Contribution of English Case Laws Upholding the Integrity of Letters of Credit

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Abstract

Letters of Credit are mostly used as a method in financing international trade. However, fraud in letters of credit transaction has become a growing concern for the entire global maritime community. Buyers usually become the victims of such fraudulent practices in L/C transaction, where the sellers acquire payment from the buyers' bank (the L/C issuing bank) submitting forged documents. Even if the buyer is suspicious about a fraud, he hardly can prevent the seller from acquiring payment. Because banks are under obligation to pay to the seller against conforming documents irrespective of an allegation of fraud by the buyer. Failing to convince the bank to stop payment, a buyer turns to the court of law pleading for an injunction to stop the bank paying. Courts, particularly English courts, require very strong proof of fraud to issue such an injunction which the buyer many times can not arrange. Many scholars criticize English law for being reluctant to issue the injunction, and argue that it harms the buyers notably. English law conversely replies that if courts tend to overrule a bank's commitment frequently, nobody would trust a banker's guarantee anymore, and letters of credit would lose its very purpose of assuring payment in international trade.

Keywords: Letter of Credit, International trade, Fraud, English law, Injunction etc.

Introduction

In international trade, payment by a letter of credit is very widely used. Justice Kerr of the English court has called the instrument, "the life-blood of international commerce" (R D Harbottle (Mercantile) Ltd and others vs. National Westminster Bank Ltd and others, 1977). The system of letters of credit, also known as documentary credits and documentary letters of credit, has alleviated many of the problems relating to payment in international trade. It is the most effective method to secure payment in a cross boarder trade, in a way that takes care of the interests of both the seller and the buyer. A letter of credit is established in a way that the seller can obtain payment from a bank within his jurisdiction. The buyer establishes the letter of credit in such a manner, that payment is promised on presentation of certain documents, the contents of which validate that the goods being delivered to the buyer are goods that comply to the terms and conditions of the underlying sales agreement. The seller needs only comply with the documentary conditions as specified in the credit, and is thereafter assured of payment.

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In spite of being the most accepted and used medium of payment in international business, documentary credit fraud is a growing concern in international maritime trade. International traders suffer huge losses each year from documentary credit fraud. Such fraud takes place when there is an intentional deception as to some fact or circumstance in connection with maritime activities, which enables the unjust obtaining of money or goods. It frequently involves the misuse of commercial contracts and documents, such as bills of lading, commercial invoices, packing lists, pre shipment inspection reports, and marine insurance policies. Falsification of bills of lading causes the largest proportion of losses. A bogus bill may be sold along with forged accompanying documents to a buyer who may later find that the cargo and perhaps even the ship does not exist.

Fraud in letters of credit is noted to have reached 'epidemic proportions' what Mr. Justice Creswell branded as ''Caner Alarm'' (Standard Chartered vs. Pakistan National Shipping Corporation, 1998). On September 7, 1999 International Chamber of Commerce (ICC) Commercial Crime Service warned banks to be very careful in checking bills of lading to be paid under documentary credits indicating that the recent scams are massive. International Maritime Bureau Director said to Lloyds in early 2002 that charter party default has rocketed, and documentary credit fraud has doubled since the terrorist attack on September 11. Following that at the end of October 2002, the commission of Banking Technique and Practice of the International Chamber of Commerce (ICC) approved the International Standard Banking Practice for the examination of documents under documentary credits (the ISBP) which would offer a precise guideline to banks checking documents for any discrepancy. There has been a shocking increase of reported instances of maritime fraud and related acts occurring in the field of international shipping and trade in the last few years. Recent losses in documentary credit fraud amount to multi million dollars according to the Commercial Crime Service of the International Chamber of Commerce. (I.C.C. Maritime Bureau, 2002), while losses have been estimated by the International Shipping Community at the equivalent of $1 billion per annum (Mukundan, 2003)

Letter of Credit transaction is governed by Uniform Custom and Practice for Documentary Credits, 2007 (UCP 600), which is in its sixth revision, incorporated by the International Chamber of Commerce (ICC). UCP was first published in 1933. It is not a law rather a set of rules and customs governing letter of credit transactions. UCP was produced to ensure that the rights of traders and banks under a letter of credit contract is governed by a single set of rules and customs, rather than through the various domestic law which would otherwise apply. UCP is almost universally accepted and applied as a set of rules governing letter of credit transactions. However, UCP is silent about the fraud issue. Fraud in letters of credit transaction is governed by common law or case law of a particular country. Though the UCP does not include any specific rule for fraud in documentary credit transaction and left it on the common law of different countries, UCP is often called for jurisdiction in the documentary credit. For example, UCP provides that banks are supposed to pay against documents, which on their face, appears to be conforming; and that banks are not liable for the genuineness or falsifications or legal effect of those documents. Thus while hearing a case of fraud of a documentary credit transaction, a judge

may not hold a bank responsible for paying against forged document, which on their face was conforming, because the banks' rights in this issue have been established by the UCP.

When there is an element of fraud in a documentary credit transaction, a buyer would normally request his bank not to honour the credit. If he fails to convince the bank to stop the payment, he would usually seek directives from a court instructing the bank to stop paying the seller. The idea is that, once the payment has been postponed, the buyer and seller can settle their disputes arising out of the issue of forgery, through arbitration, or in the court of law, whichever applies. However, English courts do not want to interfere with a documentary credit transaction, and would hardly issue such directives, otherwise known as an injunction, as asking the bank not to pay under a letter of credit in an allegation of fraud. The only way to obtain an injunction from the court in such a case is to prove fraud. Proving fraud to achieve an injunction is very difficult for a plaintiff as English law requires strong evidence of fraud, and also that the fraud has been committed by the seller himself, or by somebody else of which he had knowledge. English law, for its reluctance to issue injunction in this ground, has been criticized by many writers, legal experts, and scholars, pointing that the strong requirement of achieving an injunction is so high that has become just a mere theory (e.g. Barnes & Byrne, 1995; Barnes, 2001; King, 2001; Eden, 2001; Demir-Araz, 2002). Other countries, for example, the US is ready to give a temporary injunction if suspicion occurs (Byrne, 2002), the burden of proof in English law achieving an injunction is too high. Reluctance of English law granting injunction is said to be discouraging parties in international trade choosing English law as the jurisdiction of their contracts (Farrar, 1997).

English courts, however, not paying heed to such criticisms, continue to maintain their position of not allowing an easy injunction to postpone the payment under a letter of credit, and set principle for courts of the rest of the world. English courts, however, has their own viewpoint and rationale for limiting the use of injunction in letter of credit transaction. Given this debate of injunction in documentary credit fraud in English law, the rationales and insights of English law limiting the use of injunction of letter of credit could be of valuable knowledge for academics, international traders, bankers, and other concerned bodies alike.

This paper seeks to investigate the rationales of English law being reluctant to grant an injunction of letter of credit transaction. The aim of this paper, methodology of which has been the analysis of secondary data, literature, publications, debates, cases, is to find out and the views of the English courts, being so reluctant to issue injunction to stop the payment of a letter of credit, and would relate how limiting the use of such injunctions English law smoothens the progress of international trade.

Letters of Credit

Letters of Credits (L/C) is the most frequently used method of payment for international trade. They are mechanisms where a bank (Issuing Bank - IB) upon the request and instruction of his customer (the buyer/ the applicant of the L/C), makes payment to a third party (the seller or the

beneficiary) on presentation of specified documents (Dolan, 2001). In a simplified manner ''Letters of credit are issued by banks upon the instruction of the customer to meet the payment obligation of the customer'' (Schwank, 1999). Thus documentary letters of credits are, in essence, a banker's assurance of payment upon presentation of specified documents (Goode, 1995).

UCP defines letters of credit as ''Documentary credit(s) and standby letter(s) of credit or credits (here after referred as 'credit(s)'), means any arrangement, however named or described, where a bank (issuing bank) acting at the request and on the instruction of a customer (the applicant) or on its behalf i) is to make a payment to or to the order of a third party (the 'beneficiary') or to accept and pay bills of exchange (draft(s)) drawn by the beneficiary, ii) authorizes another bank to effect such payment, or to accept and pay such bills of exchange (draft(s)), iii) authorizes another bank to negotiate, against stipulated documents provided that the terms and conditions of the credit are complied with.''

Letters of credit can be either revocable or irrevocable. Revocable letters of credit are those where the applicant (buyer) at liberty can cancel or modify the credit for which he is not obliged to notify the beneficiary (seller). Conversely, irrevocable letters of credit are those, which cannot be modified or cancelled by the applicant. Letters of credit are required to contain clear indication of being revocable or irrevocable. Absence of such indication deems the letters of credit to be irrevocable (UCP)

Documentary credits can further be classified as unconfirmed or confirmed. Unconfirmed letters of credit are those in which the corresponding bank, referred as the Advising Bank or AB, assumes no obligation of payment of the letter of credit, rather advises the credit only to the beneficiary. On the other hand, confirmed letters of credit are those where the corresponding bank, in addition to advising the credit, adds its own confirmation that on presentation of specified documents, payment will be made. By adding its own confirmation, the corresponding bank is thus called the Confirming Bank (CB). Unconfirmed letter of credit can be either revocable or irrevocable, but confirmed letters of credit are always irrevocable. Irrevocable and confirmed is the most secure letter of credit for which both the confirming bank and the issuing bank undertake to pay the beneficiary.

Injunction of a Letters of Credit Contract

Injunction in general refers to a judicial remedy issued in order to prohibit a party from doing or continuing to do a certain activity. In documentary credit transactions, it refers to a demand by the applicant of the letters of credit to restrain the Issuing Bank from paying the beneficiary. Upon receipt of complying documents from the beneficiary, if the applicant notices any discrepancy in them, he turns to the Issuing Bank and pledges to stop payment. The Issuing Bank would only stop payment if it is convinced that there is a forgery in the document(s), and that it has been committed by the beneficiary and not by the third party which the beneficiary does not know about (Jack, 1993). If the applicant succeeds to convince the bank to stop payment, concerned parties in the documentary credit can negotiate among themselves; go to an arbitrator, or the court

of law to settle the dispute arising out of the question of discrepancy in the conforming documents. However, in many cases, the Issuing Bank refuses to stop payment to the beneficiary; hence the applicant turns to the court of law to obtain a judicial order to stop the Issuing Bank paying the beneficiary until the dispute for a discrepancy in the documents is resolved. This judicial order is the injunction of letters of credit, otherwise referred sometimes as interim injunction, temporary injunction, interlocutory relief or injunction, temporary restrain order. Courts would only issue an injunction to stop Issuing Bank from paying if there is clear evidence that the beneficiary has fraudulently presented documents that contain material representations which he (beneficiary) knew to be untrue (Pugh- Thomas 1993).

Autonomy of Letters of Credit

One of the key principles of documentary credits is that it is autonomous of any other contract(s). UCP provides that ''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''. Buyers often seek an injunction to stop paying the beneficiary pointing that goods are defective or substandard or do not meet the contract description. But courts are unwilling to grant such injunctions (Discount Records LTD vs. Barclays Bank LTD, 1975). The logic behind is that a letter of credit transaction is a separate contract which is autonomous of any other contract(s).

The obligations of banks are in respect of documents, not in respect of goods. As long as documents are in order, banks cannot decline to pay for incidents such as shipment of defective goods. The principle is ''payments of price against documents'' (Hamzeh Malas & Sons v British Imex Industries Ltd, 1958). A buyer may sue the seller for shipping goods which are defective, or substandard, or do not match the contract description under the contract of sale, but as long as the presented documents are upright, banks are bound to pay to maintain the autonomy of letters of credit (Carr, 1999). There is only one exception to the rule of autonomy of letter of credit that is the rule of fraud exception (Sweet and Maxwell Limited and Contributors, 1997; Johnson and Paterson, 2001).

Fraud Exception

Fraud exception does not originate from UCP; it is in common law practice. There is nothing-mentioned about fraud or fraudulent documents in the text of UCP. The UCP having established the autonomy of letter of credit does not mention any exception to the rule. The reason for this gap is suggested to be the difference and uncertainty of the position in municipal laws, and that every court should give its decision according to the related municipal law (Demir-Araz, 2002).

The scope of fraud exception was first established in English law in Discount Records Ltd vs. Barclays Bank Ltd, 1975. In United City Merchants (Investments) Ltd and others vs. Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A.,1982 fraud exception is articulated as ''where the seller for the purpose of drawing on the credit, fraudulently presents documents to the

confirming bank that contain, expressly or by implication, material representation of fact that to his knowledge are untrue''. The fraud needed to be an established or obvious fraud. A mere allegation of fraud (Discount Records Ltd vs. Barclays Bank LTD, 1975) or suspicion of fraud (Tukan Timber Ltd vs. Barclays Bank PLC, 1987) is not good enough to obtain an injunction to stop Issuing Bank from paying. To seek an injunction the fraud needs to be clear itself and to the banks' knowledge (United Trading Corporation SA and Murray Clayton LTD vs. Allied Arab Bank Ltd, 1985).

Fraud is an exception to the autonomy of documentary letter of credit; but this fraud has to be by the beneficiary to stop the payment. If banks receive positive evidence of fraud and that the beneficiary has knowledge of it, banks must not honour its obligation under that documentary credit (Rafsanjan Pistachio Co-operative vs. Bank Leumi UK PLC 1992). But if there is no personal fraud by the beneficiary rather by a third party of which he had no knowledge, the court cannot grant an injunction stopping the payment (United City Merchants (Investments) Ltd and Glass Fibres and Equipment Ltd vs. Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A., 1983). Thus ''a performing party may apply for an injunction to restrain enforcement of a performing guarantee by the beneficiary if he can prove fraud on the part of the beneficiary'' (Edward Owen Engineering Ltd vs. Barclays Bank International Ltd 1978; Bolivinter Oil SA vs. Chase Manhattan Bank, 1984; United Trading Corporation SA and Murray Clayton Ltd vs. Allied Arab Bank Ltd, 1985, Cited by Pugh-Thomas, 1999).

Even if there is clear fraud in the conforming documents, but the fraud is neither committed by the beneficiary, nor he has knowledge about it, or it is not clear whether the beneficiary committed the fraud or he had knowledge of it, banks cannot stop payment, nor the court would issue a restraining order. House of Lords in England in the United City Merchants (Investments) Ltd and Glass Fibres and Equipment Ltd v Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A.,1983 case held that if the beneficiary is not a party to the fraud, banks are obliged to pay.

Schwank, 1999 argues conversely to this judgement and points that it is logical for an established fraud to affect all concerned parties obligation regardless of who committed the fraud. But English courts hold the view that there is no room to argue the ''maxim ex turpi causa non oritur action'' or fraud unravels all – the so called nullity defence, that is to say since there is fraud in the letter of credit, liability of all persons in it is extinguished (United City Merchants (Investments) Ltd and Glass Fibres and Equipment Ltd v Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A., 1983, Cited by Chuah 2002). Thus Judge Raymond Jack QC was right to hold in the above case that ''the so called nullity defence had no place in English law''.

English Courts' Reluctance to Grant Injunction

The earlier sections show how narrow the fraud exception is in English law. The burden of proof is so heavy in English law, that there are few cases where the applicant of a documentary credit could establish the fraud at a satisfactory level to obtain an injunction (Demir-Araz, 2002). Such heavy burden of proof makes the obtaining of an injunction practically impossible even where fraud exists (Jack, 1993). English courts do not want to interfere with the autonomy of letters of credit preventing banks honouring their obligation (Pugh–Thomas, 19996). Thus in an allegation of fraud ''a bank which issues letters of credit will often be, in effects, piggy in the middle between, on the one hand, the beneficiary of letters of credit, wanting to receive payment, and, on the other, its customer who claims, rightly or wrongly, that there has been a fraud'' (Goode, 1995). English courts' reluctant behaviour to issue an injunction is argued to be not making much of a difference in the positions of applicants (buyers) (Demir-Araz, 2002).

American courts do not hesitate to issue a temporary injunction if suspicion of fraud occurs, providing the applicant (buyer) time to establish his allegation; while English courts do not consider a suspicion or mere allegations of fraud to issue injunctions, rather they require clear evidence of established fraud for the purpose (Demir-Araz, 2002). Lord Justice Ackner accepted this fact in United Trading Corporation vs. Allied Arab Bank Ltd, 1985, and added that fraud exception in American law is much wider than that of the UK and their conception of fraud extends to ordinary breach of contract, which English law strongly excludes. In the US, once a letter of credit transaction has been tainted by fraud, it affects all parties' rights and obligation under the credit, irrespective of the fact as who committed the fraud, particularly if the fraud committed by an agent of the beneficiary (United Bank vs. Cambridge Sporting Store Goods Corporation (New York Court of Appeal), 1976). On the other hand, English courts will only consider fraud committed by the beneficiary, or for which he had knowledge, to let it affect all parties' rights and obligation; in consequence, not allowing the nullity defence, which means fraud unravels all actions, that is to say, since there is fraud in the letter of credit, liability of all persons in it is extinguished (United City Merchants (Investments) Ltd and Glass Fibres and Equipment Ltd v Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A., 1983). It is also instructive to note the judgment of the American case of NMC Enterprises, Inc. v. Columbia Broadcasting Systems, 1974 that provides that if the sale or any other underlying contract is tainted with fraud, then any document, which the contract requires the beneficiary to present is equally tainted with fraud. English courts exclude this distinction and treat the letter of credit as a different contract without any effect of any other underlying contract. (Discount Records LTD vs. Barclays Bank LTD, 1975)

International jurisdictions worldwide, have accepted the fraud exceptions more widely, without suffering any loss of confidence by international traders. Indian courts have accepted exceptions that exceed the traditional scopes of the fraud exception. These are based on concepts such as special equities and irreparable prejudice (Raunaq International Ltd. V. National Aluminium Co Ltd, 1993; National Thermal Power Corporation Ltd v Flowmore Pvt Ltd, 1995; Kei Industries Ltd. v. Delhi Electric Supply Undertaking; Hindustan Steel Works Construction Ltd. V. G. S.

Atwal and Co. (Engineers) Pvt. Ltd, 1996). German Law approaches the exceptions to the extent of any 'abuse of right' by the beneficiary in the entire transaction (Oelofse, 1993).

English case law has been criticised by many writers and practitioners for its reluctance to issue injunctions for fraud in documentary credit. The fraud exception in English law is said to be too narrow to do any good to the applicant who might be the victim of such fraud (Mukundan, 2003). The fact that English courts do not want to interfere with a bank's commitments make it easy for fraudsters to misuse the mechanism of documentary credit. ''It is something like a person watching someone taking his money from his hands and doing nothing. He knows that the seller is fraudulent and he alleges so, but the requirement of establishing the case are so high that he can not do anything but watch''. (Dermiz -Araz, 2002)

Rationale of English Courts Being Reluctant to Grant Injunction

English law has its own views and rationales to interpret the fraud exception so rigidly. To successfully conclude English law facilitates international trade, it is needed to establish that the reluctant behaviour to issue an injunction is more important to smoothen the progress of international trade than whatever miseries the applicant (buyer) faces by not obtaining such an injunction.

English courts hold that there might be disputes between seller and buyer in international trade, such of which may arise out of forgery in conforming documents in documentary credit transaction. But English courts suggest the international traders to settle their dispute through arbitration or litigations available to them. Courts do not want to interfere in them, as then they will have to rule out the guarantee of a bank. If English courts tend to do so, there will be irreparable damage in international trade; nobody would trust a banker's guarantee any more if it is overthrown by the courts. The very purpose of documentary credits to assure the payment of international trade would thus be lost with the practice of injunction (R D Harbottle (Mercantile) Ltd and others vs. National Westminster Bank Ltd and others, 1977, Cited by Carr, 1999; Johnson and Paterson, 2001,).

Buyers often seek injunction on the ground that goods are defective or substandard or not of contract description. Moreover, courts cannot grant injunction on this allegation as the contract of sale of goods between a buyer and a seller is different from guarantees through letter of credit by issuing bank to advising bank or confirming bank. This is because of the autonomous nature of letters of credit. On receipt of defective or substandard goods, the buyer can always sue the seller for shipping such goods under the contract of sales, or can sue the shipper if goods have been deteriorated en route under the voyage contract, or can demand compensation from the insurance company if goods have been damaged by factors or elements for which they were insured. But if a court issues injunction to stop the payment of a letter of credit, they would be ruling the bank to breach a banking contract. On the other hand, if the goods have been damaged en route for which the shipping agent would be responsible, or if they have been damaged for which the insurer should compensate, an injunction will deprive an innocent seller getting the payment (Hamzeh Malas & Sons vs. British Imex Industries Ltd, 1958, Cited by Goode, 1995). A buyer needs to be

careful himself demanding whatever documents he needs to verify the quality or standard of goods while opening the letter of credit. Once the letter of credit has been opened, its payment obligation thus should not be dishonoured through injunction on the ground of mere breach of warranty of goods, as it might be damaging the confidence of sellers on documentary credit as a payment assurance.

On the other hand, a seller cannot get away with the payment through letter of credit, shipping no goods at all, or shipping garbage, producing forged documents that the true goods have been shipped. Though the letter of credit is a separate transaction from the sales contract, and that the seller is entitled to receive payment since conforming documents show that true goods have been shipped, shipping garbage or no goods at all lead the seller to have committed personal fraud and nullity for the letter of credit to be honoured. The leading case in English law in this issue is Edward Owen Engineering Ltd v Barclays Bank International Ltd, 1978, which is based on the American case Sztejn v. J. Henry Schroder Banking Corporation, 1941. In this American case, the buyer claimed an injunction on the ground that the seller has shipped rubbish instead of contract goods. The court decision was in favour of the buyer as the judge Shientag, J said ''this is not a controversy between the buyer and the seller concerning a mere breach of warranty regarding the quality of merchandise; on the present motion, it must be assumed that the seller has intentionally failed to ship any goods ordered by the buyer. In such a situation, the principle of the independence of the bank's obligation under the letter of credit should not be extended to protect the unscrupulous seller''. In a similar situation of non shipment of goods in England in the Edward Owen Engineering Ltd v Barclays Bank International Ltd, 1978 matter, Lord Denning appears to be persuaded to have adopted a wider view, and have accepted the American approach of Sheintag, J. and states: "The bank ought not to pay under the credit if it knows that the documents are forged or that the request for payment is made fraudulently in circumstances where there is no right to payment." It can therefore be inferred that in the presence of a clear established fraud, English law would not allow an unscrupulous seller to get payment shipping no goods at all.

Banks are entitled to stop payment if the applicant could produce proof of fraud committed by the beneficiary, or by his agents, or by the third party for which he had notice. (Rafsanjan Pistachio Co-operative vs. Bank Lemi UK PLC, 1992). Under such a circumstance, the applicant would not require an injunction from the court to stop payment. And if there is clear fraud by the beneficiary, or fraud for which the beneficiary has notice, and the bank pays under the documents, such payment would be a breach of the applicant's contract with the bank. The applicant can then claim damage from the bank. But an injunction by the court would interfere with the issuing bank's obligation to the confirming bank (Czarniknow-Rinda Sugar Trading Incorporation vs. Standard Bank London Ltd, 1999).

English law is often criticised for not considering the nullity defence of letters of credit; that is to say, when there is a clear fraud in the letters of credit, irrespective of who, the beneficiary or a third party, committed the fraud, an injunction should be granted (Chuah, 2002). The validity of this criticism is found to be true in United City Merchants (Investments) Ltd and others vs. Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A., 1983, where the court of appeal held that the bank is entitled to refuse payment on the ground of forgery done by the loading

broker that was not agent of the beneficiary, over ruling the decision of Mocatta, J who initially held that since there is no personal fraud of the beneficiary, but that of loading broker that was not agent of the beneficiary, bank is entitled to pay. House of Lord reversing the decision of court of appeal, supported Mocatta J's decision, and held that bank is bound to pay because the bank's contract with the beneficiary was contract for documents and not for goods. Lord Diplock here clearly upheld the application of the independence principle of documentary credits in English Law as he stated in his verdict that an innocent beneficiary, who is not aware of forgery by a third party, can not be deprived of the payment under the letter of credit. He interpreted the bank's argument, that fraudulent misrepresentation by the freight agent entitles the bank to refuse payment, to be 'superfluous', and suggested that acceptance of such an argument would damage the whole system of financing an international trade through documentary credit. A similar verdict of that of the House of Lords can also be seen in Intraworld Industries Incorporation vs. Girard Trust Bank, 1975, where it was held that ''the circumstance that will justify an injunction against honour must be narrowly limited to situation of fraud in which the wrong doing of beneficiary has so vitiated the entire transaction that the legitimate purpose of the independence of the issue's obligation would no longer be served.'' If courts thus tend to throw down the obligation of the parties in documentary letters of credit for all material inaccuracy committed either by the beneficiary or by a third party, trust in international trade would be damaged (Sweet and Maxwell Limited and Contributors, 1997).

In the absence of a clear fraud committed by the beneficiary or for which he had notice, neither the bank can stop payment, nor the courts can issue an injunction to make the bank stop payment as it will overthrow banking contracts. Rix, J explained this in Czarunknow-Rionda Sugar Trading Incorporation vs. Standard Bank London Ltd, 1999 while he said that "in the absence of established fraud, a buyer can no more seek to prevent his seller from drawing on the letters of credit for which the seller has stipulated than the buyer can seek to prevent his bank from paying under it. Otherwise the insulation and the integrity of banking contracts could be overthrown, simply by the device of injunction". Thus the importance of maintaining the integrity and autonomy of banking contracts outweighs the demand of an allegedly defrauded applicant in English law. This is because damage caused to the bank pursuant to not paying is greater than the damage caused to the applicant, for which he (applicant) can sue the fraudulent beneficiary (Godier, 2001). But unless banking commitment is insulated from disputes between merchants, international trade would become impossible (Johnson and Paterson, 2001).

On the other hand, courts can not reach on to the decision of the beneficiary's alleged fraud on a pre trial hearing, where the claimant gets the benefits of lower standard of proof. Courts have additional requirements to be careful not to upset independent banking commitments by issuing injunction based on that lower standard of proof. The defrauded applicant, however, always can obtain relief in other ways against the fraudster. English law eases any private loss of the claimant through ''the likely availability of alternative and adequate remedy'' and courts jurisdiction to grant a freezing order against the beneficiary's assets, including the payment in the hands of the nominated banks. (Czarunknow-Rionda Sugar Trading Incorporation vs. Standard Bank London Ltd, 1999).

Conclusion

In conclusion, it can therefore be reached that English law has limited the use of an injunction of letter of credit to allow the guarantee to be honoured without interference. If courts frequently grant injunction stopping payment of documentary letters of credit, the credit might lose its very purpose of financial assurance in international trade. Banks, on the other hand, would be irreparably damaged if courts restrain them to perform banking contracts; which might lead to a banker's guarantees being unacceptable in international trade. Fraud in documentary letters of credit, for whatever reason has raised, should be tried to minimize by other means, like use of independent inspectors, quality certificates, and electronic submission of conforming documents. But means of injunction of documentary credits frequently would do little good in minimizing fraud; rather it would damage trust and confidence in international trade. English law has thus had helped maintain this trust and confidence by limiting the use of injunction of documentary letters of credit, and in this process, has facilitated international business.

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