

Documentary Credit on International Trade Financing: Its Nature and the Legal Implications

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Abstract

A letter of credit (L/C)² is defined in Article 2 of Uniform Code of Customs and Practice (UCP) as . . . any arrangement, however named or described, whereby a bank (the ‘issuing bank’) acting at the request and on the instructions of a customer (the ‘Applicant’) or on its own behalf:

- i. is to make payment or to the order of a third party (the ‘Beneficiary’), or is to accept and pay bills of exchange (Draft(s) drawn by the Beneficiary); or
- ii. authorizes another bank to effect such payment, or accept and pay such bills of exchange (draft(s)); or
- iii. authorizes another bank to negotiate against stipulated document(s) provided that the terms and conditions of credit are complied with.

It is an instrument issued by a bank on behalf of the importer (buyer) promising to pay the exporter (beneficiary) upon presentation of shipping documents in compliance with the terms stipulated herein.

PURPOSE

The purpose of this paper is to provide a general understanding of documentary credit, their use and application. The sub topics covered in the course of this paper as follows

- a. general background of information
- b. the nature of documentary credit
- c. the advantages of documentary credit
- d. law relating to letters of credit
- e. the uniform code: legal implication or binding force
- f. types of letter of credit
- g. documentary credit and legal relationship
- h. doctrine of strict compliance
- i. issuing bank’s security as against the buyer
- j. jurisdiction
- k. recommendation and conclusion

Introduction

In Documentary credit can also be classified or described as letters of credit or banker’s commercial credit. The financing of international trade have its peculiar problems as a result of different location or residence of the contracting parties to the transaction reside in different countries and are therefore not able to be aware and/or able to ascertain not only the financial status of the other party but also of each other’s reputation in his home country. This bottleneck of this commercial credit makes it imprudent of the seller to part with his goods without a reliable arrangement for payment and the buyer to pay for the goods without assurance of delivery of same³. International trade financing is one of the areas where bankers make credit available to customers to be carried out obligations in connection with their trade dealings. It has been rightly claimed that “the enormous volume of sales of produce by a vendor in one country to a purchaser in another has led to the creation of an equally great financial system intervening between vendor and purchaser, and designed to enable commercial transactions to be carried out with the greatest money convenience to both parties.”

The purport and principle of documentary credit was elucidated or elaborated by Scrutton L.J in the

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² Article 2 of Uniform Code of Customs and Practice (UCP) 1993 revision

³ David Tiplady, Introduction to the Law of International Trade, Schmitthoff. Export/Trade (9th ed. 1990)

case of Guaranty Trust Company of New York vs. Hannay & Co¹ as follows:

Nature of Documentary credit

Letter of credit (also known as documentary credits or commercial credits) are better alternative to a documentary bill. Their popularity in international commerce has led judges to describe them as “the life blood of international commerce” in *United City Merchants investment Ltd V Royal Bank of Canada*²

The UCP defines letter of credit in Article 2 as:

...any arrangement, however named or described, whereby a bank (the 'issuing Bank') acting at the request and on the instructions of a customer (the 'Applicant') or on its own behalf

- a) *is to make payment or to the order of a third party (the beneficiary') or is to accept and pay bills of exchange (drafts) drawn by the beneficiary; or*
- b) *authorizes another bank to effect such payment, or to accept and pay such bills of exchange, or*
- c) *authorizes another bank to negotiate against stipulated document(s) provided that the terms and conditions of credit are complied with.*

Advantages of Documentary credit:

- a. It enables the exporter to get paid immediately for the price of the goods on shipment;
- b. It enables the importer to get credit upon security of title documents with the issuing bank.
- c. The buyer can raise funds from the bank on the strength of the documents, thus alleviating the need to have sufficient funds to pay the seller as *McNair J* observed in *Soproma SPA v Marine and Animal By Products Corporation*³

In documentary credits, parties mainly deal in documents and not in goods and this view was also canvassed⁴ Where the letter of credit makes the performance of the contract of sale or documentary proof of it a condition for payment to the seller, the contract is construed accordingly so that more obligations is imposed on both the issuing bank and on the confirming bank to ensure actual performance of the contract of sale⁵.

Law relating to letters of credit

No attempt was made to harmonise the law on letters of credit through international conventions. A near global unification, however, has been achieved through the efforts of ICC, which is responsible for the Uniform Customs and Practice of Documentary credits, otherwise known as UCP.

Consequent of the fore going, the Documentary Credit is generally governed by a code known as the Uniform Code of Customs and Practice (UCP) for documentary credits produced by the International Chamber of Commerce. Once this notion of commercial credits became acceptable as a significant factor in export and import trade, attempts were made from time to time to standardise the conditions on which bankers would be

¹ Per *Scrutton L. J* said as follows: “The enormous volume of sales produce by o vendor in one country to a purchaser in another has led to the creation of on equally great financial system intervening between vendor and purchaser, and designed to enable commercial transactions to be carried out with the greatest money convenience to both parties. The vendor, to help the finance of his business, desires to get his purchase price as soon as possible, after he hod dispatched the goods to his purchaser, with this object, he draws a bill of exchange for the price, attaches to the draft the documents of carriage and insurance of the goods sold and sometimes an invoice for the price, and discounts the bill with document attached to on exchange house. The vendor thus gets his money before the purchaser would, in ordinary course, pays; the exchange house duly presents the bill for acceptance, and has, until the bill is accepted, the security of a pledge of the documents attached and the goods they represent. The buyer on the other hand, may nat desire ta pay the price till he has sold the goods. If the draft is drawn on him, the vendor ar exchange house may not wish to part with the documents of title till the acceptance given by the purchaser is met at maturity. But if the purchaser con arrange that a bank of high standing shall accept the draft, the exchange house may be willing to part with the documents an receiving the acceptance of the Bank. The exchange house will then have the promise of the Bank to pay, which ‘fin the form of a bill of exchange is negotiable, and can be discounted at once. The Bank will have the documents of title as security far its liability on the acceptance and the purchaser con make arrangements, to sell and deliver the goods”

² (1982),p.222;RD Harbotue(mercantile)Ltd v National Westminster Bank Ltd(1978)

³ (1966)1 Lloyd’s Rep 367(a letter of credit) is of advantage to the seller in that by the terms of the contract he is given a ‘reliable paymaster’ generally in his own country whom he can sue, and of advantage to the buyer in that he can make arrangements with his bankers forthe provision of the necessa1’/ funds, his banker retaining the drafts arid the documents as his for making payment to the seller and buyer being freed from the necessity of having to keep the funds available to make payment against presentation of documents to him at tan uncertain time which is no further defined in the authorities than being at a reasonable time after shipment by the seller of documents covering goods which he has shipped or are already afloat.

⁴ *Indira Carr* in his book principles of international law second edition on standard trade terms in respect of sale by document under CIF contract.

⁵ *A.G Bendel State & Ors vs. USA Ltd* (1986)4 NWLR (Pt. 37) 547

willing to issue and act on commercial credits.

The uniform code: legal implication or binding force

I am of the opinion that there is no legal binding or implication for contracting parties or parties as case may be except where parties on their own decide to incorporate its terms into their credit transactions. Parties are free, to incorporate such codes into their documents and may exclude same by agreement.¹

Types of Letter of credit

1. Irrevocable letter of credit:

An irrevocable letter of credit is a definite undertaking by the issuing Bank provided that the terms and conditions of the credit are complied with². It constitutes a contract between the issuing banker and the seller, and is unaffected by the terms of the contract of sale made between the buyer and the seller or the contract between the issuing bank and the buyer³. An irrevocable letter of credit cannot be cancelled or amended and the Bank is obliged to honour the seller's draft if the agreed documents are made available to it. The opening of an irrevocable letter of credit constitutes a bargain between the banker and the seller of the goods which imposes on the banker an absolute obligation to pay irrespective of any dispute between the buyer and the seller in regard to the quality of the goods⁴. The buyer cannot cancel the credit even where he claims that the goods are defective or that the seller is in breach of the contract⁵. An irrevocable letter of credit cannot be withdrawn by the issuing banker without the consent of the beneficiary and this is so, notwithstanding any definite instruction to that effect by the buyer⁶.

There are two forms of irrevocable credits:

Unconfirmed credits (the irrevocable credits not confirmed by the advising bank) in an unconfirmed credit, the buyer's bank issuing the credit is the only party responsible for payment to the seller. The seller's advising bank pays only after receiving payment from the issuing bank. The seller's advising bank merely acts on behalf of the issuing bank and therefore, incurs no risk.

Confirmed credit (the irrevocable credit.) In a confirmed credit⁷ the advising bank adds its guarantee to pay the seller to that of the buyer's issuing bank. Once the advising bank reviews and confirms that all documentary requirements are met, it will pay the seller. The advising bank will then look to the issuing bank for payment. Confirmed irrevocable letters of credit are used when trading in a high —risk area where war or social, political, or financial instability are real threats. Also common when the seller is unfamiliar with the bank issuing the letter of credit or when the seller needs to use the confirmed letter of credit to obtain financing its bank to fill the order. A Confirmed credit is more expensive because the bank has added liability.

2. Revocable letter of Credit

A revocable letter of credit may be amended or cancelled at any time without prior notice to the beneficiary, i.e. the seller⁸ but not without reimbursing the nominated bank for any loss arising from any payment, acceptance or negotiation made by such bank prior to receipt by it of such notice of amendment or cancellation⁹. Thus the opening of a revocable letter of credit creates no contract between the issuing Banker and the seller. It is one which can be revoked at any time before the drafts drawn under it have actually been accepted. In *Cape Asbestos Co. Ltd vs. Lloyds Bank*¹⁰. It was held that the Defendants were entitled to do so in view of the fact that the credit was unconfirmed and revocable. The nature of a revocable letter of credit was explained by Bello JSC in *ACB vs. Yesufu*¹¹ as follows:

¹ The Law of Letter of Credit 4-16—22, 6—32 —34 (1984) cited by EQ. Ehigiatu in the Law of Credit and security (supra).. In the words of Dolan. The application of the codes is also subject to any local laws existing on the same subject matter. The Nigerian courts shall continue to apply the codes in the absence of a local law or parties' intention to the contrary. if the credit is silent, to the extent that a party proves that the Uniform customs describe a regularly observed usage of trade, the uniform customs fill in points which the parties have not considered and in fact agreed upon. If the credit is silent and there is no proof that the uniform customs describe a regularly observed usage of trade, they still serve as the latest, best and most persuasive thinking on the practices in question."

² Article 3 of the UCP

³ *North American Manufacturers Associates Inc vs. Chase National Bank of city of New York* (1948) 77F Supp 55

⁴ *North American Manufacturers Associates Inc vs. Chase National Bank of city of New York* (1948) 77F Supp 55

⁵ *Akinsanya vs. UBA* (Supra) page 992; *Hamzah Malas & sons vs. British Mex Industries Ltd* (1958) 2 QB 127

⁶ *Lindsay & Co Ltd vs. Eastern Bank* (1922) 1KB p. 318

⁷ *Lai stach Ltd v Baker Bosseley Ltd* (1958) 2 QB 130, 1 All ER 542

⁸ Article 8a of the UCP 1993 Revision

⁹ Article 85 UCP supra

¹⁰ 1921) W.N 274

¹¹ (1978) NSCC76@73; *Erican Steel Co vs. Ining Nation Bk* (1920) 266 0 41, 43; *Akinsanya vs. USA* (supra); *Nasaraisi*

Vt has been held in Cape Asbestos Co. Ltd vs. Lloyds Bank Ltd (1921) WN274...that a revocable letter of credit might be revoked at any time and that there was no real obligation on a banker to give notice of the revocation to his customer and that the giving of notice was an act of courtesy, which it was very desirable should be performed, but it was not founded upon any obligation. It seems to us that Cape Asbestos's case is the only reported judicial decision in the common law countries on the matter for it is cited by the learned authors of 3 Halsbury's Law of England, 4th Edition at P. 100 note 4... to support the proposition that a banker has no legal duty to give notice of dishonour of a revocable credit to his customer, we think the support given to the proposition is weighty. We take it as being the correct statement of the law."

The advising/nominated bank, by not adding its confirmation, cannot be sued on a refusal to pay since there will be no contractual relationship between the seller/beneficiary and the advising/nominated bank.

In practice, sellers would rather accept only irrevocable and confirmed letters of credit and the correspondent bank is asked to confirm a credit only if it is irrevocable. This is because the irrevocable/confirmed letter of credit is the best the seller can obtain in any transaction involving documentary credit, in a wrongful refusal to pay, the seller has a contractual remedy against the confirming and the issuing bank and also if the letter of credit is a form of conditional payment only, he may sue the buyer on the contract of sale. Though it is usual for the seller to pursue remedies against the confirming bank since the confirming bank situate in the seller/beneficiary's country thereby obviating the need to embark on foreign litigation and enforcement abroad. This is because in an irrevocable and confirmed letter of credit, the seller receives an undertaking of both the issuing and correspondent bank¹.

The main commercial purpose of confirmed and irrevocable commercial credit is to give the seller an assured right to be paid before he parts with the control of the goods and to afford credit to the buyer pending sub-sales upon security over documents of title to the goods. It has therefore been described as "the crankshaft of modern commerce"².

3. Transferable letter of credit.

This type of credit allows the seller to transfer all or part of the proceeds of the original letter of credit to a second beneficiary, usually the ultimate supplier of the goods. The letter of credit must clearly state that it is transferable for it to be considered as such. This is a common financing tactic for the middlemen and is common in East Asia

4. Deferred payment:

In deferred payment of letters of credit, the buyer accepts the documents related to the letter of credit and agrees to pay the issuing bank after a fixed period. This credit gives the buyer a grace period for payment.

5. Back to back letter of credit

This is a new letter of credit opened based on an already existing, non-transferable credit used as collateral. Traders often use back-to-back arrangements to pay the ultimate supplier. A trader receives a letter from the buyer and then opens another letter of credit in favour of the supplier. The first letter of credit serves as collateral for the second credit.

Enterprises Ltd vs. Arab Bank (supra). Per Bailhache J.

canvassed that, the crucial question is whether the defendants are under any legal duty to inform the plaintiffs when the credit is withdrawn of the fact of its withdrawal. It is clear from the evidence that it is the practice of the defendants to inform persons to whose credits, and, that they would have done so in this instance but that under pressure of business they forgot to do so; what has to be considered, however, is not the practice of the defendants, but whether any legal duty is laid upon them to give notice. It is to be observed that the letter of June 14, 1920, from the defendants to the plaintiffs announced the opening of a revocable and not of a confirmed credit. A letter in that form intimates to the person in whose favour the credit was opened that he might find that credit is revoked at any time. That being the representation by the defendants under any legal duty to give notice to the plaintiff when the credit is revoked?...there is no legal obligation on the defendants to give notice in the circumstances. In a case of kind, the wise course for the seller to take before making a shipment of the goods would certainly be to inquire of the bank whether or not the credit had been withdrawn. The practice of the defendants to give notice in such cases is a most prudent, reasonable and business-like practice; and I hope that nothing I have said in this case leads banks to alter that practice but at the same time it does not seem to be based upon any legal obligation or duty. It has been said that the defendants regard the giving of notice as an act of courtesy which they always perform except when, as in this case, it is unfortunately forgotten. That is the true view of the proceeding. It is an act of courtesy which it is very desirable should be performed, but it is not founded upon any legal obligation.

¹ Nasaralai vs. Arab Bank (supra); Akhmanya vs. UBA (supra); United City Merchants (Investments) Ltd & ors vs. Royal Bank of Canada & ors (supra); Pavia & Co., S.P.A vs. Thurntann — Nielsen (supra).

² ¹Chorley: Law of Banking, 6th ed. London (Sweet & Maxwell) 1974, p. 225.

6. Standby letter of credit.

This is a payment or performance used primarily in the United States. They are often called non-performing letters of credit because of that are only used as a backup should the buyer fail to pay as agreed

7. Revolving letter of credit.

With a Revolving letter of credit, the issuing bank restores the credit to its original amount. Once it has been used or drawn down. Usually, these arrangements limit the number of times the buyer may draw down its line over a predetermined period.

Documentary credit and legal relationship

It should be noted that there are four parties to a letter of credit transaction — the seller, the buyer, the issuing bank and the correspondent or confirming

Bank. There are many judicial decisions on letters of credit transaction. In practice, litigations can arise in any of the following instances:

- a. The buyer's bank may pay when the documents are different from those specified by the letter of credit.
- b. The buyer's bank may refuse to pay when the documents are in conformity with the letters of credit.
- c. There may be an argument between the parties as to whether the documents do conform or not.
- d. The buyer's bank may be aware that the seller has breached the sales contract by shipping non conforming goods (under conforming documents before it pays against the documents).

An authoritative statement on the legal relationship arising from a letter of credit can be found in the pronouncement of Lord Diplock in *United City Merchants (Investments) Ltd vs. Royal Bank of Canada* (supra). Lord Diplock said as follows:

*"...so the point falls to be decided by reference to first principles as to the legal nature of the contractual obligations assumed by the various parties to a transaction consisting of an international sale of goods to be financed by means of a confirmed irrevocable documentary credit. It is trite law that there are four autonomous though interconnected contractual relationship involved: (1) the underlying contract for the sale of goods, to which the only parties are the buyer and the seller; (2) the contract between the buyer and the issuing bank under which the latter agrees to issue the credit and either itself or through a confirming bank to notify credit to the seller and to make payments to or to the order of the seller (or to pay, accept or negotiate bills of exchange drawn by the seller) against presentation of stipulated documents; and the buyer agrees to reimburse the issuing bank for payments made under the credit. For such reimbursement, the stipulated documents, if they include a document of title such as a bill of lading, constitute a security available to the issuing bank; (3) if payment is to be made through a confirming bank, the contract between the issuing bank and the confirming Bank authorising and requiring the latter to make such payments and to remit the stipulated documents to the issuing bank when they are received, the issuing bank in turn agreeing to reimburse the confirming bank for payments made under the credit; (4) the contract between the confirming bank and the seller under which the confirming bank undertakes to pay the seller (to accept or negotiate without recourse to drawer bills of exchange drawn by him) up to the amount of the credit against presentation of the stipulated documents" which was adopted by the Nigerian Supreme Court in the case of *Akinsanya vs. UBA* (supra).*

There are four contracts involved in any transaction involving documentary credit, namely:

- 1 Contract between the buyer and the seller
 - 2 Contract between the buyer and the issuing bank
 - 3 Contract between the issuing bank and the confirming bank
 - 4 Contract between the confirming bank and the seller
1. The legal basis of the first three is not difficult to establish. The elements required for the existence of a valid contract are present. The fourth class is hard to fit into the slots of offer, acceptance and consideration¹. Indeed to do so is to distort the essence of the arrangement which has its root in the law of the Merchant².

1. Contract between the buyer and the seller

This is the underlying contract for the sale of goods in question. Without this underlying contract, the other contracts will not arise. In *IBWA vs. UNAKALAMBA*³ the Court of Appeal described it as a

¹ Mead, "Documentary Letters of Credit" 22 *CoL L. Rev.* 29]; P.N. Todds, *Sellers and Documentary credits* (1983) J.B.L. 468

² Agomo, C.K *Supra* P.66.

³ (1998) 9 *NWLR* (Pt. 565) CA 245

contract for the sale of goods or merchandise to which the only parties or operators are the buyer and the seller. This involves basically contract for the carriage of goods at a certain price. Where the mode of payment chosen in the contract between the Buyer and Seller is that of documentary credit, the Buyer is under a duty to the seller to ensure that a credit is issued within a reasonable time or an agreed time and the credit must comply with the conditions which have been laid down by the parties to the agreement. The acceptance of documents under a letter of credit does not preclude the buyer from rejecting the goods subsequently if the goods on their arrival do not conform to the contract of sale¹.

2. Contract between the issuing bank and the buyer

This is a contract between the buyer and the Issuing bank under which the latter agrees to issue the letter of credit and either itself or through a confirming bank to notify the credit to the seller and to make payments to the seller or to the order of the seller (or to pay, accept or negotiate Bills of Exchange drawn by the seller) against the presentation of stipulated documents of titles such as Bills of Lading constituting a security to the issuing Bank². An irrevocable letter of credit is a definite undertaking by the issuing bank that the following terms and conditions of the credit would be complied with³:

- a. To pay, or that payment will be made if the credit is provided for payment, whether against a draft or not;
 - b. To accept drafts if the credits provide for acceptance by the issuing bank
- In this relationship, if the buyer has provided the form of any document against which payment is to be made, the issuing bank must insist upon complete compliance. There is no room for documents which are almost the same, or which do just as well⁴.

3. Contract between the Issuing bank and the Confirming bank

The legal standing of the confirming bank varies with the role adopted between the two banks. The relationship may be agent or a relationship of two independent principals. If the confirming/correspondent bank does not agree to be solely or primarily liable but merely forwards to the seller with or without confirmation a letter of credit issued by the issuing -bank, an agency relationship is readily imputed vis — a- vis the transmission of the credit to the seller. The principal is the issuing bank and the buyer is not a party to the relationship and as between the buyer and the correspondent bank, there is no privity of contract⁵ because the confirming bank is the issuing bank's agent and not the buyer's agent, thus the buyer is entitled to reject the documents even for an apparent defect on the face of the document and refuse to be bound by the acts of the confirming bank as the confirming bank is not his agent⁶. There must be strict compliance with the terms of the instruction Article 13 of the UCP revision rules (1993) states as follows:

“Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.”

This implies that a confirming bank is concerned solely with the appearance of the documents and is not liable if it fails to notice a defect that a prudent inspection would have shown. The bank is required to ascertain whether the documents are of the right type, and whether they are in the form usually issued⁷. In the contract between the issuing bank and the confirming bank, the confirming bank is only entitled to reimbursement or remuneration if it complies strictly with the instructions of the letter⁸. If the confirming bank as agent of the issuing bank has been held to have acted on defective documents and the buyer thereby incurs a loss, the buyer can claim against the issuing bank that could in turn refuse to reimburse the confirming bank. But if the documents presented to the confirming bank are ex facie in conformity with the relative conditions of the credit, the issuing bank would be entitled to reimburse the confirming bank and it would not matter whether there is any dispute between the buyer and seller.

Doctrine of Strict compliance

The beneficiary will present documents to be issuing, advising or confirming bank as appropriate. Acceptance or

¹ Akinsanya vs. USA (supra); Nasaralai vs. Arab Bank (supra)

² Ibwa vs. Unakalamba (supra)

³ Akinsanya vs. UBA (supra)

⁴ Article 5 of the UCP; Equitable Trust Co of New York vs. Dawson Partners Ltd (1926) 27 ML R49; Raner & Co Ltd vs. Hambro's Bank Ltd (1943) I-CS 37.

⁵ Equitable Trust Co. Of New York vs. Dawson Partners Ltd 1926) 27 LILR 49.

⁶ Akinsanya vs. USA (supra)

⁷ E0. Ehigiato (supra)p. 159.

⁸ Ibid; Nasaralai vs. Arab Bank; AG. Bendel State & ors vs. USA Ltd (supra)

rejection of the documents by the bank is dependent on whether the documents confirm on their face to the terms of the credit. If, on their face, they are in strict conformity with the terms of the credit, the bank will accept the document. If they are not, they will reject the documents. This is commonly referred to as the doctrine of strict compliance. The tender of documents that are similar is not acceptable under the doctrine of strict compliance as Lord Sumner canvassed, in *Equitable Trust company of New York v Dawson Partos Ltd*¹. The requirement of strict compliance is well known and continually reiterated. It must be specific requirements of the credit² In *England Scottish and Australian Bank vs. Bank of South Africa*³, the Court stated as follow:

“It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with accompanying documents are in strict accord with the credit as opened.”

4. The contract between the seller and the confirming bank

Although a commercial credit whether revocable or irrevocable is not required in any specified form, in practice, most current forms follow a uniform pattern. Thus the form is dated and numbered; its duration and amount of cover provided are clearly spelt out. It is usually addressed to the seller and states that on the instruction of the buyer, the banker authorises the seller to draw bills of exchange up to the stated amount. An irrevocable letter of credit creates a legally binding contract between the banker and the seller. However, where the irrevocable letter of credit is unconfirmed, the contract is between the seller and the issuing bank. If the credit is both irrevocable and confirmed, both the confirming and issuing bank are liable to the seller⁴. Generally, banks cannot refuse payment so long as the documents conformed to the letter of credit. However, there are circumstances under which this rule will not apply are Where there is a fraudulent misrepresentation existing in the documents tendered under the credit, where the seller, for the purpose of drawing on the credit fraudulently or dishonestly presents to the confirming bank documents that contain, expressly or by implication, material representations of fact which are untrue to his knowledge, the bank is not bound to honour the credit⁵. But fraud by a supplier or by some other party who is not an agent of the seller, of which fraud the seller is not aware, will not justify the bank in refusing to pay and the issuing bank cannot refuse to reimburse the bank which does not pay out⁶. Also where honouring of the credit could be illegal according to the law of the place where the bank's performance is due, For instance, In Nigeria, a letter of credit issued in contravention of any law in force will be tainted with illegality and cannot be enforced by the courts. Thus if a letter of credit is issued by a person other than a licensed bank, the transaction will be a nullity.

Issuing bank's security as against the buyer

The bill of lading is the main document that provides the banker's security. Where the customer's account becomes overdrawn as a result of the payment made on his behalf, the issuing bank may retain its rights as pledge either by taking delivery of the goods and keeping them in a warehouse or obtaining a 'trust receipt' from the customer at the time of handing the documents over to the customer.

2.15 Jurisdiction

This is one area where a seemingly confusion exists as to whether a letter of credit dispute falls within the exclusive admiralty jurisdiction of the Federal High Court or just a simple banker — customer relationship which confers concurrent jurisdiction on the State and Federal High Courts. We shall examine judicial authorities on this briefly. A letter of credit dispute does not fall within the admiralty of the Federal High Court of Nigeria.

In *Akinsanya vs. UBA (supra)*, The Supreme Court opined that a matter concerning the opening of a letter of credit, in which there is a collateral agreement of carriage of goods by sea is not an admiralty matter and that the state high court has jurisdiction to try it. This is because the whole transaction being a documentary credit, a bill of lading is not itself the contract of carriage between the shipper and the charterer, but is merely evidence of the terms. All parties to international Documentary credit deal in documents only, and as the present action is between the buyer and the Issuing bank, the Lagos High Court has jurisdiction. In *Nasaralai vs. Arab Bank of Nigeria (supra)*, *Bello JSC* while relying on *Jamal Steel Structure Ltd vs. ACB Ltd* held that;

“it is a misconception of law and practice of commercial credit to describe the case as one governed by

¹ (1927) 2 LIL Rep 29, *Moralice (London) Ltd VED sand Fman (1954) 2 Lloyd's Rep 526*; *JR Rayer and co-Ltd v Hai-nbros Bank Ltd (1943) 1 KB 37*; (1942) 2 ALL ER 694

² *seaconsar v Far East Ltd v Bank mabzi Jomhourli Islam Iran (1993) 1 Lloyd's Rep 236*; (1994) 1 Lloyd's Repl

³ (1981) 1 Lloyds Report 68, 74 - 75

⁴ *Impanoutsos vs. Raymond Hadley corporation (1917) 2 KB 473*

⁵ *Aldnsanya vs. UBA Ltd (supra)*

⁶ *United City Merchants vs. Royal Bank of Canada (supra)*

maritime law which is within the exclusive admiralty jurisdiction. The learned Jurist went on to say that “Now in the business world of documentary credits, parties are not factually concerned with the seaworthiness of a ship or loading it or monitoring its voyage or ensuring its compliance with the maritime law of the country of the discharge of its cargo. They are not concerned with the actual delivery or non — delivery of the goods. The whole transaction may in reality be a fraud or forgery. There may be no ship and there may be no good at all. Parties are only concerned to ensure compliance on papers with the relevant terms of their respective contracts. It is essentially a matter of documentary contract between a banker and his customer, which has nothing to do with maritime law. It is a matter within the jurisdiction of High Court of Lagos State and not the Federal High Court”. The 1999 Constitution of the Federal Republic of Nigeria has made elaborate provisions for the jurisdiction of the Federal High Court. 5.251 (d) provides for the exclusive jurisdiction of the Court in the matters listed there but added a proviso to the effect that:

“Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the Bank”

Recommendation

- a) Letter of credit should always be used as an avenue to assist the importers and exporters in their international commercial transaction.
- b) Irrevocable and confirmed letter of credit should be encouraged as the best practice for documentary credit for its enormous significance both exporter(s) and importer(s) and designated banks thereby promote international commerce, foreign investment and economic development.
- c. There is a need for unification of UCP to international trade practice in the whole world for smooth commercialization and industrialization as well as free flow of trade to nation building.
- d) A stricter criminal punishment and award of damages should be introduced in international commerce to sanitize the use of letter of credit and to promote trust, integrity and sanity of international trade financing in terms of security through banks.

Conclusion

The financing of international trade creates peculiar problems as the parties to the transaction reside in different countries. Consequently, they are not in a position to ascertain or know the financial standing or reputation of the other party. The letter of credit makes it possible for the seller to part with the possession of the goods by providing reliable arrangement for payment and assurance of delivery of the goods. It is therefore recommended that the use of it is also safer and less risky to transact international business through the medium of documentary credit than carrying cash. The courts are keen on enforcing a letter of credit according to its terms.

Finally, the use of letters of credit as a tool to reduce risk has grown substantially over the past decade and it accomplishes the purpose by substituting the credit of the bank for that of customers for the purpose of facilitating trade.

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