

BRIEFING NOTE

Navigating the Waters of Commodities Trading

- ***Takeaways from Credit Agricole Corporate & Investment Bank, Singapore Branch v PPT Energy Trading [2022] SGHC(I) 1***

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Introduction

During the pandemic, some commodities traders went into financial difficulties, which then affected other commodities traders along the chain of trading. This led to questions with respect to whether or not such trades were *bona fide* and the legal effects of such trades.

In the recent Singapore International Commercial Court judgment of *Credit Agricole Corporate & Investment Bank, Singapore Branch v PPT Energy Trading* [2022] SGHC(I) 1 (the “**SICC Judgment**”), Cooke J answered some of these questions. We share the key takeaways of this decision below.

Factual Background

PPT is engaged in the business of commodities trading. PPT was approached by Zenrock (who was also in the business of commodities trading) to be part of a pre-structured back-to-back crude oil trading transaction. This transaction involved PPT purchasing crude oil from another trader – Shandong – and selling the same crude oil to Zenrock. PPT was to profit from the difference between the purchase price and the sale price.

Credit Agricole is a bank. Upon the application of Zenrock (secured by the above cargo), it issued a letter of credit in favour of PPT. Unbeknownst to Credit Agricole, Zenrock obtained another letter of credit from ING Bank (for a lower amount) secured over the same cargo.

After Zenrock went into financial difficulties and failed to pay the purchase price to PPT, PPT sought indemnity from Credit Agricole. The latter refused to indemnify PPT on the basis that the PPT-Zenrock sale contract, being part of a string transaction, was part of a fraudulent scheme perpetrated by Zenrock and participated by PPT to defraud Credit Agricole.

Decision of Cooke J

First, Cooke J summarised the requirements of a fraud (or ‘sham’ transaction). He confirmed that a failure, even a reckless failure, to ascertain the truth of representations, will not amount to fraud. In order for Credit Agricole to argue successfully that the PPT-Zenrock sale contract was a ‘sham’ transaction to defraud the bank, both PPT and Zenrock must share a common subjective intention that the transaction documents are not to create the legal rights and obligations which they give the appearance of creating (*Snook v London and West Riding*

Investments Ltd [1967] 2 QB 786). Where PPT had simply failed to investigate the background of the pre-structured transaction proposed by Zenrock, the sale contract was not a ‘sham’.

Second, Cooke J touched on the *bono fide* nature of the transaction in circumstances where the PPT-Zenrock sale contract was part of a string of pre-structured back-to-back transaction. His honour determined that where parties in a chain of sales intended to enter into real sale and purchase transactions (and where such sale contracts contain the relevant provisions relating to the trades), then that sale contract was valid. This is in line with the basic principles of contract formation – offer; acceptance; consideration; and an intention to create legal relations. In circumstances where PPT and Zenrock had satisfied the requirements of offer, acceptance and consideration, by way of a sale contract, as well as mutually intended the sale to proceed, the PPT-Zenrock sale contract was valid.

Third, Cooke J suggested that title in cargos can pass even where original shipping documents did not change hands. This may be counterintuitive to those in the commodities / shipping space who may be used to indorsing bills of lading and physically handing these to the next party. Following the *SICC Judgment*, it appears that insofar as commodities trading is concerned, title can pass in accordance with the terms and conditions of the sale contract regardless of whether original shipping documents were provided. Although PPT cannot adduce original bills of lading, this did not mean that it never had title in the crude oil cargo.

Commentary

The collapse of commodity traders during the pandemic has brought the spotlight on the practice of commodities trading. The *SICC Judgment* is helpful in that it recognises the authenticity and validity of such trades so long as basic contractual requirements are fulfilled.

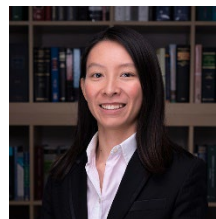
Our lawyers have been assisting with claims arising as a result of the collapse of commodities traders along a chain of pre-structured back-to-back commodities transaction. We are familiar with the nature, complexities and solutions, of such claims. If you would like to learn more about how we can assist with similar claims, please feel free to contact our lawyers.

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