

Singapore High Court Clarifies Law on Credit Sleeve Providers and Sham Transactions

The Singapore High Court has found in favour of a Singapore-incorporated petrochemical wholesale company which received a margin for acting as an intermediary in a credit sleeve arrangement with other parties to facilitate the sale of fuel oil in *Goodwood Associates Pte Ltd v Southernpec (Singapore) Pte Ltd and another suit* [2020] SGHC 242. The Court of Appeal recently dismissed the appeals brought against the High Court's decision.

Our Comments

This is a significant decision for parties involved in commodities trading, where a party's primary role in the transaction is to act as an intermediary or "credit sleeve" to facilitate the trades and that party is not concerned with whether there was actual delivery of the subject-matter commodity to its buyer.

It is critical for parties involved in such transactions to be aware of the risks associated with entering into such transactions.

Our Koh Swee Yen, Joel Quek and Anand Shankar Tiwari acted for the successful plaintiffs before the Singapore High Court and Court of Appeal.

This update takes a look at the High Court's decision, which was upheld by the Court of Appeal.

Background

The plaintiffs were Goodwood Associates Pte Ltd ("**Goodwood**") and its sole director and shareholder, Mr Lee Soek Shen ("**Mr Lee**").

The defendants were Southernpec (Singapore) Pte Ltd ("**SSPL**"), the purchaser under two contracts for the sale of fuel oil (the "**July Contracts**") and Southernpec (Singapore) Shipping Pte Ltd ("**SPSPL**"), who had executed a guarantee ("**SPSPL Guarantee**") in favour of Goodwood for in respect of transactions between Goodwood and SSPL.

SSPL wanted to purchase fuel oil from BMS United Bunkers (Asia) Pte Ltd ("**BMS**"), an oil trading company, but was unable to do so because it did not have a trading credit limit with BMS. Goodwood was therefore asked to participate as an intermediary or "credit sleeve" to facilitate the sale of fuel oil between BMS and SSPL in exchange for a margin of US\$3 per metric tonne of fuel oil, and entered into sale contracts with SSPL (which included the July Contracts). SSPL's payment obligations to Goodwood under these contracts were guaranteed by SPSPL under the SPSPL Guarantee.

Unbeknownst to Goodwood at the time, the July Contracts were part of a circular chain of transactions, involving six parties (including Goodwood, SSPL and BMS) where SSPL provided the fuel oil sold but was the ultimate end-buyer. When SSPL defaulted on its payment obligations to Goodwood under the July Contracts, Goodwood brought claims against SSPL for the purchase price of the fuel oil under the July Contracts and against SPSPL under the SPSPL Guarantee.

SSPL and SPSPL denied liability, contending the July Contracts were unenforceable because the transactions were shams. SSPL and SPSPL also counterclaimed against Goodwood, Mr Lee and Mr

Andrew Lim Boon Leong (who was alleged by SSPL and SPSPL to have brokered and managed the execution of the trades), for engaging in lawful and unlawful means conspiracy with three other non-parties and making legal claims on the allegedly false premise that the July Contracts are genuine, causing SPPL and SPSPL to suffer losses in the form of, among other things, legal costs, wasted managerial and staff time as well as the costs of engaging an information technology forensics expert.

The High Court's Decision

The High Court Judge dismissed SPPL's and SPSPL's claims in lawful and unlawful means conspiracy and allowed Goodwood's claims against SPPL and SPSPL.

In particular, in determining whether the July Contracts were in fact shams, the High Court Judge distinguished between circular trading transactions in which *no delivery* of the subject-matter commodity is contemplated and those in which *no trading* in any subject-matter commodity is contemplated at all and the entire series of circular trades is a fiction ([47] of the Judgment).

According to the High Court Judge, in the first scenario, the parties fully intend for the legal title in the subject-matter commodity to pass through the various parties in the circular chain of transactions and parties intend to be bound by the relevant contracts. However, in the second scenario, the parties do not intend to trade or take legal title in any commodity whatsoever and do not intend to create any legal obligation to pay for the trades in the subject-matter commodity. The High Court Judge held that the July Contracts fell within the first scenario.

Further, the High Court Judge found that there was no basis to conclude that Goodwood or Mr Lee knew that the July Contracts were, or were intended to be, shams. Even if they had been aware that the July Contracts were part of a circular chain of transactions, there was insufficient evidence to show that Goodwood and Mr Lee knew that the fuel oil transacted was in fact non-existent, and that the transactions was a sham. Rather, Goodwood and Mr Lee had, by their conduct, demonstrated that they consistently treated the July Contracts as genuine and legally binding.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partners:



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