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5. BANKING LAW

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I. Lending and security: interpretation of ship mortgage

5.1 In *The "World Dream"*,[1] due to less than perfect drafting, the General Division of the High Court had to consider whether an assortment of slot machines, casino tables and other gaming paraphernalia onboard a cruise ship was considered to be part of the ship such as to be within the scope of a mortgage over the cruise ship.

5.2 The shipowners had mortgaged the ship to a syndicate of lending banks of which the respondent was a member and also the agent bank and security agent. The substantive terms of the mortgage were set out in a deed and the term "Ship" was in turn described in the deed as follows:

> Ship means the vessel described in the Schedule and includes any share or interest in it and its engines, machinery, boats, tackle, outfit, equipment, spare gear, fuel, consumable or other stores, belongings and appurtenances whether on board or ashore and whether now owned or later acquired by the Owner and also any and all additions, improvements and replacements made in or to such vessel or any part of it or in or to its equipment and appurtenances.

5.3 As would be apparent, the disagreement between the parties largely arose from the fact that the gaming equipment was not specifically identified as being part of the ship.

5.4 The preliminary issue that S Mohan J had to address was how a ship ought to be defined under the common law. Having carefully considered the authority of *Coltman v Chamberlain,*[2] the court came to the conclusion that the word "ship" should encompass any object that was either "(a) necessary to the navigation of the ship, and without which no prudent person would sail; or (b) necessary to the prosecution of the adventure".[3]

5.5 Clearly, the gaming equipment could not be said to be necessary to the navigation of the ship and as such, the issue was whether the gaming equipment was necessary to the prosecution of the adventure.

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1 [2024] 4 SLR 1255.
2 (1890) 25 QBD 328.
3 *The "World Dream"* [2024] 4 SLR 1255 at [51].

5.6 The lenders argued that since the vessel was a cruise vessel purposed for entertainment and leisure, with a focus on gambling, the gaming equipment should be considered to be essential for the delivery of that experience, and therefore the gaming equipment was necessary for the prosecution of the vessel's adventure.

5.7 On the other hand, the shipowners argued that since the vessel offered a multitude of entertainment facilities and the gaming equipment had only occupied a fraction of space, the vessel should not be considered to be purposed for gaming or even with a focus on gambling, and therefore the gaming equipment was not necessary for the prosecution of the vessel's adventure.

5.8 The court decided in favour of the lenders. First of all, the court ruled that the vessel was for all intents and purposes a floating resort, the object of which was to provide passengers with a multi-faceted entertainment and leisure experience while on the voyage. That should therefore be the object of the vessel's adventure. The court noted that the evidence (particularly a surveyor's report that was commissioned to facilitate the sale of the vessel after it was arrested) showed that gaming was a significant component of the entertainment experience offered, there being nine distinct spaces on board where gaming facilities were available.

5.9 Furthermore, the court also felt that even if gaming was not a focus of the overall experience, it did not follow that the gaming equipment was unnecessary to the accomplishment of the vessel's adventure.

5.10 The court held that the entertainment experience on board the vessel should not be treated as a unitary object. Rather, the object of the vessel's adventure was to provide different options to different passengers according to their personal interests and preferences. Therefore, one has to take into account the fact that the experience offered onboard was multi-faceted. The relevant question to ask was therefore, not whether a particular item on board the vessel was necessary for the experience as a whole, but whether that item was necessary for a particular entertainment or leisure experience that the vessel was intended to provide. Considered in this way, it was clear that the gaming equipment on board the vessel was necessary to the prosecution of the gambling experience as one of the adventures of the vessel, and accordingly, the gaming equipment ought to be considered part of the ship and be within the scope of the mortgage.[4]

4 For completeness, it should be highlighted that the court also found in favour of the lenders on the basis that the gaming equipment came within the meaning of the terms "appurtenances", "belongings", "equipment" and a general sweep-up phrase.
(cont'd on the next page)

II. Fraud exception in letters of credit, performance bonds and demand guarantees

5.11 The year 2024 saw a string of decisions on the fraud exception in the law relating to letters of credit, performance bonds and demand guarantees.

A. Letters of credit

5.12 We start with the decision of Goh Yihan J in *Banque de Commerce et de Placements SA, DIFC Branch v China Aviation Oil (Singapore) Corporation Ltd*[5] *("Banque de Commerce")*, given on 5 June 2024, where the issuing bank of a letter of credit ("BCP") made a claim to recover from the beneficiary of a letter of credit the amount already paid under the letter of credit. This was prompted by the subsequent discovery of information that had at least suggested to BCP the possibility that there had been a fraud. The claim was founded on a number of grounds, including the fraud exception under letter of credit law. In this case, BCP had relied on the expanded test for the fraud exception considered in the first instance decision of *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd*,[6] wherein it was at least suggested that the fraud exception could be made out if the beneficiary had been reckless in not caring whether the representations it had made to the bank in the course of presenting documents for payment under a letter of credit, were true or not. Noting that it was at the time unclear under Singapore law whether such recklessness could engage the fraud exception in relation to letters of credit, the court held it was not necessary to decide this point, because the court found on the facts that the beneficiary had taken various appropriate steps and could not be said to have acted recklessly.

5.13 Furthermore, the court also held, following the decision of the Court of Appeal in *UniCredit Bank AG v Glencore Singapore Pte Ltd*,[7] that in order to rely on the fraud exception, it was necessary that the misrepresentations be directed at BCP. On the facts, the misrepresentations were contained in documents addressed to the purported buyer. The documents were also never presented to BCP. The documents were presented to UBS Switzerland AG as the confirming bank. Accordingly, there could be no misrepresentations that were directed at BCP as the

Since these points involve issues of contractual interpretation, rather than banking law, these points will not be discussed in this review.

5 [2024] SGHC 145.

6 [2023] SGHC 220. The first instance decision was discussed at length in Eric Chan, "Banking Law" (2023) 24 SAL Ann Rev 110 at paras 5.4–5.15.

7 [2023] 2 SLR 587.

issuing bank. BCP's recourse, if the fraud exception had been available, would in any case be against the confirming bank and not the beneficiary.

5.14 Hot on the heels of *Banque de Commerce* came the decision of Aidan Xu @ Aedit Abdullah J in *Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian*[8] ("*Inter-Pacific Petroleum*"), decided on 11 July 2024. *Inter-Pacific Petroleum* was a case where the liquidators of an insolvent company had sued a director for breaches of duty. The case against the defendant was in essence that he had entirely failed in his duty as a director to properly oversee the business activities of the company, and as a consequence, the company incurred substantial debts to banks on the pretence of financing transactions that turned out to be sham transactions.

5.15 Two claims were made against the defendant director – firstly, that the defendant had breached his duty as a director to act with care, skill and diligence, and secondly, that the defendant had breached his duty to take into account and act in the interests of the company's creditors at a time when it was already known to the defendant that the company was insolvent on a balance-sheet basis.

5.16 For present purposes of discussing the law relating to letters of credit, our concern will be with the second claim – the defendant's breach of his duty in failing to take into account the interests of creditors at a time when he ought to have known that the company was insolvent. As background, the company was initially under judicial management before it went into liquidation, and the judicial managers had discovered that many sale contracts in respect of the company's cargo trading business were sham and non-existent transactions. Accordingly, the claim against the defendant was that he ought to have but failed to take into account the interests of creditors at the time when the company was already in a vulnerable financial state and the defendant had worsened the situation in failing to prevent the drawdown on the banking facilities that supported the cargo trading business.

5.17 On the evidence, the court found that the cargo trading transactions financed by the drawdown on the banking facilities were indeed sham transactions. The court also found that the defendant was entirely unaware of the company's cargo trading business during his tenure as a director, had ignored red flags that ought to have put him on inquiry as a director, and had accordingly breached his duty to take into account the interests of creditors of the company at a time when he ought to have known that the company was already insolvent.

8 [2024] SGHC 178.

5.18 Nonetheless, the defendant tried to argue that his breach of duty had not caused any loss to the company. It was in this context that the fraud exception in letter of credit law came up for consideration within the judgment. The banking facilities for the cargo trading business were granted by way of letters of credit and the defendant's argument was that either the fraud exception or the nullity exception would be applicable because the bills of lading were defective, and as such, the company could have resisted the bank's claim for reimbursement under the letters of credit.

5.19 Not surprisingly, this argument was rejected by the court, which held that neither the fraud exception nor the nullity exception could have applied. The court ruled that, at the time the documents were presented to the bank, there was nothing to put the bank on notice as to the fraudulent nature of the bills of lading – the irregularity were not strikingly suspicious such that the bills could be said to be *ex facie* fraudulent.[9] Pointing to established case law, the court emphasised that the evidentiary threshold for the fraud exception was a high one – the documents must on their face unequivocally imply fraud and that if the facts before the bank were also consistent with honesty, then the bank had to pay and there was no basis for the company in turn to refuse to reimburse the bank. On the expert evidence presented, the court held that there was insufficient material to establish that fraud was the only realistic inference to be drawn.[10]

5.20 Less than three months after the decision in *Banque de Commerce,* and approximately one month after the decision in *Inter-Pacific Petroleum,* the Court of Appeal gave its written judgment on 21 August 2024 in *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd*.[11]

5.21 The key facts of this case have been discussed in the 2023 edition of the *Singapore Academy of Law Annual Review of Singapore Cases*,[12] and for the purposes of this 2024 edition, it suffices to focus on the key legal point established by the judgment of the Court of Appeal – namely that the fraud exception in letter of credit law can be made out if the beneficiary, in presenting documents, has acted recklessly in not caring whether the representations contained in the presented documents were true or not. In so doing, the Court of Appeal has aligned the standard of fraud in

9 The defendant was only able to identify the absence of a "Notify Party" box on the bills of lading as the sole suspicious circumstance: *Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian* [2024] SGHC 178 at [269]–[270].

10 *Inter-Pacific Petroleum Pte Ltd v Goh Jin Hian* [2024] SGHC 178 at [281].

11 [2024] 1 SLR 1054.

12 Eric Chan, "Banking Law" (2023) 24 SAL Ann Rev 110 at paras 5.4–5.15.

Singapore letter of credit law with the standard of fraud in the Singapore law relating to performance bonds and on-demand guarantees.[13]

5.22 The Court of Appeal issued a very robust ruling that there was neither any legal basis nor legitimate rationale to differentiate between fraud in relation to letters of credit and fraud in relation to independent guarantees. Significantly, the Court of Appeal has also explicitly disavowed the stricter approach towards the fraud exception in letter of credit law that was adopted in the first instance decision of the Singapore International Commercial Court in *Crédit Agricole Corporate & Investment Bank, Singapore Branch v PPT Energy Trading Co Ltd*.[14]

5.23 Prior to the present decision by the Court of Appeal, it was already well established from the decision in *Arab Banking Corp (BSC) v Boustead Singapore Ltd*[15] that a bank who was the issuer of an independent guarantee (which was called a performance bond in that case itself) was entitled to invoke the fraud exception to refuse payment if the beneficiary was recklessly indifferent as to whether it had a valid demand for payment.

5.24 In coming to its decision that the treatment for fraud should be the same in relation to letters of credit and in relation to independent guarantees, the Court of Appeal acknowledged that letters of credit and independent guarantees served different purposes.[16] Letters of credit were a mode of payment in exchange for goods, whereas independent guarantees were merely to secure an obligation. The Court of Appeal also accepted that the assessment as to whether there was a fraud could differ significantly between letters of credits and independent guarantees. With a letter of credit, the court has to determine if there was "fraud in the documents", whereas with an independent guarantee, there may well be no documents involved at all.[17] Notwithstanding these aspects, the Court of Appeal felt that with a letter of credit, there was still no reason a bank should be required to make payment if the beneficiary had no honest

13 The Court of Appeal generally referred to such instruments collectively as "independent guarantees" and the same approach will be adopted herein.

14 [2022] 4 SLR 1. The Singapore International Commercial Court had expressed the view that in order to invoke the fraud exception as the basis to refuse payment on the letter of credit, there had to be dishonesty on the part of the beneficiary and it was not enough that the beneficiary was only reckless as to whether the documents presented had contained false representations.

15 [2016] 3 SLR 557.

16 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [50].

17 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [52].

belief in the truth of the representations which it had made to the bank.[18] Earlier on in the written judgment, the court had also emphasised that recklessness (being the third category of fraudulent conduct within the classification adopted within *Derry v Peek*)[19] did not entail the existence of any duty of care, and that it was subjective, rather than objective, in nature.[20] Thus, a person who was reckless in the *Derry v Peek* sense would *actually be conscious* that his representations could be untrue. Hence, as far as the fraud exception in the law of letters of credit is concerned, there ought to be no discernible difference between, on the one hand, a person who is aware but does not care that his representations could be untrue, and, on the other, a person who has no honest belief in the truth of his representations.[21]

5.25 Finally, on 26 November 2024, in *DJY v DJZ*,[22] Wong Li Kok, Alex JC gave his judgment in a case where the claimant had sought an injunction to restrain payment under an instrument described as a standby letter of credit, which it had caused to be procured in favour of the beneficiary.[23] The claimant based its case on unconscionability, and argued that it was unconscionable in the circumstances of that case for the beneficiary to call for payment on the instrument.

5.26 One preliminary issue which arose between the parties in that case was the characterisation of the instrument itself (despite it being labelled as a standby letter of credit). The claimant argued that the instrument ought to be treated as a performance bond whereas the beneficiary argued that it ought to be treated as a letter of credit. The point arose because the claimant could only restrain payment upon proving fraud if the instrument were a letter of credit, whereas the claimant could also restrain payment on the ground of unconscionability if the instrument were a performance bond.

5.27 The court ruled that the instrument ought to be treated as a performance bond. First of all, the court accepted that the label that was applied to the instrument could not by itself lead to an absolutely pre-ordained result and that ultimately the terms of the instrument

18 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [53].

19 (1889) 14 App Cas 337.

20 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [39].

21 *Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corp Ltd* [2024] 1 SLR 1054 at [54].

22 [2024] SGHC 301.

23 The first defendant was the beneficiary of the standby letter of credit while the second defendant was the bank which had issued the standby letter of credit.

would have to be examined and construed in order to decide its characterisation.[24] Secondly, the court held that when approaching the task of characterisation, the key question was whether the instrument was intended to be security for the performance of an obligation or intended to be a mode of payment.[25] After having regard to the purpose of the instrument and its terms (which had also expressly incorporated the International Standby Practices ISP98), the court concluded that the instrument , being linked to the underlying contract pursuant to which it was procured, was intended as security rather than intended as a mode of payment. Accordingly, while the instrument was also intended to exist independently of the contract pursuant to which it was issued, nevertheless a payment under the instrument operated as a secondary, rather than primary, obligation. On the facts, the bank's obligation to pay under the instrument could only arise if the primary payment obligation of the claimant was null, void and invalid.

5.28 As regards whether the beneficiary's call for payment under the instrument ought to be restrained by an injunction, the court noted that it was well established that applications for injunctions to restrain payment on a performance bond would depend on whether there was fraud or unconscionability. Following and applying the analytical framework enunciated by Lee Sieu Kin J in *CEX v CEY* [26], the court ruled that one had to (a) ascertain if the beneficiary's call was strictly in compliance with the terms of the instrument, and (b) evaluate if the conduct of the parties supported a strong *prima facie* case that the beneficiary had acted unconscionably.

5.29 As to whether the beneficiary's call was in strict compliance with the instrument, the claimant argued that the beneficiary's call was not in strict compliance with its terms. The terms had provided for a declaration or decision by a body (referred to within the judgment as the "Federal Audit Court of Country [X]" or "FAC") that the beneficiary's payment obligations under the underlying contract (pursuant to which it had made payments to the claimant) were legally invalid, and that such declaration or decision had to be final and no longer modifiable on appeal. The claimant argued that neither of these conditions were satisfied because the FAC had not expressly declared that the beneficiary's payment obligations to be legally invalid, and furthermore, even if it had,

24 *DJY v DJZ* [2024] SGHC 301 at [15], citing Judith Prakash J in *Kumagai-Zenecon Construction Pte Ltd v Arab Bank plc* [1997] 1 SLR(R) 277.

25 *DJY v DJZ* [2024] SGHC 301 at [16], citing *Chartered Electronics Industries Pte Ltd v Development Bank of Singapore* [1992] 2 SLR(R) 20.

26 [2021] 3 SLR 571.

the declaration was neither final nor no longer modifiable on appeal, as there were various motions for clarifications that have yet to be heard.

5.30 The court rejected the argument of the claimant that it was necessary that there be an express declaration or decision from the FAC that the beneficiary's payment obligations were null and void. The court noted that in *Master Marine AS v Labroy Offshore Ltd*,[27] the Court of Appeal had said that, when interpreting a performance bond, a court should be restrained in its examination of the external context and extrinsic evidence, and there should generally not be a need for cross-reference to the underlying contract to determine the ambit of the terms, because both the beneficiary and the issuing bank ought to be able to determine quickly if a demand was valid by looking at the terms of the bond itself. In this case, the court rejected the claimant's argument that the terms of the instrument required an express declaration by the FAC to the effect that the payment obligations were invalid. This is because the claimant itself had also argued that the FAC did not have the power to make such a declaration. If the claimant were right that the FAC did not have the power, then the condition for payment as interpreted by the claimant could never be fulfilled. On the contrary, the court decided that a more reasonable interpretation would be that the instrument only required a final decision from the FAC to the effect that the beneficiary was to be repaid the sums that it had earlier paid out to the claimant.

5.31 In respect of the claimant's argument that the declaration or decision of the FAC was neither final nor no longer modifiable on appeal, before the court, the claimant had sought to prove, through its expert witnesses, that the FAC was a control and audit agency rather than a judicial court and as such, it did not have the judicial authority to make decisions that had the effect of *res judicata*. This argument was also rejected by the court, who held that if this argument were valid, again it would have been impossible for the beneficiary to fulfil the condition and to call for payment. The court instead indicated that it preferred the evidence of the beneficiary's expert witness, who had said that the finality of a decision should depend on whether the decision could be reopened, varied or set aside on the merits by the same adjudicating body or court who had made the original decision. The court also noted that the view of the beneficiary's expert witness was consistent with the position in Singapore law, where judicial review is considered a distinct remedy that does not impact the finality of the original decision that is being judicially reviewed. Furthermore, since no evidence on the nature of judicial review in Country [X] was tendered on behalf of the claimant, the court ruled that the fact that the various FAC decisions were being challenged

27 [2012] 3 SLR 125 at [35].

in judicial review would not be evidence that the decision of the FAC is not a final decision. Accordingly, the court decided that the FAC decision was indeed a final decision for the purposes of the payment condition.

5.32 As to whether there was unconscionability on the part of the beneficiary, the claimant had sought to argue that where there was a genuine dispute between the parties over a beneficiary's legal entitlement to call on a performance bond, an insistence by the beneficiary on calling for payment could constitute unconscionable conduct. On this particular issue, the court noted that the Court of Appeal, in *Arab Banking Corp (B.S.C) v Boustead Singapore Ltd*,[28] as well as in *GHL Pte Ltd v Unitrack Building Construction Pte Ltd*,[29] had recognised that, since a performance bond was a security for the performance of a main contract, it might be unconscionable for a beneficiary to call on the performance bond ahead of a final determination of the substantive dispute between the parties and thus, it might be appropriate to restrain the beneficiary from calling on the performance bond prior to a determination of the parties' rights and obligations. However, in the case at hand, the court had already determined that there was already a final decision by the FAC as to the beneficiary's entitlement. Regardless of the outcome of any subsequent proceedings, the effect of the FAC decision was to require the claimant to return the sums it had paid to the beneficiary.

5.33 Furthermore, the court also noted that in *Ryobi Tactics Pte Ltd v UES Holdings Pte Ltd*,[30] it was held that a call for payment under a performance bond could be legitimate even if it was made under a mistake, so long as the beneficiary had honestly believed at the time that the other party was in breach. In the present case, the onus was on the claimant to show that the beneficiary had acted unconscionably in calling for payment with the knowledge that it was not entitled to payment. The court ruled that the beneficiary had failed to adduce sufficient evidence to show this.

5.34 Given that the claimant had failed to make its case on unconscionability, the court also ruled that it also failed to make its case on the fraud exception. The application for an injunction was accordingly dismissed.

28 [2016] 3 SLR 557.
29 [1999] 3 SLR(R) 44.
30 [2019] 4 SLR 1324.

III. Banking secrecy: banker's books exception

5.35 In *Alliance Divine Impex Pte Ltd v Arulappan Tony*,[31] the applicant was a former employer of the respondent, and the applicant sought an order against the respondent's bank, pursuant to s 175(1) of the Evidence Act 1893[32] ("EA"), for the bank to produce for inspection by the applicant, the respondent's bank statements and other documents for the period of time when the respondent was suspected of having misappropriated the applicant's moneys and assets. The applicant was contemplating bringing an action against the respondent for conversion and unjust enrichment, and it had initially obtained a pre-action discovery order against the respondent, pursuant to O 11 r 11 of the Rules of Court 2021, for the respondent to disclose the same banking documents. The respondent did not however comply with the pre-action discovery order, and thus, the applicant applied for an order under s 175 of the EA for the bank to directly produce the same banking documents.

5.36 Referring to his own earlier judgment in *Ong Jane Rebecca v Lim Lie Hoa*[33] ("*Ong Jane Rebecca*"), Goh Yihan J in the General Division of the High Court, affirmed that an application for an order under s 175 of the EA entailed a three-step analytic process. Firstly, the court has to decide if the documents sought fell within the meaning of a "banker's book" under the EA. Secondly, there had to be a legal proceeding in which the application for inspection is to be made. Thirdly, the court has to decide if it should exercise its discretion to allow inspection.

5.37 As to the first step, on the facts, there could be no doubt that the bank documents sought were banker's books.

5.38 As to the second step, the court was also satisfied that there were legal proceedings in which the applicant was able to demonstrate that it had a substantial right to gain access to the banking documents. The judge repeated his earlier view in *Ong Jane Rebecca* that s 175 of the EA provided for a legal process but did not, in and of itself, confer the right to seek an order. In the present case, the proceedings brought by the applicant for pre-action discovery could constitute the legal proceedings enabling the applicant to apply for the disclosure order under s 175 of the EA. The court did not consider it necessary that the bank against whom the s 175 EA order was sought was itself not a party to the legal proceedings. What

31 [2025] 3 SLR 68.
32 2020 Rev Ed.
33 [2023] 5 SLR 656.

mattered was that the applicant must have a substantive basis to ask for the banking documents.[34]

5.39 Finally, as to the third step, the court, after weighing all relevant factors, came to the conclusion that it should indeed exercise its discretion to grant the order. In particular, the court was satisfied that the applicant's application was reasonable and proper, and that the application struck a proper balance between the applicant's reasonable interest in obtaining judicial relief and the confidentiality of the banking relationship between the respondent and his bank. The court felt that the applicant had reasonable cause to seek the banking documents in order to pursue its claim against the respondent for conversion or unjust enrichment. The court also took into account the fact that the applicant had already tried other means without much success, including obtaining a pre-action discovery order against the respondent, and was therefore satisfied that the application had been made in good faith and not for a collateral purpose. The court also noted that the banking documents sought related only to the period when the respondent was still in the applicant's employment.[35]

5.40 In the circumstances, the court granted the application for an order under s 175(1) of the EA.

5.41 In *obiter dicta*, the court briefly considered the applicant's alternative argument that O 11 r 11 of the Rules of Court 2021 itself gave the applicant a basis to compel the bank to provide the banking information sought. Significantly, the court doubted that this could be correct. The court pointed out that banking secrecy would generally apply to the information in the hands of the bank, and the restrictions imposed by banking secrecy could only be overridden by the situations covered in the Third Schedule to the Banking Act 1970[36], and the situations did not include O 11 r 11 as a means to overcome banking secrecy.

IV. Conclusive evidence clauses

5.42 In *Foreland Singapore Pte Ltd v IG Asia Pte Ltd*,[37] Goh Yihan J in the General Division of the High Court had to consider the effect of a conclusive evidence clause. Interestingly, in this case, it was the customer of the financial institution which had attempted to rely on a conclusive

34 *Alliance Divine Impex Pte Ltd v Arulappan Tony* [2025] 3 SLR 68 at [16].
35 *Alliance Divine Impex Pte Ltd v Arulappan Tony* [2025] 3 SLR 68 at [24]–[26].
36 2020 Rev Ed.
37 [2024] SGHC 179.

evidence clause to bind the financial institution to a position set out in an account statement.

5.43 The defendant in this case was a broker and the plaintiffs were its customers. Through the defendant, the plaintiffs had entered into various transactions involving contracts for differences with nickel as the underlying reference assets. The defendant executed these trades on the London Market Exchange ("LME"). In early March 2022, following a surge in nickel prices on the LME, the plaintiffs made substantial gains on its investment position and duly gave instructions to the defendant to close their positions on 8 March 2022 so that the plaintiffs could take profit. The resulting profits were reflected in account statements that were automatically generated by the defendant's systems and dated 8 March 2022 and 9 March 2022 respectively.

5.44 However, in an extraordinary development, the LME on the same day (*ie*, 8 March 2022) suspended trading of nickel and directed the reversal of all trades executed that date. On 8 March 2022 and 9 March 2022, the plaintiffs instructed the defendant to release the funds representing their profits from their account but the defendant refused. Instead, the defendant adhered to the LME's instructions and reversed the plaintiffs' closing trades executed on 8 March 2022.

5.45 The plaintiffs sued the defendant, challenging the decision of the defendant to reverse the closing trades. One of the arguments raised by the plaintiffs was that the defendant was precluded from reversing the closing trades because it was bound by the account statements.[38] The plaintiffs relied on the following wording in what the court had referred to as Term 14(7) of the margin trading customer agreement:

> You will be deemed to have acknowledged and agreed with the content of any Statement and the details of each Transaction set out in any Statement that we make available to you unless you notify us to the contrary in writing within two business days of the date on which you are deemed to have received it …

5.46 The plaintiffs' argument based on Term 14(7) was founded on a passage in *Pertamina Energy Trading Limited v Credit Suisse*[39] ("*Pertamina*"), where the Court of Appeal had alluded to conclusive evidence clauses as being "valid and binding on the parties".

5.47 The court however rejected the argument. It ruled that the passage from *Pertamina* did not mean that a statement issued pursuant to a conclusive evidence clause would necessarily be binding on both

38 *Foreland Singapore Pte Ltd v IG Asia Pte Ltd* [2024] SGHC 179 at [123]–[128].
39 [2006] 4 SLR(R) 273.

sides. Whether a conclusive evidence clause would have the effect of binding both the financial institution and the customer must ultimately depend on the precise wording of the clause. The court pointed out even in *Pertamina* itself, the Court of Appeal did not decide that the conclusive evidence clause that was before it made the statement of account binding on the bank. Returning to the present wording of Term 14(7), the court ruled that it was clearly intended to be binding only on the customer.[40]

5.48 The court pointed out that the plaintiffs' argument could not be sound in any case, since a statement of account could only be conclusive evidence of the amount due and owing as at the time indicated on the relevant statement. It was always open to the defendant to issue a further statement at a later date that would conclusively show the amount due and owing at such later date.[41]

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40 *Foreland Singapore Pte Ltd v IG Asia Pte Ltd* [2024] SGHC 179 at [127].
41 *Foreland Singapore Pte Ltd v IG Asia Pte Ltd* [2024] SGHC 179 at [128].