACIB that there was a real sale transaction between PPT and Zenrock under which 'marketable title' was to pass to Zenrock. PPT knew that the above representation was fraudulent, or PPT was reckless as to whether it did or did not have good title to the cargo, as no shipping documents were ever intended to pass. CACIB was entitled to refuse payment for that reason. 	<ul style="list-style-type: none"> PPT could pass good title to Zenrock. The transactions entered into were real and property in the cargo passed at the vessel's flange at the loading port in accordance with the TOTSA General Terms & Conditions, which were incorporated into the PPT Sale Contract. PPT and Zenrock had never intended otherwise. 	<ul style="list-style-type: none"> PPT and Zenrock had entered into real sale and purchase transactions with specific terms relating to the trades and incorporating the TOTSA General Terms & Conditions. Notwithstanding the purpose behind the transactions (i.e., securing funds for Zenrock) and that a fraud was committed by Zenrock, all the transactions were still genuine, and labelling them as 'financing transactions' or 'credit sleeve transactions' does not, in general, change their character. Title passed without regard to the original shipping documents, even though they were never likely to be put into circulation beyond the original supplier, TOTSA. 	<ul style="list-style-type: none"> The transactions were not a sham. The motive for a transaction does not determine whether it is or is not a sham. The question is whether the transaction documents give rise to the rights and liabilities set out within, which they did in this case. For the transactions to be a sham, the participating parties must have a common subjective intention that the transaction documents are not to create the legal rights and obligations that they appear to create. In essence, the parties must be dishonest in creating the pretence of a transaction to deceive others in the absence of such a transaction in reality.

Did PPT make a fraudulent misrepresentation as to title under the LOI?

CACIB's Allegations	PPT's Defence	SICC's Decision	Reasoning
<ul style="list-style-type: none">PPT could not pass marketable title to Zenrock in accordance with the LOI as the original shipping documents were not circulating in the chain of transactions, and it was never envisaged that they would be.	<ul style="list-style-type: none">There were no representations as to the passage of title in the LOI or the invoice. An invoice simply triggers payment under an LC and an LOI permits payment in the absence of original bills of lading.	<ul style="list-style-type: none">CACIB was obliged to judge the commercial invoice and LOI on their face. If the documents were compliant, then CACIB was obliged to make payment under the LC when payment was due. CACIB breached the terms of the LC when it failed to accept PPT's presentation of compliant documents, and CACIB could be liable for damages as payment was made into a blocked account months after the due date.	<ul style="list-style-type: none">PPT had not misrepresented to CACIB the position as to its title to the cargo, nor was it involved in a scheme to defraud CACIB.As the underlying sale contracts were not deemed to be a sham, the invoice and LOI were not fraudulent and did not contain fraudulent misrepresentations as to the transfer of marketable title.A beneficiary under an LC owes no duty of care to the issuing bank when presenting documents for payment.Dishonesty cannot be found from the absence of any enquiry into the motives or facts underpinning the round-tripping and the presence of unusual features in the transaction, even if taken together. As dishonesty was not found on PPT's part, the fraud exception did not apply.

What was the nature of the LOI?

CACIB's Allegations	PPT's Defence	SICC's Decision	Reasoning
<ul style="list-style-type: none"> • The LOI provided that PPT was unable to provide CACIB with original and non-negotiable copies of the bills of lading and: <ol style="list-style-type: none"> i. In consideration of CACIB making full payment for the cargo, PPT warranted that it had marketable title to the cargo, free and clear of any lien or encumbrance; it had full right and authority to transfer title to CACIB; and it was entitled to receive the original bills of lading from its supplier and transfer them to CACIB; ii. PPT agreed to protect, indemnify and save CACIB harmless from any and all damages, costs and expenses that it may suffer or incur by reason of the original bills of lading remaining outstanding, or breach of the warranties given; and iii. The LOI was governed by English law. • The LOI was irrevocable. Even partial performance by CACIB of the LOI was sufficient for the warranties it contained to become effective. 	<ul style="list-style-type: none"> • The LC was a unilateral contract – CACIB promised to pay under the LC and would be bound to pay if its offer was accepted by PPT by the provision of the invoice and LOI. • The LOI also contained a unilateral offer which could only be accepted by full performance (i.e., CACIB's payment under the LC by the due date set in the PPT Sale Contract). • PPT accepted that this LOI was an irrevocable offer, albeit that CACIB did not accept it. 	<ul style="list-style-type: none"> • The LC was an offer of a unilateral contract by CACIB to PPT, and the LOI was an offer of a unilateral contract by PPT to CACIB. • PPT was only obliged to give the warranties stated in the LOI if CACIB accepted the offer by performing the terms of the LOI (i.e., by making payment by the due date as set out in the PPT Sale Contract). 	<ul style="list-style-type: none"> • An LC is a unilateral contract that is irrevocable, while the revocability of LOIs depends on their terms. • Under English law, an LC is an offer of a unilateral contract which can be accepted by presentation of conforming documents. The offer is irrevocable because of commercial considerations. • The true character of an LOI, however, must be determined by reference to its terms, as it could be revocable should the terms allow for the LOI to be withdrawn (e.g., where the presenter later has received original shipping documents and wishes to replace the presentation of an LOI and invoice).

Did PPT give warranties to CACIB within the LOI upon its presentation?

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<ul style="list-style-type: none">The effect of the interim injunction prohibiting payment under the LC was to suspend performance of CACIB's obligation to pay under its terms. Full performance of the LC (i.e., payment) was not required for PPT's warranties under the LOI to become operative.	<ul style="list-style-type: none">A warranty is a promise, not a representation.PPT gave express warranties in the LOI which would only become operative once CACIB made full payment under the LC by the due date provided in the PPT Sale Contract.	<ul style="list-style-type: none">CACIB did not accept the unilateral contract offer, and PPT did not give any of the warranties set out in the LOI.	<ul style="list-style-type: none">Warranties contained within LOIs are only effective upon full payment by the issuing bank by the due date.In order for the warranties in the LOI to be effective, CACIB must have made payment by the due date under the PPT Sale Contract. The due date for payment was not extended by the injunction sought by CACIB, and CACIB therefore failed to do so and could not rely on the warranties in the LOI.

Even if PPT had given warranties as to (i) the cargo's marketable title, (ii) PPT's authority to transfer the title and (iii) PPT's ability to endorse bills of lading to CACIB when the LOI was to be presented, would PPT have breached the warranties?

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<ul style="list-style-type: none"> Regarding the first warranty (title) and the second warranty (authority), CACIB contended that in order to have marketable title free and clear of any encumbrance, a party must have the right to receive and transfer original bills of lading. Any inability to produce these documents means that the party does not have this right and is therefore in breach of warranty. The assignment of the receivables by Zenrock by way of a floating charge as security for financing meant that Zenrock did not have marketable title free and clear of any encumbrance. It could therefore not be passed to Shandong, or to PPT. 	<ul style="list-style-type: none"> The first warranty in the LOI stated that PPT had 'marketable title' to the cargo. PPT submitted that its title was marketable as Zenrock had to accept the cargo notwithstanding any lien or encumbrance, and a court would compel Zenrock to do so. Even if the floating charge had crystallised over the cargo, it did not encumber the cargo because Zenrock was expressly permitted and able to enter into sales of goods. A purchaser would therefore be able to take the cargo free from any charge. 	<ul style="list-style-type: none"> The fact that the bills of lading remained with TOTSA did not prevent title from passing. While the floating charge crystallised at the latest upon the issuance of the LC, PPT had acquired the cargo free from any floating charge as PPT did not have notice of its crystallisation. 	<ul style="list-style-type: none"> Even if the warranties had been given by PPT in the LOI, none of the warranties were breached. Ownership in the cargo passed at the loading port through the chain of transactions and to PPT. PPT's first warranty in the LOI, that it had marketable title free and clear of any lien or encumbrance, was not broken as it did not have notice of the crystallisation of the charge. If there was no breach of PPT's first warranty, then the second warranty (that it had the authority to transfer title) could also not be breached. Each sale contract in the chain of transactions required delivery of the original bills of lading to be endorsed by subsequent purchasers and sellers. The fact that each participant in the chain chose to rely on the provision of payment against the invoice and LOI does not affect their entitlement to the bills of lading. Thus, the third warranty as to PPT's ability to endorse bills of lading upon the presentation of the LOI was also not breached.

Did PPT give CACIB an indemnity under the LOI?

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<ul style="list-style-type: none"> If CACIB had become a lawful holder of the original bills of lading, it would have been able to either take possession of the cargo or enforce rights of suit against the vessel for delivering the cargo to someone who did not hold the bills of lading. PPT was therefore liable to indemnify CACIB for this loss by reason of the bills of lading being outstanding. 	<ul style="list-style-type: none"> CACIB did not advance a factual case that it hypothetically would have accepted and held the bills of lading had they been presented as CACIB suspected fraud and was still unlikely to make payment under the LC. 	<ul style="list-style-type: none"> The indemnity contained in the LOI did not operate because CACIB failed to pay the amount due upon presentation of the LOI. Even if the express indemnity in the LOI had operated independently of any breaches of the warranties, CACIB would not have been entitled to recover for the loss. 	<ul style="list-style-type: none"> The indemnity was offered on the same basis as the warranties. It was available upon full payment under the LC by the due date under the PPT Sale Contract. If CACIB was unwilling to accept the bills of lading and pay under the LC, it would be in no legitimate position to claim delivery of the cargo against presentation of the bills of lading. Therefore, CACIB had not established any loss that PPT would have been liable to indemnify.

PPT's claim for payment under the LC

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	<ul style="list-style-type: none"> PPT claimed the sum due under the LC. This was paid by CACIB and secured by a bank guarantee in the event the court decided that CACIB was entitled to repayment or damages. It also sought pre- and post-judgment interest on that sum, and the fees incurred to secure the bank guarantee. 		<ul style="list-style-type: none"> PPT was entitled to the sum due under the LC. All questions of other relief were reserved for future determination. There was no basis upon which any claim could be made against the bank guarantee.