
FUTURE OF LETTERS OF CREDIT IN THE LIGHT OF DEVELOPMENT
OF THE LAW OF FRAUD AND MISREPRESENTATION

QUESTIONS AND ANSWERS

Question - Ian Grayson (Holmans, Brisbane):

The question may have been answered by the GEC case but I was wondering whether in the case where there is a fraud on the document which has been presented to the bank, the real course of action should be an injunction against the seller to prevent them from accepting the money rather than an injunction against the bank?

Response - David O'Bryen:

I have not had any experience with that but I cannot see that that would be wrong. Usually the problem is the jurisdictional problem is it not and in such a case where you can restrain that person that is fine.

Response - Professor Gerry McLaughlin:

David is right about the jurisdictional question. But assuming you can get jurisdiction, a Mareva injunction against the beneficiary from dissipating the funds seems to me a more appropriate way if you have jurisdiction. To handle it simply - the letter of credit is paid, it is over and unless you take the position that a letter of credit is so special - is a specialty contract - that the payment maintains its special character in the hands of the beneficiary, which I think is a rather extreme argument, why can't a Mareva injunction freeze the assets and let the dispute go on its merry way. It is easy to say that but I think the main issue is what David just pointed out - can you get jurisdiction over the beneficiary.

Comment - Robert Seidler (Chairman):

Ladies and gentlemen, we had two speakers who presented their papers with vigour and lucidity. Could you please thank them.