

Industrial & Commercial Bank Ltd v Banco Ambrosiano Veneto S.P.A.
[2001] SGHC 120

Case Number : Suit 600167/2000
Decision Date : 31 May 2001
Tribunal/Court : High Court
Coram : Tay Yong Kwang JC
Counsel Name(s) : Davinder Singh SC, Hri Kumar and Sameer Advani (Drew & Napier) for the plaintiff; Yang Ing Loong and Ng Wee Chong (Allen & Gledhill) for the defendant
Parties : —

Banking – Letters of credit – Standby letters of credit – Fraud by issuer's employee

Banking – Letters of credit – Standby letters of credit – SWIFT message – Legal effect – Circumstances when it binds sender

JUDGMENT:

Grounds of Decision

1 The Plaintiff is a bank carrying on business in Singapore. It is part of the United Overseas Bank group. The Defendant is a bank carrying on business in Italy. The Plaintiff's claim is for payment on two Standby Letters of Credit ("SBLCs") issued by the Defendant in its favour.

2 The first SBLC for US\$12 million ("Global SBLC") was said to have been issued by the Defendant's Udine Branch, in consideration of the Plaintiff having granted and/or agreeing at the Defendant's request to grant and/or continuing to grant to one Super Shipmanagement Pte Ltd (now known as Global Trade & Consultancy Pte Ltd) ("Global") banking facilities and/or other banking accommodation, as security for the facilities. The material terms of this SBLC were that the Defendant shall immediately pay to the Plaintiff US\$12 million, interest thereon and other banking charges as may be certified by the Plaintiff upon demand made by way of authenticated teletransmission. If the amount payable under the said demand was not paid by the close of business on the date of the demand, the outstanding amount was to bear interest until the date of receipt of payment, such interest to be calculated from time to time at the rate per annum equal to that certified by the Plaintiff. Interest which was not paid when due was to be added to the overdue sum and bear interest itself. The Plaintiff's certificate on the outstanding sum, interest and other charges due shall be final and conclusive.

3 By an authenticated teletransmission dated 14 February 2000, the Plaintiff certified that US\$10,659,605.96 and interest at the rate of 3.5% over three months SIBOR from 12 February 2000 were due and owing under the Global SBLC and demanded immediate payment of the same.

4 The second SBLC for an amount of US\$3 million ("Ghosh SBLC") was issued by the Defendant's Udine Branch as security for facilities granted to one Amarendra Nath Ghosh ("Ghosh"). The material terms of this SBLC were similar to those set out above in respect of the Global SBLC.

5 By an authenticated teletransmission dated 1 February 2000, the Plaintiff certified that US\$2,229,875.39 and interest thereon at the rate of 2.5% over three months SIBOR from 1 February 2000 were due and owing under this SBLC and demanded payment of these amounts.

6 The Defendant failed to pay the sums demanded in respect of both SBLCs.

7 The Defendant's Defence is that it never intended to issue the two SBLCs in question which were issued by its employee, Philip Martino Pigozzo, fraudulently pursuant to a fraudulent scheme involving Pigozzo, Ghosh, the Plaintiff's employee, Samuel

Lee and others.

THE ISSUES

8 On facts, this case turned essentially on the question of Pigozzo's fraud and any complicity on the part of the Plaintiff's bank officers. On law, the issue concerned the effect of authenticated SWIFT messages. "SWIFT" is an acronym for Society for Worldwide Interbank Financial Telecommunication.

THE PLAINTIFF'S CASE

9 Albert Yeo Hock Chang, the Vice-President of the Corporate Banking Division of the Plaintiff, joined the United Overseas Bank ("UOB") in 1964 and was transferred to the Plaintiff about six years ago. At the material time, he was in charge of the operational matters in the Plaintiff which did not encompass its credit operations, which came within the purview of the Credit Administration Department. Albert Yeo then proceeded to provide some facts about the Defendant. The Defendant was a large private Italian bank with its head office in Milan and over 550 branches in Italy. It is presently part of the Intesa Group of banks, one of the largest banking conglomerates in Italy. The Defendant's main business was in providing corporate banking services such as payment orders, collection, letters of credit and guarantees.

10 The relationship between the Plaintiff and the Defendant first developed in May 1995 when the Defendant proposed the formal establishment of a correspondent bank relationship. The Plaintiff replied in June 1995 stating that it was pleased to set up a direct correspondent relationship with the Defendant. The Plaintiff also enclosed its Schedule of Terms and Conditions as at January 1990.

11 In June 1997, the Plaintiff sent an updated copy of its book of authorised signatories to the Defendant. On 1 December 1998, the Plaintiff notified all its correspondent banks of changes made to its list of authorised signatories.

12 Ghosh, an Indian citizen, became a customer of ICB in July 1996 when he opened a personal account with its main branch. Albert Yeo was introduced to Ghosh in August 1999 by Quinton Chew, ICB's main branch manager at a short introductory meeting. Ghosh did not open any other account with the Plaintiff until June or July 1999 when he opened accounts in the names of various companies, including Global (then known as Super Shipmanagement Pte Ltd) and Sofia Palace International Pte Ltd ("Sofia Palace"). Around that time, Ghosh applied for credit facilities for himself and for Global. These matters were dealt with by Joseph Wong and Quinton Chew.

13 In 1999, Ghosh applied for a revolving term loan of US\$3 million in his own name. Subsequently, he asked for another revolving term loan of US\$2.7 million. One of the securities required by the Plaintiff in respect of these facilities was an SBLC from the Defendant for the sum of US\$3 million on terms acceptable to the Plaintiff.

14 On 11 June 1999, the Plaintiff received a SBLC (the Ghosh SBLC) via an authenticated SWIFT message from the Defendant. The Ghosh SBLC stated that it was issued to secure the facilities to be furnished by the Plaintiff to Ghosh. The Plaintiff had no reason to doubt its authenticity.

15 The Ghosh SBLC was in a 760 format (meant for guarantees) while the Plaintiff required SBLCs to be in 799 format to conform to SWIFT standards. The Defendant was requested to re-issue the Ghosh SBLC in the proper format and it did so on 14 June 1999.

16 Ghosh also applied for credit facilities for Global, initially for US\$17.9 million. The Plaintiff asked for various securities including a SBLC from the Defendant for US\$4 million. On 16 September 1999, the Plaintiff received the Global SBLC for US\$4 million from the Defendant via authenticated SWIFT message. As with the Ghosh SBLC, the Plaintiff assumed that Ghosh had

made the necessary arrangements with the Defendant for this SBLC.

17 When Super Shipmanagement Pte Ltd changed its name to Global, Ghosh requested the Defendant to amend the Global SBLC accordingly. On 12 October 1999, the Plaintiff received the amended Global SBLC via authenticated SWIFT message.

18 Global subsequently applied for further facilities from the Plaintiff. Consequently, the Plaintiff requested that the amount of the Global SBLC be increased to US\$12 million and its validity period be extended to 16 September 2002. On 12 November 1999, the Plaintiff received the revised Global SBLC with the amendments requested, again via authenticated SWIFT message. Thereafter, the Plaintiff issued a new letter of offer dated 27 November 1999 to Global offering the increased facilities which was accepted by Ghosh.

19 The Plaintiff's internal policies regarding the acceptance of securities from foreign banks were as follows. Before it accepts such securities, the credit officer in charge would check on the credit worthiness and standing of the foreign bank with UOB's Correspondent Banking Division. There was a pre-approved list of foreign banks and limits which the Plaintiff could accept for various dealings. For banks outside this list, the Plaintiff would obtain *ad hoc* approval from UOB's Correspondent Banking Division before accepting the securities. The Defendant fell outside this list.

20 Although there was no need for Albert Yeo's approval to be sought before a security was accepted, the credit officers would sometimes seek his comments because of his experience in such matters. Quinton Chew did show Albert Yeo the Global SBLC when discussions were going on to increase the limit from US\$4 million to US\$12 million. Upon perusing the Global SBLC, Albert Yeo suggested that the place of expiry be changed from Udine, Italy to Singapore as it would be to the Plaintiff's advantage and was a standard requirement for all letters of credit accepted by UOB and the Plaintiff. He also recommended that the interest rate co-relate to the prevailing rates so as to account for fluctuations instead of the maximum of 7.25% per annum stipulated in the Global SBLC.

21 In addition, there existed an internal guideline which stipulated that where a SBLC was issued by a bank from a G7 country, there was no need for verification of the authority of the branch to issue that SBLC. As Italy was a G7 country, there was accordingly no need to verify the authority of the Defendant's Udine Branch. However, Albert Yeo overlooked that guideline and suggested to Quinton Chew to verify the authority of the Udine Branch with the Defendant's Head Office in view of the proposed new amount of the Global SBLC and the fact that letters of credit of such an amount (US\$12 million) would normally be issued by a bank's Head Office instead of its branch. Albert Yeo wanted to "doubly sure". The Plaintiff then sent a SWIFT message to the Defendant's Head Office in Milan for this purpose.

22 A reply came from the Udine Branch confirming that it was authorised to issue the SBLCs. Albert Yeo noticed that it emanated from the Udine Branch and asked Quinton Chew about it. Quinton Chew in turn said he would check with Clement Lim of UOB's International Trade Services and Remittances.

23 One or two days later, Quinton Chew informed Albert Yeo that the Defendant's Head Office must have routed the Plaintiff's request to its Udine Branch for it to reply. Clement Lim also reminded Quinton Chew about the internal guideline relating to G7 countries and told him there was no need to verify the branch's authority anyway.

24 Subsequently, the Plaintiff received faxes and SWIFT messages dated 23 January 2000, 27 January 2000 and 1 February 2000, from the Defendant alleging that Ghosh was suspected of having perpetrated fraud on the Defendant through the use of various accounts with the Plaintiff including Global's account and that the SBLCs had been issued fraudulently and were null and void.

25 By its solicitors' letters dated 1 February 2000, the Plaintiff wrote to Global and to Ghosh demanding repayment of all outstanding sums under the respective facilities. Actions were then commenced against Global and Ghosh here (Suit Nos. 600168 and 600169 of 2000) and on 26 April 2000, the Plaintiff was awarded summary judgment in both actions.

26 The Plaintiff also decided to enforce the two SBLCs against the Defendant and made the respective demands mentioned earlier in this judgment. As mentioned before, the Defendant failed to pay up despite the demands.

27 Addressing the Defendant's contentions, Albert Yeo said that even if the terms of the two SBLCs were not favourable to the Defendant, the Plaintiff had expressly stipulated to Ghosh and to Global that the SBLCs would be on terms acceptable to the Plaintiff. That was reasonable as the Plaintiff was taking a commercial risk in extending facilities to Ghosh and to Global. The Plaintiff had no knowledge of the authority of the Defendant's Pigozzo and that was why it was all important that the SBLCs together with the amendments were received by way of authenticated SWIFT messages which would assure the recipient of the identity of the sender and the correctness of the message text. That obviated the need to determine the authority of the issuer or its officer sending the message. If Pigozzo did by-pass the Defendant's internal controls for its SWIFT system, that was the Defendant's internal matter. Far from being evidence of fraud, most of the amendments sought were not substantial or unusual and the speed with which the Defendant responded was not extraordinary if Ghosh was indeed a major customer of the Defendant as he had claimed. Again, if Ghosh and Global did not furnish any security to the Defendant for the SBLCs, that was a matter not within the knowledge of the Plaintiff which was under no duty to inquire about such. Pigozzo had been arrested and had confessed to his misdeeds but, significantly, had not implicated any of the Plaintiff's officers in the alleged fraud.

28 In cross-examination, Albert Yeo agreed that it was not usual to address the SBLCs and the messages relating thereto to a person (the Plaintiff's Samuel Lee) who was not directly involved in the SBLCs. He surmised that that was done because of the substantial ACU deposit dealings that Ghosh had with Samuel Lee. In any event, when he was shown the SWIFT messages with Samuel Lee's name in it, he was more concerned with the terms rather than the name. He knew that Samuel Lee had left the Plaintiff in less than honourable circumstances but was not aware of the reason.

29 Joseph Wong was the manager of the Plaintiff's main branch from 1994 to August 1999. He first met Ghosh in 1995 or 1996 when the latter went to open a personal current account with the bank. From time to time, Ghosh would go to the main branch to collect his cheque books or to carry out various transactions.

30 In 1999, Ghosh told Joseph Wong that he wanted to become a Singapore Permanent Resident so that he could establish his business operations in Singapore and use it as a base to invest in Thailand and in the British Virgin Islands. At about the same time, Ghosh opened various accounts in the name of companies like Sofia Palace, Super Shipmanagement Pte Ltd (later Global), Geolink Holdings (S) Pte Ltd and Nellington International Pte Ltd.

31 About the middle of 1999, Ghosh applied for credit facilities from the Plaintiff stating he wanted them for foreign exchange and general business transactions. He also said that he would engage in currency trading with the Plaintiff. Ghosh wanted to know how he should go about applying for such facilities and the kind of security required. Joseph Wong informed him that he had to provide security in the form of properties, shares or fixed deposits. Ghosh said he had funds in overseas banks and wanted to know whether there was any way they could be used as security. Joseph Wong suggested using SBLC as he had prior experience in handling such. He also explained to Ghosh how a SBLC worked.

32 Ghosh then said he would ask his overseas bank to provide a SBLC, mentioning that he would probably use the Defendant. Joseph Wong told him that the SBLC would have to be in the Plaintiff's standard format. He subsequently handed Ghosh a draft in that format obtained from UOB's International Trade Services and Remittances Department.

33 Ghosh told Joseph Wong during discussions that he wanted a US\$3 million loan. Joseph Wong explained that he could have a term loan or an overdraft. Ghosh decided on a revolving term loan. Joseph Wong then told him that he would have to provide security for at least US\$3 million. Ghosh said he would arrange for the Defendant to issue a SBLC.

34 Joseph Wong then prepared a report dated 23 June 1999 together with a credit officer in the main branch to seek approval for the facilities from the management. In doing his background checks on Ghosh, Joseph Wong asked Ghosh for a reference letter from his bankers. Joseph Wong received a letter of introduction from the Defendant dated 11 June 1999 signed by Pigozzo.

35 Joseph Wong also spoke to U Kean Seng, a lawyer in a Singapore law firm, as Ghosh had referred Joseph Wong to him. U Kean Seng told Joseph Wong that Ghosh had a few tens of millions of dollars worth of assets. He also sent Joseph Wong Ghosh's resumé by a letter dated 22 June 1999.

36 Ghosh also arranged for Joseph Wong to meet two owners of the Siam Vidhya Group which he said was a large corporation based in Thailand and involved in many areas of business including finance, properties and hotels and said he was thinking of investing in that group. Joseph Wong also checked with a former credit officer of the Plaintiff who had handled Ghosh's current account and was told that Ghosh had good connections and was of good financial standing.

37 Having received all this information, Joseph Wong accepted that Ghosh was creditworthy and formed a favourable impression about his business acumen. In any event, the facilities extended to Ghosh were more than adequately secured.

38 The Plaintiff's internal guidelines required a bank officer deciding whether to accept a SBLC to ensure that the bank risk was acceptable and that the SWIFT message transmitting the SBLC was authenticated and in an acceptable format. Joseph Wong called an officer in the Plaintiff's Correspondent Banking Department to check on the Defendant and was told that the Defendant was a large private bank in Italy.

39 On 11 June 1999, the Ghosh SBLC was received. Joseph Wong was told that it was in the wrong format. On 14 June 1999, a revised SBLC was received from the Defendant. Joseph Wong then sent a note to UOB's Correspondent Banking Division to seek approval to accept this SBLC. Approval came on 21 June 1999.

40 A letter of offer dated 3 July 1999 was then given to Ghosh who accepted it subsequently. This letter of offer was signed by Joseph Wong and Quinton Chew, who was to take over as manager of the main branch.

41 Although the bank's internal guidelines did not require him to check with the Defendant's Head Office on the authority of the Udine Branch as Italy was a G7 country, Joseph Wong asked the bank's Customer Service Centre to do so. On 6 July 1999, the Plaintiff sent an authenticated SWIFT message to the Defendant's Head Office in Milan for this purpose. When no reply came, a reminder was sent on 10 July 1999. On 12 July 1999, an authenticated SWIFT message came from the Defendant's Udine Branch referring to the Plaintiff's request of 6 July 1999 and confirming that the Udine Branch was authorised to issue the Ghosh SBLC.

42 Sometime later, noticing that Ghosh's account number appeared in the Ghosh SBLC, Joseph Wong called Ghosh and told him that it should be deleted. An amendment by way of authenticated SWIFT was then received from the Defendant on 19 July 1999.

43 After Ghosh drew down on the revolving term loan, he wanted another such loan of US\$2.7 million. A credit proposal dated 20 July 1999 was then prepared. This additional facility was to be secured by a pledge of Ghosh's fixed deposits. The proposal was approved, a letter of offer dated 28 July 1999 signed by both Joseph Wong and Quinton Chew was given to Ghosh who accepted it on the same day.

44 These were the only two facilities for Ghosh that Joseph Wong was involved in at the main branch.

45 Later, Ghosh informed Joseph Wong that he wanted to apply for facilities for Super Shipmanagement as he wanted to use that company as a vehicle for his local and overseas investments. Based on discussions with Ghosh, Joseph Wong prepared a credit proposal but he then left to take up his new appointment as manager of the Plaintiff's Jalan Besar Branch and the proposal was left to Quinton Chew to submit for approval.

46 While Joseph Wong was manager of the main branch, Samuel Lee was in charge of the ACU deposits department there. Ghosh dealt with Samuel Lee on his deposits and remittances. As Ghosh went to the bank regularly to meet Samuel Lee, Joseph Wong would sometimes ask Samuel Lee to pass documents or messages to Ghosh. Samuel Lee was not involved in the preparation of the credit proposals, in the bank's decision to grant the facilities to Ghosh or in the acceptance of the SBLCs from the Defendant.

47 In cross-examination, Joseph Wong clarified that Samuel Lee as Assistant Vice-President was not under his supervision but reported to Albert Yeo. He had gone out for lunch on one or two occasions with Ghosh and Samuel Lee. Ghosh could go to the main branch a few times in one day.

48 There was never any request for facilities from the Defendant. Joseph Wong dealt directly with Ghosh. When Ghosh mentioned the Defendant as one of his bankers, he did not specify whether it was the Head Office or a branch. When Joseph Wong asked for his banker's reference, he believed that Ghosh mentioned the name Pigozzo.

49 When the confirmation dated 12 July 1999 came from the Defendant's Udine Branch and not the Head Office, Joseph Wong was told that it had been confirmed by the Head Office that the SBLC was issued. He glanced at the contents of the confirmation casually without noticing that it had emanated from the Udine Branch. It was then put away in a file.

50 Clement Lim, the Deputy Manager in the International Trade Services and Remittances Department of the UOB group, testified that this department handled the many trade-related operations of the UOB group which included the Plaintiff. He has been involved in the sending and receipt of SWIFT messages since 1979 when he was with the Irving Trust Co. The use of the SWIFT system was part and parcel of his daily dealings in the department.

51 Clement Lim explained that when receiving messages via SWIFT, it was important to ensure they were authenticated. Such authentication was handled by UOB's Telecommunications Centre which received all incoming telexes. The Centre would then distribute the messages according to type among the various operations departments. Messages involving SBLCs would be directed to the Letters of Credit Advising Section which he was in charge of at the material time.

52 UOB and the Plaintiff adhered to the following internal guidelines before accepting any SBLC:

- (1) if the SBLC was received by SWIFT, the transmission must be authenticated;
- (2) the SBLC must conform with UOB's standard format for such; and
- (3) in certain cases, the Head Office of the branch issuing the SBLC must verify the authority of that branch.

The last requirement was not necessary where:

- (1) the SBLC amount did not exceed \$100,000;
- (2) the Head Office and the issuing branch were both in G7 countries, regardless of the monetary limit of the SBLC; and
- (3) the Head Office was within a G7 country but the issuing branch was not, if the amount did not exceed S\$10 million.

Where verification was required and a SWIFT arrangement existed between UOB and the issuing bank, it must be done via authenticated SWIFT.

53 In Clement Lim's experience, there were occasions where the response to an enquiry was not received directly from the Head Office but from a branch or department. This was not unusual as banks were organized differently. It was quite common to receive SBLCs in the wrong format, as happened in the present case.

54 Clement Lim had no dealings with Ghosh or Pigozzo and had never spoken to them before. When the revised Ghosh SBLC in the correct format was received, it was sent to Clement Lim's superior, Francis Wee, for approval and then forwarded to the Plaintiff's Operations Department. As Italy was a G7 country, they did not seek confirmation from the Defendant's Head Office on the authority of the Udine Branch to issue that SBLC.

55 A request was subsequently made by Lim Jit Kwong of the Plaintiff's Customer Service Centre to Clement Lim to seek confirmation from the Defendant's Head Office on Udine's authority. Clement Lim told the one making the request it was not

necessary to do so but, after conferring with Francis Wee, agreed to do so as the latter saw no harm in sending for such confirmation. Hence the authenticated SWIFT message dated 6 July 1999 and the reminder by the same mode dated 10 July 1999 were sent to the Defendant.

56 On 12 July 1999, confirmation from the Udine Branch was received by the Plaintiff. Clement Lim discussed this response with Francis Wee and they decided that it was acceptable, having assumed that the Defendant's Head Office had routed the Plaintiff's inquiry to the Udine Branch to reply.

57 On 16 September 1999, the Plaintiff received the Global SBLC for US\$4 million from the Defendant, again by authenticated SWIFT message. In November 1999, Quinton Chew (who had taken over as the manager of the main branch) requested Clement Lim to seek confirmation of the authority of the Udine Branch in respect of the Global SBLC. Clement Lim informed Quinton Chew that there was no need to do so as both the Head Office and the branch were in a G7 country. However, Quinton Chew mentioned the Plaintiff's Correspondent Banking Division had expressly asked for it.

58 On 16 November 1999, the Plaintiff sent for such confirmation from the Defendant's Head Office via an authenticated SWIFT message. On 17 November 1999, an authenticated SWIFT message was received, again from the Udine Branch, confirming its own authority. Quinton Chew noticed that it came from the Udine Branch and asked if it was unusual. Clement Lim explained it was very likely that the Defendant's Head Office had forwarded the message to the Udine Branch to reply and that there was no requirement to seek confirmation at any rate.

59 It was not unusual that the Global SBLC was addressed to Quinton Chew and Samuel Lee. Many letters of credit were also addressed to Clement Lim as he was in the Letters of Credit Advising Section although he had nothing to do with the transactions for which the letter of credit was sent. The fact that a person's name appears on a SWIFT message did not necessarily mean that the person was in charge of or involved in that particular transaction.

60 In cross-examination, Clement Lim said that for SBLCs received in hard copy, they would send them for signature verification by the International Trade Services and Remittances department which would also check that a particular signatory had the authority to issue SBLCs of that amount.

61 For SBLCs received by SWIFT, their duty was to check that they had been authenticated. Clement Lim would first look at the application header and then check that the authentication was alright. There was a key with a lot of numbers. From this, he could tell that that was an authenticated message, which meant that it was both a genuine document from the Udine Branch to the Plaintiff as well as one issued with the full authority of the sender, the Udine Branch. He understood the SWIFT system to be such. Within the UOB Group, a format 799 message could not be sent by just anybody with access to SWIFT. There were controls over who could send such messages because they would bear the full authority of the Bank. Clement Lim was not aware whether the UOB guidelines had been circulated to departments other than his.

62 For the Ghosh SBLC, when Clement Lim told Joseph Wong that it was in the wrong format, he also asked Joseph Wong whether he knew anyone in Udine he could contact. In the process, Clement Lim spoke to Samuel Lee who gave the name, Pigozzo. When the revised format came back from the Udine Branch, Clement Lim directed it to Samuel Lee who was in the same office as Joseph Wong as Samuel Lee's name was stated therein. Joseph Wong was probably not around then. Otherwise Clement Lim would have spoken to him rather than Samuel Lee.

63 Lim Lye Huat, the Vice President of Human Resources in UOB, testified about the termination of Samuel Lee's employment with the Plaintiff.

64 Samuel Lee joined the Plaintiff in August 1997. From 1 April 1999, Samuel Lee was an Assistant Vice-President in the ACU Department. Around February or March 2000, it was discovered that Samuel Lee had singly and without authority issued various letters (in particular, those dated 26 July 1999, 11 January 2000 and 21 January 2000) and a document entitled "Letter of Conditional Undertaking" dated 13 September 1999 to the Defendant. This was viewed as gross misconduct and the Plaintiff terminated his services on 20 March 2000.

65 In cross-examination, Lim Lye Huat said the discovery about Samuel Lee's misconduct came in the form of a report dated 10 March 2000 from the Internal Audit Department in consultation with internal and external lawyers. He was aware that Samuel Lee had given two statements to the Internal Audit Department on 26 and 27 January 2000. The decision to dismiss Samuel Lee was taken by Lim Lye Huat and his superior, Ronald Tan Hee Huan, then Head of Human Resources in the Plaintiff. Lim Lye Huat did not see various other letters written by Samuel Lee which were all signed by him singly and which involved US\$2 million and more. He was also not aware of the fact that the Defendant had sent a number of cheques to Samuel Lee for collection and that Samuel Lee had sent them instead to Ghosh free of payment. Lim Lye Huat said he was aware, however, that the Plaintiff had made a police report against Samuel Lee but did not know who made the report. He did not know where Samuel Lee was working at present. He disagreed that the Plaintiff's management had already taken the decision earlier to dismiss Samuel Lee and that he was constrained to carry out the decision.

66 Lim Lye Huat went on to say that the four documents mentioned in his AEIC were sufficient to dismiss Samuel Lee as signing singly and without authority was very serious in the Bank. As for other allegations like having received paid overseas trips from Ghosh, they would have to convene an inquiry if they wished to dismiss Samuel Lee on this ground.

67 Samuel Lee was informed of his dismissal by Lim Lye Huat who called him, spoke to him and told him the reason and then handed him the letter of dismissal dated 20 March 2000. The four documents in question were however not mentioned. There was no need to hear Samuel Lee's explanations as he had admitted the facts. Samuel Lee took the letter, feeling very sad. He mentioned that the Plaintiff should be more compassionate as he had a son to take care of. Lim Lye Huat consoled him and the matter was not pursued further.

68 Quinton Chew took over from Joseph Wong as Branch Manager of the Plaintiff's Main Branch in August 1999. He was previously with the Corporate Banking Department which was located in the same building as the Main Branch. Before his posting took effect, Quinton Chew met Joseph Wong on several occasions to begin the process of the handing over of responsibilities. Joseph Wong or the account manager for Ghosh would ask Quinton Chew to countersign documents relating to Ghosh's credit facilities and these included the letters of offer dated 3 July 1999 and 28 July 1999 to Ghosh.

69 He met Ghosh for the first time around mid-September 1999 (initially his Affidavit of Evidence-in-Chief stated it as early September 1999 but that was corrected in oral testimony). By the time he became Branch Manager in August 1999, the Plaintiff had already extended personal facilities to Ghosh and the Defendant had issued the SBLC for US\$3 million to secure those facilities. A proposal for the granting of facilities to Super Shipmanagement had also been drawn up by Joseph Wong and the said account manager. Quinton Chew was asked by the account manager to initial on the cover page of the proposal as some amendments had been made and Joseph Wong was not available. Quinton Chew was however not involved in the earlier discussions and the preparation of the proposal.

70 On 18 August 1999, the Plaintiff's Credit Committee approved the grant of facilities to the company. A letter of offer dated 3 September 1999 was prepared and sent. That letter required the company to furnish a SBLC for US\$4 million from the Defendant. Quinton Chew then went off on leave.

71 When he returned on 18 September 1999, he was informed that the Plaintiff had received a SBLC for US\$4 million on 16 September 1999. A copy of the Global SBLC was handed to Albert Yeo for checking as he was very familiar with such documents. Albert Yeo suggested that the interest rate provision be amended and the place of expiry of the SBLC should be Singapore instead of Italy.

72 Quinton Chew instructed the account manager for Ghosh to check whether the Ghosh SBLC required the same amendments. When told that that SBLC was in similar terms as the Global SBLC, Quinton Chew instructed that Ghosh be informed about the changes that had to be made to both SBLCs.

73 On 24 September 1999, the amendments were confirmed by authenticated SWIFT from the Defendant. Quinton Chew showed the SWIFT message to Albert Yeo to confirm that it was in order.

74 In October 1999, Ghosh told Quinton Chew that he required further facilities from the Plaintiff to enable him to set up his operational headquarters in Singapore and to finance various business activities. He said that he would get the Defendant, Coutts Bank, and National Bank of Canada to issue further SBLCs. Quinton Chew told Ghosh he would have to obtain approval from UOB's Correspondent Banking Division first. A note dated 11 November 1999 was prepared and sent to the said Division.

75 On 12 November 1999, the Plaintiff received an authenticated SWIFT message from the Defendant which increased the Global SBLC amount from US\$4 million to US\$12 million. Since Quinton Chew had not asked Ghosh or the Defendant for this amendment, he assumed that Ghosh had made his own arrangements with the Defendant. A note dated 12 November 1999 was then sent to update the Correspondent Banking Division on this development and that the Defendant would not be issuing a new SBLC.

76 On 15 November 1999, the amendment of the Global SBLC amount was approved on condition that:

- (1) confirmation was obtained from the Defendant's Head Office that the Udine Branch was authorized to issue such SBLCs;
- (2) the related loan was repaid/renewed before the expiry of the SBLC; and
- (3) the format of the SBLC was in UOB's format and, if not, it was vetted by UOB's Legal Department.

77 Quinton Chew then handed a copy of the authenticated SWIFT message from the Defendant to Albert Yeo for checking. Quinton Chew also found out that the Defendant's Head Office was in Milan. He called Clement Lim to discuss the need for confirmation from the Defendant's Head Office on the authority of the Udine Branch. Clement Lim pointed out that, according to UOB's internal guidelines, there was no need to verify the authority of branches of banks from G7 countries. Quinton Chew informed him that the confirmation was specifically required by the Correspondent Banking Division. Clement Lim then said he would send the request to the Defendant's Head Office. That was done on 16 November 1999.

78 A reply from the Defendant was received by authenticated SWIFT message on 17 November 1999 confirming the authority of the Udine Branch. Quinton Chew noticed that it came from the branch and not the Milan Head Office. He showed it to Albert Yeo who also noticed that fact and enquired about it. Quinton Chew told Albert Yeo he would check with Clement Lim on whether there was a need to seek clarification of the reply.

79 Clement Lim told Quinton Chew that there was nothing unusual in the reply as the Defendant's Head Office could have routed the Plaintiff's request to the Udine Branch for it to reply. He again point out the UOB's internal guidelines about branches of banks from G7 countries and that, in any event, the Plaintiff's request had been despatched to the Defendant's Head Office. Quinton Chew passed on Clement Lim's comments to Albert Yeo.

80 On 30 November 1999, Quinton Chew sent a note to the UOB Correspondent Banking Division to give an update on the securities held by the Plaintiff in relation to the additional facilities for Global. Quinton Chew also mentioned the internal guidelines stipulated that no confirmation was needed for a SBLC issued by a branch located in a G7 country where the Head Office was domiciled in a G7 country.

81 Quinton Chew did not recall having seen two letters from Ghosh and Global dated 16 November 1999 addressed to him. The Ghosh letter stated that he did not require the extension of the expiry date for the Ghosh SBLC and that he would inform the Defendant. The Global letter stated that Global did not require the increase and extension of the Global SBLC and would be making other arrangements. However, Global did not make any other arrangements in relation to its SBLC.

82 On 27 November 1999, the Plaintiff issued a letter of offer of additional facilities to Global, which facilities were to be secured by the Global SBLC (as amended on 24 September 1999 and 12 November 1999). Global accepted the terms and was furnished the additional facilities.

83 Quinton Chew's final meeting with Ghosh was in late December 1999.

84 Under cross-examination, asked why he showed the Defendant's SWIFT messages on the SBLCs to Albert Yeo, Quinton Chew replied that it was because Albert Yeo was experienced in the area of letters of credit.

85 Asked why Samuel Lee's name appeared in documents pertaining to the SBLCs, Quinton Chew surmised that it could be because Samuel Lee had been servicing Ghosh's and his companies' accounts in respect of remittances and his name could have appeared in correspondence with the Defendant. Quinton Chew therefore did not find this to be unusual at that time. Samuel Lee did not attend the discussions between Ghosh and the Plaintiff in respect of further facilities for Global.

86 Quinton Chew said he was not surprised by the unsolicited amendments sent by the Defendant on 12 November 1999 as Ghosh had indicated earlier that he would be giving the Plaintiff additional SBLCs from the Defendant and the other two banks. Quinton Chew did not send a letter to Ghosh asking for a SBLC of a larger amount after the discussions as the issues at that stage related to the viability of the loan and the collateral. The SBLCs from the other two banks did not materialize. The Plaintiff did not have to wait for all three SBLCs to come in before it implemented the facilities line although its letter of offer stated that that would be done only upon the perfection of all documentation. The Plaintiff could implement the line in proportion to the securities received.

87 When Ghosh was not travelling overseas, he would go to the Plaintiff's Main Branch very frequently, sometimes several times in one day. He would normally be attended to by the ACU counter staff (Samuel Lee's counter). Ghosh had shifted to an office in Robina House around December 1999. Quinton Chew had been to his office around three times. Once was at or near Christmas eve at Ghosh's invitation. Quinton Chew had also been to Ghosh's office once with a colleague (Adrian Ler). Once or twice, Samuel Lee was coincidentally also at Ghosh's office when Quinton Chew was there. Quinton Chew denied having gone to Lau Pa Sat food centre to buy lunch for Ghosh, as alleged by Samuel Lee in his statement to the Plaintiff's internal auditors.

88 Sometime in November 1999, Ghosh introduced his associate and friend, Shankar, to Quinton Chew at the Plaintiff's Main Branch. Quinton Chew denied that Shankar had given him the door card keys to Ghosh's office. He also denied that Ghosh or Shankar had ever given him Global's company stamp, although he had seen Ghosh bring it to the bank quite frequently to affix to documents. He denied that it was a known fact that the staff of the ACU Department and he held Global's company stamp.

89 Quinton Chew and Samuel Lee had signed jointly a letter dated 17 December 1999 forwarding Ghosh's share certificates in the Apex Plastics Group to the Defendant. This letter was essentially instructed through the letters of Mr U Kean Seng of Shook Lin & Bok (a law firm) and by Ghosh. Shook Lin & Bok forwarded the share certificates on 16 December 1999 to the Plaintiff for its custody but the Plaintiff's Safe Custody Department informed Quinton Chew that it would not accept custody of the shares. That same day, another letter came from the law firm instructing the Plaintiff to forward the share certificates to Pigozzo of the Defendant. Quinton Chew did not know Pigozzo and Ghosh had never spoken to Quinton Chew about Pigozzo either. Ghosh asked Quinton Chew and Samuel Lee to send the share certificates for him and they did so as a service to him although that was not something they would usually do in the course of their work.

90 As the second letter of Shook Lin & Bok could not be located by the Plaintiff's solicitors, the assistance of that law firm was sought. When that letter was faxed over to the Court, it turned out to be a letter dated 17 December 1999 from the law firm to the Plaintiff for the attention of Quinton Chew. The letter stated that the solicitors acted for Ghosh and had been instructed by Ghosh to forward his original share certificates in the Apex Plastics Group for onward transmission to his banker in Italy. The address of the Plaintiff's Udine Branch was then stated and it was expressly instructed that the share certificates should be for the attention of Philip M. Pigozzo.

91 Quinton Chew asked Samuel Lee to charge Ghosh between \$1,000 to \$2,000 for performing that service for him but he was not sure whether Samuel Lee did so. Quinton Chew did not know what the purpose of sending the share certificates to Pigozzo was as that would be some arrangement between Ghosh and the Defendant. Ghosh did mention that he did not want to bring the share certificates with him as he was going to travel to various places. Quinton Chew did not ask for an indemnity from Ghosh should the share certificates be lost. Neither did he ask the Defendant to acknowledge receipt. The share certificates were

apparently sent to the Defendant by a courier service.

92 Quinton Chew denied the suggestion that there was something untoward among Ghosh, Samuel Lee and himself in relation to the dealings between Ghosh and the Plaintiff. He denied he had recommended to the Plaintiff's Credit Committee to grant the facilities to Global by virtue of the special relationship among Ghosh, Samuel Lee and himself. Quinton Chew had never previously handled requests to send millions of dollars worth of shares to foreign banks. Samuel Lee counter-signed on the Plaintiff's letter dated 17 December 1999 to the Defendant because all letters that left the Plaintiff usually had to be signed by two officers.

93 Ghosh was a valued customer to the Plaintiff and he would have more needs than the ordinary customer. He had indicated that he wanted to make Singapore his operations centre. The Plaintiff's officers would therefore need to spend more time to understand and to finance his overseas operations.

94 Asked whether he had heard of Andrew Pigozzo, Quinton Chew said he was introduced as a brother of Philip Pigozzo at the Christmas eve gathering in Ghosh's office which Samuel Lee and Adrian Ler also attended. They were informed that Andrew was on holiday. Quinton Chew did not receive a faxed copy of Andrew's passport. He disagreed with the suggestion that he was aware that the Global SBLC had not been procured in a proper manner. He denied that Samuel Lee had participated in discussions between Ghosh and himself regarding the facilities and the SBLCs. The last time Quinton Chew spoke to Ghosh was sometime at the end of 1999.

95 Quinton Chew and the Head of the Credit Administration Department signed two credit reference letters addressed to the Defendant dated 16 December 1999 and 29 December 1999. Quinton Chew was not certain whether they had been prepared by Samuel Lee. He was aware that Samuel Lee had signed such letters singly when there existed an internal memorandum in the Plaintiff that credit reference letters must be signed by the Branch Manager and one officer from the Credit Administration Department.

96 When Quinton Chew took over from Joseph Wong as Branch Manager, he asked Joseph Wong what were the accounts he could develop and Joseph Wong highlighted specifically Ghosh's account because there were proposals put up by Joseph Wong for Ghosh to purchase an office block at 79 Anson Road. Ghosh did not proceed with that. Ghosh also had huge ACU fixed deposits of about US\$6.5 million, bonds with UOB and Citibank deposits of more than S\$2 million. Quinton Chew therefore treated him as a valued customer but he did not act as a personal banker for him. He was not aware what the relationship between Samuel Lee and Ghosh was.

97 In respect of the statements given by Samuel Lee to the Plaintiff's Internal Audit Department on 27 January 2000, Quinton Chew denied Samuel Lee's suggestion therein that Ghosh might have given benefits in kind to Quinton Chew. He did not know why Samuel Lee had left the employ of the Plaintiff. He was with Samuel Lee at Ghosh's office on 16 December 1999 but they were discussing some letters of credit for Ghosh to import goods for his Thai company. They were not there to discuss or prepare the letter dated 17 December 1999 forwarding the share certificates to the Defendant. Quinton Chew disagreed with Samuel Lee's statement that he always remained behind in Ghosh's office when Samuel Lee left. He was not aware of the fact that Samuel Lee had gone on holidays paid by Ghosh.

98 Samuel Lee, presently working as an Assistant Manager in Sumitomo Bank in Singapore, testified that he joined the Plaintiff in August 1997 as Assistant Vice-President with the ACU Customer Services and Marketing Section at the Main Branch. His duties included the marketing of the Plaintiff's ACU services and cross-selling of the UOB Group's products, handling customers' ACU deposit and current accounts, dealing with inquiries and complaints and processing customers' instructions and verifying signatures before sending the instructions to the Operations Section for execution. He was not authorised to and did not deal with customers' applications for credit facilities, something which was within the domain of the Credit Department. He would only assist the customers in making general inquiries with the Credit Department and would refer them to a credit officer if they wanted to apply for credit facilities. He was not involved in any decision to grant credit facilities or the security to be furnished therefor.

99 Samuel Lee was introduced to Ghosh by his colleague, Adrian Ler, in June/July 1999, when Ghosh wanted to open fixed deposit accounts for himself and his company. Samuel Lee made enquiries about Ghosh. Adrian Ler told him that Ghosh had been a customer of the Plaintiff for two years, was related to royalty in India and had substantial assets abroad. He was also told that Ghosh maintained some corporate accounts with UOB. Both Joseph Wong (then Branch Manager) and Adrian Ler told him that as Ghosh only wanted to open a fixed deposit account, there was no risk to the bank.

100 A few weeks after opening a fixed deposit account in his own name, Ghosh opened fixed deposit and/or current accounts in the name of:

- (1) Super Shipmanagement Pte Ltd (later Global);
- (2) Sofia Palace International Ltd ("Sofia Palace") and
- (3) Nellington International Ltd ("Nellington").

Samuel Lee conducted a search on the first company, a Singapore company, and made sure that all requisite documents for opening an account were in order.

101 Ghosh had general discussions with Samuel Lee on his facilities on several occasions, mentioning that although the Plaintiff's interest rates were relatively high, he continued to use the bank because of the efficiency of the staff and his long relationship with the bank. Ghosh also mentioned to him in passing that he wanted to use SBLCs issued by the Defendant as security for the facilities extended to him by the Plaintiff. As Samuel Lee's knowledge of SBLCs and credit matters was limited, he could not advise Ghosh on this.

102 However, Samuel Lee obtained and gave a copy of the Plaintiff's standard form for SBLCs to Ghosh at his request. He also faxed a copy thereof to the Defendant on Ghosh's instructions as Ghosh had told him that the Defendant wished to have a look at the Plaintiff's standard form SBLC before deciding whether to issue any in the Plaintiff's favour.

103 For the Global SBLC, Samuel Lee subsequently prepared a letter dated 11 October 1999 on Ghosh's request to inform the Defendant of the change of name of Super Shipmanagement to Global. He also assisted Ghosh in preparing the letters to the Defendant concerning the increase in the value of the SBLC and the extension of its expiry date. All this was part of customer service as far as Samuel Lee was concerned. He did not however advise Ghosh on matters relating to the SBLCs.

104 Samuel Lee denied any knowledge of or involvement in any alleged conspiracy with Ghosh and Pigozzo to defraud the Defendant. He was not aware of the details of Ghosh's dealings with the Defendant or with Pigozzo and had no reason to suspect that Ghosh was involved in any illegal or fraudulent activity.

105 From time to time, Ghosh would go to Samuel Lee's office and ask him or one of his staff to prepare cheques drawn on his companies' accounts made payable to a company known as Cenacle Holdings. He told them that this company belonged to him and the payments were for foreign exchange trades.

106 Samuel Lee prepared the cheques drawn on Sofia Palace's account but did not help in the cheques drawn on Nellington's account. There was insufficient money in Sofia Palace's account at that time to meet several of the cheques drawn by Ghosh. However, Ghosh would assure him that there would be sufficient funds in the account when the cheques were presented for payment.

107 Once the cheques were signed, Ghosh would tell Samuel Lee to send them by courier to the Defendant for the attention of Pigozzo. Samuel Lee would prepare a simple covering letter to the Defendant.

108 The Plaintiff would subsequently receive a package from the Defendant containing some cheques for collection. This would come by courier for Samuel Lee's attention. Most of the cheques sent by Samuel Lee to the Defendant were not returned to the

Plaintiff for collection. The cheques that were returned would be accompanied by a covering letter from the Defendant. As the funds were insufficient to cover the cheques, Samuel Lee would call Ghosh for his instructions. Ghosh would inform him that the Defendant would send him instructions on the cheques. Samuel Lee did not communicate directly with Pigozzo concerning the cheques.

109 Subsequently, an authenticated SWIFT message from the Defendant would arrive instructing Samuel Lee to cancel the transaction. The message would refer to the collection reference numbers and instruct the Plaintiff to return the cheques "free of payment". Samuel Lee would do as instructed and would get Ghosh to acknowledge receipt of the cheques identified in the SWIFT message.

110 All the cheques received were thus returned to Ghosh pursuant to the Defendant's instructions via authenticated SWIFT save for the last instruction which the Plaintiff received by fax dated 12 November 1999 from the Defendant. That bore Pigozzo's signature which Samuel Lee had seen many times before. He did as he had done before, asked Ghosh to sign on the fax acknowledging receipt of the cheques and then handed them over to him. He did not believe there was anything wrong or suspicious about all this. He did ask Ghosh once whether he kept issuing such cheques and was told that they were only a stand-by for the Defendant for his foreign exchange transactions and were cancelled subsequently as he would make payment to the Defendant from his other bank accounts. Samuel Lee believed his explanation.

111 Samuel Lee was shown twelve letters from the Defendant dated from 13 October 1999 to 14 January 2000 (enclosed in the Defendant's letter dated 27 January 2000 to the Plaintiff), addressed to him and enclosing twelve cheques. He did not remember having received these letters or the cheques specified therein.

112 From time to time, Ghosh would ask Samuel Lee to help him prepare remittance forms on behalf of Cenacle Holdings. This would be done on the Defendant's standard remittance forms and Samuel Lee saw no reason to refuse such requests. Samuel Lee would then fax the completed form to the Defendant.

113 On one occasion, Ghosh asked him to remit US\$10,000 to Pigozzo, saying that the money was reimbursement for Pigozzo's and his wife's travelling expenses. Ghosh asked him to remit the funds in his (Samuel Lee's) name as a misunderstanding could arise if Pigozzo was seen to be receiving money from a customer of the Defendant. Further, if it was done in Samuel Lee's name, there would be no bank charges levied on the remittance and a preferential foreign exchange rate would be applied. Samuel Lee felt that it would not be proper for him to use his bank privileges for this and they therefore went to OUB next door to effect the transaction. This was the only time Samuel Lee remitted money in his name to Pigozzo or anyone else.

114 Around September 1999, Ghosh asked that the Plaintiff issue a Letter of Conditional Undertaking to the Defendant in respect of his foreign exchange transactions. He gave Samuel Lee a draft for this purpose and explained that it would enable him to carry out substantial foreign exchange trades. Ghosh appeared very experienced and knowledgeable in foreign exchange trades. Samuel Lee did not suspect anything was wrong and saw no harm in providing the undertaking. He made amendments to the draft to eliminate any risk to the Plaintiff. In his mind, the Letter of Conditional Undertaking as amended by him, merely purported to undertake to pay the Defendant all monies advanced by the Defendant to Sofia Palace's account with the Plaintiff. He did not believe there was any connection between the Letter of Conditional Undertaking and the SBLCs or the cheques sent to the Defendant by courier.

115 The covering letter dated 13 September 1999 from Samuel Lee to Pigozzo at the Defendant's Udine Branch was marked "Strictly Private and Confidential". Both the covering letter and the Letter of Undertaking were typed on the Plaintiff's letterheads and they read as follows:

"13 September 1999

STRICTLY PRIVATE & CONFIDENTIAL

Banco Ambrosiano Veneto

Nucleo Operativo Estero Merci
Via Vittorio Veneto, 21
1-33100 UDINE/Italy

Dear Mr P. Pigozzo,

Re: Letter of Conditional Undertaking

Enclosed is the Letter of Conditional Undertaking dated 13 September 1999 for your personal attention.

The details and transactions mentioned in the said Letter of Conditional Undertaking is strictly restricted and remain in confidence only to the two Officers in-charge (Your goodself and the undersigned) as Bankers for the parties concerned namely Cenacle Holding S.A. and Sofia Palace International Ltd. respectively.

Thank you.

Yours truly,
(signed)
Samuel Lee
Assistant Vice President

...

13 September 1999

Banco Ambrosiano Veneto
Nucleo Operativo Estero Merci
Via Vittorio Veneto, 21
1-33100 UDINE/Italy

Dear Mr P. Pigozzo

Dear Sir,

Letter of Conditional Undertaking

Reference is made to the annex Trade Agreement concluded between M/S Cenacle Holding S.A. and M/S Sofia Palace International Ltd on SALE AND PURCHASE AND EXCHANGE AND SWAP contracts.

From time to time, M/S Cenacle Holding S.A. or Banco Ambrosiano Veneto, Udine, Italy is Banker for M/S Cenacle Holding S.A. will be remitting funds in different currencies (USD/AUD/GBP/DEM/JPY and others) to M/S Sofia Palace International Ltd's accounts maintained with us. Only upon receipt of such funds and according to the Trade Agreement, an amount of equal value or equivalent will be remitted to M/S Cenacle Holding S.A.'s accounts maintained with you.

According to the Trade Agreement, Banco Ambrosiano Veneto, Udine, Italy as Banker for M/S Cenacle Holding S.A. will make advance payment in different

currencies to the accounts of M/S Sofia Palace International Ltd maintained with us as instructed by your client. The amount will be determined by M/S Cenacle Holding S.A. and M/S Sofia Palace International Ltd which will be of equal or equivalent value of the contracted amount as per the Trade Agreement. This amount will be secured by a Bank Guarantee for the partial or total refund of the advance payment in the event of non-delivery of other currencies or payment as per the Trade Agreement by M/S Sofia Palace International Ltd.

At the request of M/S Sofia Palace International Ltd, we Industrial & Commercial Bank, Main Branch, 80 Robinson Road, Singapore, Dealing Officer: Samuel Lee, Assistant Vice President establish this Guarantee and undertake irrevocably to pay to Banco Ambrosiano Veneto, Udine, Italy as Banker of Cenacle Holding S.A. on your first written demand, irrespective of the validity and the effect of the Trade Agreement and waiving all rights of objection and defense arising from the Trade Agreement any amount up to USD60,000,000.00 (United States Dollars Sixty Million only) upon receipt of your written request that M/S Sofia Palace International Ltd has failed to deliver the other currencies to M/S Cenacle Holding S.A. in conformity with the Trade Agreement. The amount in the written demand is restricted only up to the maximum of advance payment made to us by Banco Ambrosiano Veneto, Udine, Italy.

The amount of this Guarantee will automatically be reduced in proportion to the value of each part delivery of currencies upon receipt by you from the account of M/S Sofia Palace International Ltd which we shall be entitled to accept as conclusive evidence that such part payment has been effected to you, Banco Ambrosiano Veneto, Udine, Italy by telegraphic transfer debiting the account of M/S Sofia Palace International Ltd maintained with us.

Any payment made by us under this Guarantee will automatically reduce our engagement by same.

This document is to be returned to us when our Guarantee is no longer required or its validity has expired.

This Guarantee is valid for written demands received by us at our address: Attn: Samuel Lee, Officer-in-Charge of M/S Sofia Palace International Ltd, Industrial & Commercial Bank Ltd, 80 Robinson Road, Singapore on or before 16 December 2001 after which date the liability to you under this Guarantee will be of no further effect, whether this document is returned to us or not.

This Guarantee will come into force only after receipt by us of the advance payment in favour of M/S Sofia Palace International Ltd.

This Guarantee is only for Banco Ambrosiano Veneto, Udine, Italy and not assignable. The confidentiality of this Guarantee is strictly restricted between the Two Officers in-charge of both parties respectively.

This Guarantee shall be governed by the laws of Singapore. Place of jurisdiction is Singapore.

Yours faithfully

(signed)
Samuel Lee
Industrial & Commercial Bank Ltd
Main Branch, Singapore"

116 On 26 January 2000, Samuel Lee made the following statement to the Plaintiff's internal auditors:

"I, Samuel Lee Joo Cheong, I/C No. S2168964E, Assistant Vice President of Industrial & Commercial Bank, am responding to an Internal Audit enquiry on 25 January 2000 regarding my dealing with Mr Ghosh and his company accounts, Global Trade & Consultancy Pte Ltd and Sofia Palace.

I first know Ghosh sometime in June/July 1999 when Adrian Ler, an ex-ICB credit officer told me that Ghosh wanted to open an account with ICB. Adrian was later transferred to UOB.

Ghosh opened both personal and corporate accounts for the above two companies with us. As we did not know him well, we were initially very cautious about him.

My first outing with him was a seminar at Holiday Inn Parkview followed by lunch attended by Mr Joseph Wong, Ghosh and myself. This was sometime in June/July 1999. There were altogether about 10 people attending the seminar. During this seminar, the Thais demonstrated to us his company's product, computer chips which could resolve the Y2K problems for Y2K non-compliant PCs.

When Joseph and I first knew Ghosh, he kept pestering us to grant him a line to purchase cheques. This means that we would negotiate cheques issued by him. We did not agree to his request as he was unable to provide securities.

After several meetings, Ghosh got to know about my family problems and was sympathetic with my son, he gave him SGD20,000+- which I deposited into his Fixed Deposit and Savings Accounts with Malayan Banking Berhad Cecil Street Branch.

Ghosh sometimes ask my staff (either Jenny or Shirley) to prepare cheques drawn on his ICB's account payable to Cenacle Holdings (one of Ghosh's companies) registered in Luxembourg. After preparing the cheques some time in July/August 1999, Ghosh asked me to courier about 5 cheques to Banco Ambrosiano Veneto (BAV), attention to Philip Pigozzo, Manager of International Banking. The 5 cheques were issued by Ghosh, drawn on his ICB account for SGD 2 million each. However, the cheques were couriered back to ICB (attention to me) for collection via DHL. I called Ghosh to tell him that there were insufficient funds in his account. He instructed me to hold on and wait for a tested SWIFT message from BAV to cancel the collection and to return the cheques to him. I subsequently received an authenticated message from BAV and returned the cheques to Ghosh as per instruction in the SWIFT.

The same scenario happened two more times, once with 3 cheques of AUD 2 million each and the other time with 8 cheques of USD 2 million each. Each time he would ask me to courier the cheques to BAV, then the cheques would be

couriered back to ICB for collection. I would then receive instructions from BAV to cancel the collection items and return Ghosh the cheques.

Ghosh paid for my overseas trip 3 times.

The first trip was to Sydney (2 days) / Adelaide (2 days) from 3 to 6 October 1999. U Kean Seng (a lawyer of Shook Lin & Bok), Lee Joo Hai (my brother), Benjamin (my son) and I flew over. We traveled with Singapore Airlines First Class. We were there for holidays. Ghosh paid for our lodging, accommodation, airfare and all other expense for the trip.

My second trip was to Bangkok for 3 days from 24 to 30 October 1999. I went with my son and Ghosh. Ghosh's 3 Australian friends joined us later. My son and I traveled with Singapore Airlines Business Class. Ghosh paid for our airfare. During the trip, we stayed in his apartment. We were there for holidays.

During our meetings, he mentioned he was looking for a personal assistant, someone that he could trust. And sometime in November/December 1999, Ghosh mentioned that he was going to offer me a job in his company, Global Trade & Consultancy Pte Ltd and a bank he was going to buy over. The bank was Centurion Bank registered in Vanuatu. I believed he was serious about offering me a job as the offer was made in the presence of my brother and U Kean Seng. Also he instructed me to open an USD Account for the purpose of remitting USD500,000 to the account to pay off my housing loan. He gave me USD5,000 to pay for the initial deposit. As an inducement for me to join his company, he promised to pay me two to three years' worth of salary (included in the USD 500,000) as there is certain risk should he lose in his FX trading.

Before he left for Europe trip before 31 December 1999, he handed me his company stamp for Sofia Palace, keys to his office in case he needs me to retrieve documents for the Bank. He also handed me to the rented apartment at Chor Yang Park around October 1999 to periodically check the condition of the apartment.

Sometime during 7-10 January 2000, I flew to London, upon his instructions, to deliver him some documents for him to sign. I brought over 2 sets of property documents (a Bukit Timah development and a Grange Road development) and one set of UOB margin trading documents for him to sign. He gave me short notice to fly over. On 7 January 2000 in the afternoon, he called me in the office and asked me to fly to London on the same evening. His friend, Shanker delivered the air ticket to me and fetched me to the airport. I traveled by Qantas, Economy Class.

While in London on 8 January I went to the lawyers' office in the morning together with Ghosh and Philip Pigozzo. Ghosh was getting the lawyer to witness his signing of a letter of set-off for his UOB margin trading account. In the afternoon, we went to Ghosh's office where he signed the documents I brought for him to sign. At the same time, I prepared 2 sets of payment instructions from Sofia Palace to instruct ICB to remit funds to BAV for his company account. In the same afternoon, Ghosh and I sent Philip to the Airport. We went back to the office and had dinner there.

On Sunday (9 Jan) in the morning, we checked out from the hotel and went over to his office and continued to prepare the payment instructions. I waited in the office while Ghosh was talking with his friend downstairs. We left at about 2 p.m and went for lunch. They brought me to the City area and took some photographs before going back to the office.

I sat for a while and took a taxi to the Airport to return to Singapore. As we had no time to shop anything for my son, Benjamin, Ghosh gave me USD100 and GBP50 for my taxi-fare and to buy Benjamin a gift.

As instructed by Ghosh, I drafted and signed at least four letters using ICB's letterhead and faxed them to BAV. The contents of two of those letters were as follows:

a) Dated 11 January 2000.

To: Banco Ambrosiano Veneto,

"to confirm that we will effect the following payments to your account with Chase Manhattan Bank, NY on the respective value dated under reference NOEM/601/PH:"

<u>Payment</u> <u>Amount</u>	<u>Value Date</u>
USD 2,000,000	12 January 2000
USD 2,000,000	14 January 2000
USD 2,000,000	17 January 2000
USD 2,000,000	19 January 2000
USD 2,000,000	21 January 2000
USD 2,000,000	24 January 2000

b) Dated 21 January 2000

Advising Banco Ambrosiano Veneto that the Bank received the following payment instructions from Sofia Palace International Limited:-

<u>Payment Amount</u>	<u>Value Date</u>
USD 2,000,000	22 February 2000
USD 2,000,000	29 February 2000
USD 2,000,000	10 March 2000

I recalled signing the letters personally and faxing the letters personally to Banco Ambrosiano Veneto. I was comfortable with the customer, Ghosh Amarendra Nath, and I wanted to provide additional service to him and increase the customer's deposits with the Bank. I trusted the customer because based on all his previous transactions with our Bank, funds were always remitted to us promptly as he had committed. I first drafted the first letter but Ghosh indicated to me the wording were not appropriate. So he later gave me the wordings for the letters. Ghosh would first give me the wordings to the letters verbally. About four to five of those letters; and each letter was for confirming five to six payments of US\$2,000,000 for each payment. I prepared those letters with the understanding that they were just letters advising Banco Ambrosiano Veneto as it is the practice of the Bank to confirm payments through authenticated SWIFT messages.

On 24 January 2000, I was instructed by Mr John Sng and Mr Larry Lam not to discuss this matter with anyone nor to take any action regarding this matter.

Ghosh had instructed me verbally to prepare the following two documents on 21 January 2000 evening and fax to BAV immediately.

- a) One pertaining to Ghosh having receipt of two cheques, one for USD5 million and the other for USD2 million. Both cheques were issued by Mr Ali's companies and that the cheques were held back pending litigations. Mr Ali is believed to be the principal of Shenton Money Changer which has business dealings with Ghosh.
- b) The other fax pertains to a letter dated 21 January 2000 confirming that ICB will effect three payments of USD2 million each to BAV on the respective value dates.

However, as I was not comfortable with his request, I did not do so. After I met with the Internal Auditors in the evening of 24 January 2000, I returned Ghosh's call. He assured me that if I faxed over these 2 documents to BAV, everything would be settled. Therefore, I went to his office at Robina House to prepare these 2 documents and faxed them to BAV as I did not want to do it in my office. Ghosh also instructed me to destroy all the bank documents in my

custody, but I did not and they are now in the hands of the internal auditors.

Ghosh told me to backdate the letter mentioned in paragraph b) above to 21 January 2000 because I was supposed to fax it on 21 January 2000 instead of the 24 January 2000. He also told me that if anyone enquires, I must maintain that the letter was faxed to BAV on 21 January 2000 instead of 24 January 2000. He also instructed me to take off the banner which usually identifies the originator of the fax before faxing the above documents.

On 25 January 2000, he faxed me the instruction to my home, authorising me to prepare the letter b) mentioned above. He also asked me to erase the date which showed "25 January 2000" on the letter."

117 On 27 January 2000, Samuel Lee made another statement to the Plaintiff's internal auditors regarding his knowledge about Quinton Chew as follows:

"Sometime in July 1999, Joseph Wong ask me to introduce Ghosh to Quinton as Quinton will be taking over from Joseph as Branch Manager of ICB Main Branch.

Usually Ghosh talked to Quinton or me alone, sometimes both together.

Sometime in October 99, Ghosh and Quinton were in a meeting room at ICB Main Branch. When I went into the room later, I saw one or two pink bags which were used for keeping jewellery on the table. I only saw the bag, I was not sure if there were any jewellery in the bag. When Ghosh saw me entering the room, he discreetly kept the bags in his pocket, I did not ask him about the jewellery.

Ghosh came to the branch almost every day. He often asked me to write reference letters for him. Initially I wrote some for him, to parties, such as banks that he intended to open account with. I signed these letters singly. I did not know that in ICB, there must always be two officers signing the letters until my colleague, Vivianna Low after checking with Joanna Tang informed me in October/November 1999. When I was in Westpac Banking Corporation, I signed such letters singly very frequently. When I came to ICB from Westpac, I brought some samples of the letters with me to follow.

After I knew that I was not supposed to sign such letters singly, I told Ghosh to check with Quinton. When Ghosh told him that Quinton had agreed to sign such letters I would prepare the letters for Quinton to sign. Quinton would ask me to make amendments and deletions, such as customer credit facilities and outstanding balances that were not supposed to be included. I told Quinton that if we cannot prepare such letters, just explain to Ghosh. I have also checked with Quinton who can sign such reference letters. He agreed with me that it must be signed by the Branch Manager and an officer from Credit Administration Department. For any other kind of letters, it must be signed by two officers who were in charge of the customers' accounts. All reference letters pertaining to Ghosh and his companies were prepared by me and signed by Mr Poey Liang Huat and Quinton.

These reference letters were kept in the file except for one which was sent to a German bank attention to a Professor. This letter to the German bank was sent

in late December 1999 together with two UOB millenium bank notes in the same envelope. Vivianna Low was the one who prepared the final letter, put in the envelope and couriered it out. Quinton was the one who coordinated the final process for this letter to the German bank.

Regarding the letter dated 17 December 1999 and Apex shares that was couriered to BAV from ICB, Ghosh told Quinton and I to prepare this letter for him on the evening of 16 December 1999 when we were at his office. Quinton and I asked Ghosh why we should prepare this letter for him. He said that BAV would take action faster if the letter came from a bank instead of through Shook Lin & Bok.

On the next morning, we received the original share certificates from Shook Lin & Bok. Before we prepared the letter, I asked Quinton whether we should do it for Ghosh. I did not think he gave me an answer. However, he looked pressurized by work or Ghosh's frequent calls. We proceeded to prepare and send the letter to BAV.

There were several occasions when I was in Ghosh's office, Quinton was already there. I saw him there for at least three times. Quinton usually assist Ghosh in processing his Letters of Credit transactions. Quinton did not feel surprised when he saw me. He always stay behind when I left Ghosh's office.

On last Christmas Eve (24 December 1999), when I went to Ghosh's office, Quinton and Adrian Ler (now in UOB Corporate Banking) were there. They were drinking and Adrian and Ghosh also smoke. I again left earlier.

One time, Quinton went to Lau Pa Sat and bought Ghosh some Indian food for lunch.

When Ghosh first moved to the new office, by the instructions of Ghosh, Mr Shanker gave Quinton the two door cards for the inner glass door (one for Quinton and one for me). Shanker later check with me if I had received the card or not. But until today, I still have not received the card from Quinton. The outer door was a wooden door and I have the key for that. However, I did not know if Quinton had a key to the outer wooden door.

The last day before Ghosh went off to Europe, I tested open the wooden door with the key I got from Ghosh. The key worked.

Ghosh gave the company stamp of Global Trade and Consultancy Pte Ltd to Quinton. This stamp was used by Quinton to stamp the trade or L/C related transactions. U Kian Seng is authorised to sign for Global Trade for LC related transactions. Ghosh gave the company stamp of Sofia Palace to me primarily for remittance instructions.

Vivianna, Jenny and Shirley knew that I hold the stamp for Sofia Palace and Quinton holds the stamp for Global Trade.

There was one instance, sometime in late December 1999 in which Ghosh enquired whether if BAV were to send us a MT 100 with future value date (this

means that BAV is obliged to remit funds to ICB for Ghosh's account on value date), could ICB remit the funds back to BAV based on this MT 100. I said it was not possible. He then checked with Vivianna who referred to me. I told her no. She informed Ghosh "no", as her boss (Samuel) said so. Ghosh also talked to Quinton and Quinton checked with me. Quinton suggested to Vivianna and then to me on whether we could wait for the funds to arrive, then make the payment with back-valuation. I said it was not possible. As far as I know, this transaction did not go through. I feel that Quinton tried his best to assist in his banking transactions because Ghosh maintained a big account with us."

118 Questioned by the Defendant's Counsel about his dismissal from the Plaintiff, Samuel Lee said he was not told by Lim Lye Huat of the particulars of the gross misconduct stated in the letter of dismissal as Lim was "not aware of the case". He had not expected to be dismissed and was shocked for a few seconds as he had not done anything illegal nor cheated the bank. He had been suspended from work and was under the impression that he would be transferred to another department. He wrote to the Plaintiff through Lim to express his shock and to state that he had not done anything wrong. No response came from the Plaintiff.

119 Samuel Lee, 43 years old, was divorced from his wife three to four years ago. He was given custody of his six year old son.

120 Five or six years ago, he bought a private apartment while it was still under construction for \$750,000. It was re-financed with a loan from the Plaintiff. In 1999, his salary was \$4,070 per month. He moved out of the private apartment to a HDB flat with his son a few months ago as he could not continue with the Plaintiff's loan and had problems obtaining re-finance. His present salary at Sumitomo Bank was \$3,500 per month. Ghosh did not help him to get this job. He had been working in various banks for the last 21 years and had worked with the tested telex and the authenticated SWIFT systems.

121 Samuel Lee was very close to Ghosh but had never been to Ghosh's office in Serangoon Plaza. He only knew that Global was involved in the import and export of goods between Indonesia and Singapore. He acted like a private banker to Ghosh in the latter half of 1999. Quinton Chew and others in the Plaintiff also paid special attention to Ghosh because he was a special client of the bank. Samuel Lee was told by Ghosh that Pigozzo was his private banker in Italy.

122 Samuel Lee had obtained the copy of the SBLC given to Ghosh from one of the officers in the Credit Department. He was aware of the two SBLCs that were subsequently obtained by Ghosh as some of the SBLC documents would state that they were for Samuel Lee's attention and the Plaintiff's telex room would give him a copy. In other cases, Ghosh would inform him. However, he had no part to play in the increased amount of the SBLC beyond typing the letter for Ghosh. He was involved in the change of name from Super Shipmanagement to Global as his department dealt with change of customer's names. He also typed the letter regarding this for Ghosh.

123 Cenacle Holdings was a Luxembourg company. When the cheques drawn on the Sofia Palace account came back from the Defendant, Samuel Lee was aware that there were insufficient funds in the account to pay on those cheques. It was not improper not to inform the Defendant about it immediately. Samuel Lee would call the customer and inform him of the situation and if the customer said he could not pay the requisite amount, he would return the cheques to the Defendant. This would affect the bank's relationship with its customer because the other bank would know there were insufficient funds in the customer's account. Besides, Ghosh gave him the impression that the Defendant was aware of the transactions.

124 Samuel Lee did not help Ghosh prepare the cheques drawn on the Nellington account. One of Samuel Lee's staff could have done so.

125 Samuel Lee did not notice the reverse side of the cheques returned to Ghosh had the words "credited to payee's account". Although the amounts involved were large, he was confident dealing with Ghosh in this manner as the instructions from the Defendant had come by authenticated SWIFT.

126 He had spoken to Pigozzo two or three times via telephone probably about payments from the Defendant to the Plaintiff to credit the Sofia Palace account as he needed the funds before he could do the foreign exchange deals for Ghosh.

127 Samuel Lee prepared various letters on the instructions of Ghosh. He considered this part of customer service and saw no need to check with anyone in the Plaintiff before doing so. Further, Ghosh had demonstrated that he was someone who would honour his words.

128 Samuel Lee agreed that the Letter of Conditional Undertaking dated 13 September 1999 (reproduced earlier) was essentially a guarantee for up to US\$60 million. Funds were supposed to be remitted from the Defendant to the Plaintiff, he would then do a foreign exchange conversion for Ghosh and send the money back to the Defendant. However, there was no opportunity to do any of these things. The matter was to be restricted to Pigozzo and himself because Ghosh had told him that in Italy, it was a requirement that a private banker would handle all the accounts there and a private banker in Singapore would handle all the accounts here. Samuel Lee did not think Ghosh was charged any fee by the Plaintiff for all these transactions.

129 Samuel Lee made some amendments to the draft given by Ghosh to make it clear that it was for the sale and purchase of foreign exchange. The original draft was more relevant to a supply of goods situation.

130 Samuel Lee was aware that his sole signature on documents would not bind the Plaintiff. However, it was up to the addressee-bank whether to accept that document or not. In any event, the question whether the Letter of Conditional Undertaking was binding or not did not enter his mind when he signed it. He signed it because he thought the foreign exchange transaction would be good for the Plaintiff and whether or not the Letter of Conditional Undertaking was there, the transaction would still take place.

131 Where the cheques returned to Ghosh were concerned, Samuel Lee did not know that the money had been credited to the payee's account as he did not look at the reverse of the cheques. He held on to some of them for two to three months as he had told Ghosh that the Defendant did not revert and Ghosh told him that the Defendant was aware of all this. There was no reason for him to suspect anything untoward as the Defendant had not sent a chaser for the funds.

132 When the Plaintiff's internal audit questioned Samuel Lee on 24 January 2000, he realized that something was wrong. Ghosh told him that if he backdated the letter to 21 January 2000, everything would be clarified. Samuel Lee was supposed to have sent that letter on 21 January 2000 but had felt uncomfortable doing so and therefore did not send it on 21 January 2000.

133 He was not thinking straight after the interview by the Plaintiff's internal audit which questioned him about his relationship with Ghosh and what he had received in not too friendly a tone. He did not have the benefit of knowledge of the whole situation until a few months later. He did not believe then that Ghosh had cheated the bank. He went to Ghosh's office after the interview by the Plaintiff's internal audit on 24 January 2000 to prepare that letter. Ghosh was abroad but had left his office keys with Samuel Lee. When he arrived at Ghosh's office, there was someone there so he did not need to use the office keys anyway. He still trusted Ghosh's words then if the letter was dated 21 January 2000 and faxed out to the Defendant, things would be alright. Ghosh had told him that there was a misunderstanding and internal conflict within the Defendant which had started to enquire.

134 On 25 January 2000, Ghosh faxed a note to Samuel Lee's home instructing him to do the things mentioned earlier. Samuel Lee had spoken to Ghosh earlier. Samuel Lee was "a bit hesitant" about Ghosh by then. Ghosh asked him to erase the transmission date print from Sofia Palace's letters dated 21 January 2000 to Samuel Lee as the fax would show that date as 25 January 2000. Samuel Lee did so by blanking out the date, photocopying the touched-up copies and placing the photocopies in the file. He agreed with the suggestion that in doing so, he was trying to create the impression that they were received on 21 January 2000.

135 Samuel Lee then elaborated on the all expenses paid trip to Australia in October 1999 mentioned by him in his statement to the Plaintiff's internal audit. Ghosh, U Kean Seng (the lawyer from Shook Lin & Bok) and Samuel Lee's brother (an accountant with BDO Binder doing accounting work for Ghosh) were travelling to Sydney and Adelaide for business. Samuel Lee had introduced Ghosh to his brother in June/July 1999 who then helped Ghosh set up Sofia Palace and Nellington, companies in the British Virgin Islands. (Samuel Lee initially said it was in January/February 1999 but immediately corrected the months). When

Ghosh heard that Samuel Lee was on leave during that week in October 1999, he invited him and his son along. They travelled together to Sydney by Singapore Airlines in First Class and then to Adelaide by Qantas in Economy Class. Samuel Lee booked the air tickets for Ghosh through UOB Travel. As far as he was concerned, this trip was a personal matter although he was also Ghosh's banker. He therefore did not tell anyone in the Plaintiff about it.

136 Later in October 1999, Samuel Lee and his son again travelled with Ghosh. This time it was in Bangkok. They travelled by Singapore Airlines in Business Class and stayed in Ghosh's apartment there. The airfare was paid by Ghosh. Samuel Lee had vacation leave to clear and Ghosh wanted Samuel Lee's son to have a holiday as the Australian trip was a business one.

137 The third trip was to London between 7 to 10 January 2000. Samuel Lee went there alone on Qantas, Economy Class, to deliver legal documents to Ghosh to sign as his lawyers required them by the following Monday (10 January 2000). Samuel Lee applied for leave on Monday, 10 January 2000 and departed from Singapore on Friday, 7 January 2000. The trip was paid for by Ghosh. Ghosh did not want the documents delivered to and from London by courier as he was afraid that there would be delay.

138 In London, Samuel Lee met Pigozzo for the first time at Ghosh's office. He had brought along the Plaintiff's letterhead at Ghosh's request in case there were documents he needed to sign and pass to Samuel Lee to bring back to Singapore. He also brought one cheque book for Ghosh. Ghosh had also told him that a few bankers including Pigozzo were there in London to discuss some deal with him. Samuel Lee prepared two letters dated 7 January 2000 in Ghosh's office in London and handed them with the cheques to Pigozzo. Samuel Lee did not talk much to Pigozzo who left on the afternoon of 8 January 2000 for Italy. They did not discuss the letters enclosing the cheques sent to the Plaintiff.

139 Ghosh gave Samuel Lee \$20,000 for his son as Samuel Lee had to pay quite a lot to his ex-wife after the divorce. Ghosh also offered him the post of CEO in the bank that he was buying in Vanuatu. Other than the initial amount of US\$5,000 mentioned in his statement, Ghosh did not pay the rest of the US\$500,000 into the account Samuel Lee opened with OCBC Bank.

140 Samuel Lee met Andrew Pigozzo, the younger brother of Philip Pigozzo, once in Ghosh's office in Singapore. Quinton Chew was also there. A copy of Andrew Pigozzo's passport was faxed or given to Samuel Lee for him to book a room in one of the hotels in the UOB Group so that he could enjoy a special concession. Andrew Pigozzo came to Singapore around December 1999.

141 On 11 June 1999, Philip Pigozzo sent an authenticated SWIFT message to Samuel Lee as a test to ensure that everything was in order as there was a problem in the test key between the Plaintiff and the Defendant. Samuel Lee could not remember why that was addressed to him. The Ghosh SBLC was sent for the attention of Samuel Lee as the Defendant must have thought that he was in charge of Ghosh's account. Ghosh could have told Pigozzo to send matters pertaining to the SBLCs to Samuel Lee.

142 As most of the payments were from Sofia Palace's account, Samuel Lee held that company stamp for Ghosh when he was travelling abroad. Since Global was concerned with the SBLC transactions, Quinton Chew would be given that company stamp by Ghosh. Whenever Samuel Lee's staff needed to use the Global stamp, he would ask them to see Quinton Chew and none of them ever came back and said that Quinton Chew did not have it. Samuel Lee said he was surprised that Quinton Chew had denied having the Global stamp but acknowledged that he (Samuel Lee) could be mistaken about it.

143 Samuel Lee also helped Ghosh to prepare the Defendant's remittance forms here. They would then fax them to the Defendant for funds to be remitted here.

144 Samuel Lee said his attendance in Court was voluntary to "clarify the whole thing". He had not been threatened by his former employers nor was any deal made such that the Plaintiff would not pursue any claim against him if he agreed to testify for the Plaintiff. Even after his dismissal from the Plaintiff, he would go to be interviewed by the Plaintiff's internal auditors and solicitors when requested.

145 In re-examination, Samuel Lee explained that when there were insufficient funds to meet a cheque, it was standard banking practice to first contact the customer who drew the cheque rather than the bank which sent it. He did not send the cheques back

to the Defendant because Ghosh had told him to expect a SWIFT message from the Defendant to cancel the cheques and to return them to him. Samuel Lee did receive the SWIFT message subsequently. In fact, there was no occasion where Ghosh told him to expect instructions and none came. He had no reason to suspect the instructions sent from the Defendant.

146 He would not have credited an account before receiving the funds from the other bank. He therefore had no idea that the Defendant had already credited the Cenacle account with the funds represented by the cheques.

147 For important customers, a special file would be created and all correspondence pertaining to that customer will be filed. During office hours, that file would be on Samuel Lee's table and accessible to other officers. He would lock it up at night.

148 He did not clear the contents of the Letter of Conditional Undertaking with the Plaintiff's legal department as it was very clear to him then that, with or without the letter, the transactions could take place. If they did, the Plaintiff would have earned a fair bit on the foreign exchange transactions.

149 When Ghosh asked Samuel Lee over the weekend in January 2000 to destroy the documents in his custody (as stated in his statement dated 26 January 2000 to the internal auditors), he did not do so as that would mean doing something that was wrong. He would have asked the internal auditors for advice if they were more gentle with him and had not arrived at the conclusion that he had done something wrong. He disobeyed their instructions on 24 January 2000 not to discuss the matter with anyone nor to take any action as he did not think that they had all the information. He wanted Ghosh to provide all the information but Ghosh said it was merely an internal conflict in the Defendant and if he were to fax the letters over, everything would be closed. He gave all the documents to the internal auditors on the night of 25 January 2000 as he had realized by 24 January 2000 that the Commercial Affairs Department was involved in the case. He knew something was not right and wanted to clarify and reveal everything.

150 In June 1999, Samuel Lee spoke to and met Ghosh almost everyday. They would talk about their families and their problems. Samuel Lee trusted Ghosh and regarded him as a friend. He confided in him as he had no one else to turn to. Ghosh appeared very, very rich and influential. In Thailand, he showed Samuel Lee his factories, his restaurants and his hotel. When Ghosh's car went into the factories' compound, guards would salute him. When he walked out of the airport, he would not be checked by anyone. Ghosh was also generous with his money, making donations to charitable causes. When he gave money to Samuel Lee, he did not ask for any favour in return.

151 Until he was questioned by the internal auditors in January 2000, Samuel Lee had no suspicion at all that Ghosh was involved in anything illegal or that there was a fraud perpetrated within the Defendant. The last contact he had with Ghosh was during that fateful weekend in January 2000. He continued to cooperate with the Plaintiff even after his dismissal as he felt it was his duty and he wanted to clear up matters as soon as possible. He did a lot of personal things for Ghosh as he had been offered a job by him and thought Ghosh was going to be his future employer. He did not know that the Sumitomo Group owned 18% of Ghosh's companies.

152 The Plaintiff's expert witness was Joseph Colleran who testified via video conference from the USA. Colleran was with the Irving Trust Co. between 1952 to 1988. His career was almost entirely in International Operations and/or International Trade Financing. He retired as a Vice President and was presently doing lecturing and consulting work in matters concerning International Trade Finance.

153 He testified that a SWIFT message was an electronic one and since such messages could not be signed manually, they were authenticated by means of a code arrangement known only to the sender and to SWIFT. When a bank sent a SWIFT message to another bank, that message would not go directly to the recipient bank. It was sent instead to a SWIFT switching centre in Brussels, Belgium. The sending bank would enter a code on the message which was known only to the sending bank and SWIFT. When the message was received at the switching centre, the code of the sender would be reviewed for authenticity by a computer. If the computer recognized the coded message as having emanated from the sending bank, it would add an authentication by means of a code known only to SWIFT and to the recipient bank and relay the message to the recipient bank.

154 The recipient bank could therefore reply on the SWIFT message as having been sent by the named sending bank and the authenticated message would bind the sending bank in the same way as a manual signature on a paper document would.

155 SWIFT messages were different from tested telexes which would be sent by the sending bank directly or through an intermediary bank to the recipient bank. Such telex messages would be tested or authenticated by means of a code known only to the sending bank (and/or the intermediary bank) and the recipient bank. A test on a telex was an electronic signature and would bind the sender in the same way as a manual signature on a paper document would.

156 SWIFT messages are sent from bank to bank and not from individual to individual although they could be addressed by or to a named individual for identification and/or information purposes. The inclusion of such names would not change the fact that the recipient bank was justified in relying on the message as having been sent with the authority and responsibility of the sending bank.

157 When a bank joined the SWIFT system, the codes to be used in the messages would be given to the bank and not to the individuals. The bank would then entrust the codes to its chosen employees. It was the responsibility of each bank to protect the security of the codes. Recipient banks were not required to question an authenticated SWIFT message and the mere receipt thereof was reason enough to act on it. Thus Pigozzo's lack of authority to send the SBLCs was totally irrelevant to the Plaintiff.

158 Although SBLCs were issued for particular situations, certain types were now so common that many banks had standard forms for them like the Plaintiff did in this case. In the USA for instance, at the end of the first quarter of 2000, there were outstanding at US banks some US\$227 billion in SBLCs. SBLCs had therefore become an internationally recognized instrument and the Plaintiff had acted reasonably in accepting them to support the facilities extended to Ghosh and to Global.

159 The authentication process was meant to avoid any investigation by the recipient bank as to whether the composer of the message and the sender thereof had the actual authority of the sending bank to do so. Authentication showed conclusively that the message came from and with the authority of the sending bank.

160 In 1999, the SWIFT network carried over 1 billion messages and the average daily payment volume of such messages was more than US\$5 trillion. With the sheer volume, investigations or inquiries beyond authentication would run completely contrary to the purpose of the SWIFT system. That was how Colleran treated authenticated SWIFT messages from other banks while he was at Irving Trust Co. Once authenticated, he acted upon the veracity and accuracy of the contents of the SWIFT message with complete confidence. The SWIFT system was meant to obviate arguments and inquiries about authority. Otherwise, the banking system could not function and the authentication arrangements would be meaningless.

161 The Plaintiff did not need to verify the authority of the Defendant's Udine Branch to issue the SBLCs. Banks differed in the way they organized themselves. It could be that the Defendant's international activities were centralized in Udine. The Plaintiff was not required to know the Defendant's policy in responding to inquiries about its branches. The fact that the response came from the Udine Branch was not unusual. The Plaintiff's authenticated messages had been sent to the Defendant's Head Office and it did not need to speculate on what the Defendant's Head Office had done. The response from the Defendant was also by authenticated SWIFT message.

162 When following the amendment instructions of an issuing bank, the verification of the correct letter of credit was done through the credit number and not through the issue date, which may not even be checked by the amending bank.

163 Commenting on the Defendant's Defence, Colleran was of the view that the fact that named individuals were mentioned in SWIFT messages could not lead to the conclusion that they were implicated in any fraud or that they were involved in the processing or amending of the SBLCs. The deletion of an account number was not unusual as lending banks could extend facilities to a named party who may have more than one account at the lending bank. Removal of an account number would cover the lending bank for facilities extended to any of those accounts. Similarly, changing the place of expiry to where the lending bank was located was convenient for that bank in computing time.

164 The change of name in the SBLC from Super Shipmanagement to Global was a natural consequence of the company changing its name. The Plaintiff, Ghosh or both could have requested such an amendment from the Defendant and there was therefore nothing unusual in the fact that the request for such sent to the Defendant was signed jointly by Samuel Lee and Ghosh. The amendment to extend the expiry date of the SBLC was to match the last possible due date for repayment of loans covered by the SBLC. The amendment to increase the amount by US\$8 million was merely to correlate it with the amount of the facilities covered by the SBLC.

165 In cross-examination, Collieran agreed that when one was looking at a paper document bearing a manual signature, one must always examine the signature to determine that it was genuine. It was also necessary to see whether the person signing had the authority to do so. The signature and the authority of the person concerned would be in the signature book for verification.

166 An authenticated SWIFT message received would bind the sending bank if the recipient bank was willing to accept its commitment after doing a credit check. Different branches of the sending bank may have different issuing authority but that would be unknown to the recipient bank. It was up to the sending bank to control which of its branches could send authenticated SWIFT messages.

167 Asked whether the internal guidelines of the Plaintiff were at variance with his testimony in that they implied mere receipt of a SWIFT message did not guarantee the authority of the issuing branch, Collieran said the Plaintiff did not have to verify the authority of the branch but could decide to do so as a policy in order to minimize risks.

168 When the Defendant's Head Office received the enquiry, it could have read the contents and stopped the fraud but did not. The Plaintiff was not required to know the organizational make-up of the Defendant. If the Udine Branch did not have the requisite authority, the Head Office could have said so in reply and it would have been very imprudent for the Plaintiff to act on the SBLC. In any event, the Defendant's own evidence showed that the Udine Branch was authorised to handle SBLCs.

169 It was not unusual for the Plaintiff to receive an amendment increasing the value of the Global SBLC by US\$8 million without request as most amendments would be initiated by the account party and not by the beneficiary bank. Collieran agreed that the two banks did not appear to have been involved in high volume or frequent SWIFT traffic until 1999. Asked whether the Plaintiff in such a situation, upon receiving SBLCs of large amounts, ought to have exercised caution before accepting the SBLCs, Collieran replied that the Plaintiff did exercise caution by doing a credit analysis and sending the query by SWIFT message to the Defendant's Head Office.

170 Collieran accepted the criticism of the Defendant's expert (Anthony Dodd) that there were a number of technical inaccuracies regarding the SWIFT system in his affidavit. He explained that he was not testifying as an expert in the technicalities of the SWIFT system but as a user, both as a sender and recipient.

THE DEFENDANT'S CASE

171 Tommaso Cartone, the Managing Director of the Defendant, gave evidence via video conference from Italy. He explained in his Affidavit of Evidence-in-Chief that the Defendant was an Italian bank with its principal place of business in Italy and was part of the Intesa group of banks, the largest banking group in Italy, with Banca Intesa S.p.A. as the holding company. The Defendant had many branches throughout Italy, grouped into about 20 different Areas, with the branches in each Area being managed by the Area Head Office. In each Area Head Office, there was a department known as Nucleo Operativo Estero Merci ("NOEM") (or the Operations Centre for Foreign Goods Department) which administered for the branches in its Area documentary remittances, documentary credit, letters of guarantee and stand-by letters with a foreign element. NOEM did not have the power to grant or approve overdrafts or to establish and manage banking relationships with foreign clients, its role being a purely administrative one.

172 The NOEM of the Friuli Venezia Giulia Area Head Office was in Udine. It did not have direct connection with the Head Office

in Milan but was under the Head of the Friuli Venezia Giulia Area. The co-ordinator or manager of this NOEM was Philip Martino Pigozzo who had been in that post since 22 September 1997. His duties included the coordination of human resources, ensuring the legal and procedural correctness in relation to collections, documentary credits and foreign guarantees, providing consultation, operational and technical assistance, dissemination of knowledge and know-how. Pigozzo did not have the power to approve or manage applications for lines of credit, to open and manage bank accounts for Italian or foreign clients, to issue letters of credit or to perform any act relating to any of the transactions for which he was authorised to act through the SWIFT system without the simultaneous use of the electronic data (User-ID and password) of another authorised employee of the Defendant (i.e. a sort of double electronic signature was required).

173 On 14 January 2000, an officer of the Defendant's Auditing Department in Milan, Maurizio Spinelli, carried out a routine internal inspection of foreign accounts opened with the Defendant. He was alerted to a US\$2 million credit into Cenacle Holding's account number 58909. This led to further investigations and on 18 January 2000, Spinelli went to the Area Head Office in Udine to investigate specifically the irregularities relating to the account of Cenacle Holdings. As a result, a series of fraudulent banking transactions was uncovered and it involved:

- (1) Pigozzo;
- (2) Ghosh, an Indian citizen;
- (3) Ng Yean Kiat, a director of Cenacle Holdings, a Luxembourg holding company controlled by Ghosh;
- (4) Ante Devic, a Yugoslav;
- (5) Samuel Lee, Assistant Vice President in the Plaintiff;

and possibly some other high-level officials of the Plaintiff. The fraudulent transactions caused the Defendant to suffer damages of about US\$39 million.

174 The fraud was in two broad categories. The "chequeing fraud" or "cheque-kiting" involved a process of depositing cheques into accounts in the Defendant linked to Ghosh and withdrawing the money without there being actual funds in the accounts. The second category involved the unauthorized issue of SBLCs to other financial institutions.

175 It was discovered that in 1999, Pigozzo opened six current accounts at the Udine Branch in the names of Ghosh and Cenacle, denominated in various foreign currencies. The accounts were highly anomalous because the application forms for opening them were signed but not filled out. They were also opened with no deposit of funds or with insignificant amounts therein. Ghosh and Cenacle were not Italian citizen/entity and had no commercial interests nor production activities in Italy. Ghosh also controlled two companies with accounts with the Plaintiff – Sofia Palace and Global.

176 Cartone then went on to describe the various unauthorized and irregular transactions done by Pigozzo involving Ante Devic, Ng Yean Kiat and Ghosh.

177 These matters led to further discovery that Ghosh had negotiated a number of cheques for large amounts with the Defendant. Pigozzo, upon receipt of the cheques, would immediately credit the amounts into Ghosh's or his related accounts before the cheques were sent to the correspondent bank for collection and without ascertaining whether they would be honoured. Ghosh and Cenacle were never granted any overdraft facilities.

178 For the earlier transactions, when the cheques sent for collection were dishonoured and returned unpaid to the Defendant, Pigozzo would use the pretext that there had been a mistake in presenting the cheques and would have them presented again. For the latter transactions, Pigozzo sent the cheques to the drawee bank but they were not returned nor was payment received. Pigozzo would use credit transfers to cover the deficit created by the unpaid cheques at his own discretion.

179 The details of the fraudulent transactions were set out in the Defendant's complaint dated 7 February 2000 to the Public Prosecutor at the Tribunal of Udine.

180 Thirteen cheques of US\$2 million each credited into Cenacle's account remained unpaid. They were issued between 16 September 1999 and 14 January 2000 by Sofia Palace on its account with the Plaintiff and made out in favour of Cenacle. Pigozzo had credited the amounts into Cenacle's account before the Plaintiff remitted the necessary funds to the Defendant.

181 Between 20 September 1999 and 18 January 2000, Cenacle ordered nine money transfers on its accounts with the Defendant in favour of Sofia Palace and Global totalling more than US\$28 million and that was when the dissipation of the US\$26 million described above took place.

182 On 11 January 2000, the Plaintiff's Samuel Lee wrote to the Defendant confirming that the Plaintiff would effect six payments of US\$2 million each to the Defendant. On 21 January 2000, he wrote again to the Defendant that the Plaintiff had received three payment instructions from Sofia Palace to effect three payments of US\$2 million each. To date, no payment had been received by the Defendant for the thirteen cheques stated above and of the nine payments promised by Samuel Lee, only two were effected but these went to cover two other earlier cheques and not the thirteen cheques in question. The amount outstanding in Ghosh's/Cenacle's accounts with the Defendant totalled some US\$25 million.

183 Pigozzo also entered into Defendant's computerized system the names of various American banks as the clearing banks for the cheques, thereby misleading the Udine Branch into believing that the cheques had been transmitted to the American correspondent banks as would have been done in normal practice. In truth, the cheques had been sent to Samuel Lee.

184 On 21 January 2000 and 24 January 2000, the Defendant wrote to the Plaintiff regarding payment on the said cheques. On 27 January 2000, Cartone personally wrote to the Plaintiff's Chairman and Chief Executive Officer and its Executive Vice-President and General Manager requesting them to confirm that they would be making the remaining seven payments mentioned in Samuel Lee's letters. Cartone also asked for confirmation of the payment on the thirteen cheques. He also made telephone calls to the Plaintiff's officers to inform them of the situation.

185 The Plaintiff replied on 31 January 2000, claiming that Samuel Lee had no authority to issue the letters dated 11 January 2000 and 21 January 2000. The Defendant replied that two payments had been duly made by the Plaintiff, thereby contradicting their stand that Samuel Lee did not possess the requisite authority.

186 The Defendant suspended Pigozzo from his duties immediately after the discovery of the fraud. He was questioned by the Defendant's officers on 21 January 2000, 27 January 2000, 28 January 2000 and 1 February 2000 and made certain confessions. On 15 February 2000, the Defendant dismissed Pigozzo. To date, it was uncertain whether Pigozzo had made full disclosure of all the documents and the material facts.

187 Where the SBLC fraud was concerned, the Defendant first became aware of it on 27 January 2000 when Pigozzo decided to deliver more documents to the Defendant. There was no record of any request from Ghosh or Cenacle to the Defendant requesting SBLCs to be issued in favour of the Plaintiff. Cartone then detailed the transactions relating to the two SBLCs. The two SWIFT messages sent by the Plaintiff to the Defendant's Head Office in July 1999 and the one sent in November 1999 were transmitted by the Head Office to the Udine Branch, giving rise to the anomalous situation where the department issuing the SBLCs confirmed its own authority to do so.

188 It appeared that Pigozzo had also issued other SBLCs for substantial amounts for the benefit of Ghosh's associate/companies.

189 It was clear that the terms and the circumstances surrounding the SBLCs were highly suspicious. Pigozzo confessed that he had entered into the Udine Branch's SWIFT system by using the user-ID and password of a colleague which he had obtained by reading over that colleague's shoulders. It was highly significant that almost all of the SWIFT messages were sent for the attention of Samuel Lee who was not the officer who dealt with SBLCs. It was inconceivable that a bank would agree to be

bound by letters of credit so unfavourable to itself and that the Defendant would issue the SBLCs on the format sent to it by the Plaintiff without requesting any of its own standard terms to be incorporated therein. It was also inconceivable that the Defendant would accede to each and every request by the Plaintiff to amend the SBLCs and in so short a period of time. The wording of the scope of the SBLCs was also so vague that they were tantamount to a blank cheque being given by the Defendant. Any bank officer would also have insisted on knowing the terms of the credit facilities as well as the reasons for requiring those facilities. There were also no guarantees by Ghosh or Cenacle for the SBLCs found at the Udine Branch.

190 Pigozzo subsequently brought to the Defendant some documents which he had been keeping all along at his home. Among them was the Letter of Conditional Undertaking for US\$60 million dated 13 September 1999 signed by Samuel Lee together with the covering letter. When the Defendant tried to exercise its rights under this document, the Plaintiff rejected the request on the same ground that Samuel Lee did not have the authority to issue it. These documents were clear evidence of Samuel Lee's complicity in the fraud perpetrated by Ghosh and Pigozzo. Further, shortly after the matter, Samuel Lee resigned from the Plaintiff and the Plaintiff had not given discovery of the documents relating to the resignation to the Defendant.

191 On 27 January 2000, Pigozzo decided to offer the Defendant's investigators more documents kept at his home. These included share certificates of Apex Plastics Co Ltd of Thailand. They had been sent to Pigozzo on Ghosh's instructions but without any indication that they were collateral security. Ghosh had tried to offer them as security to the Defendant in a letter from his solicitors, Shook Lin & Bok. Since the Defendant was completely unaware of the two SBLCs, it could not have accepted these share certificates as security.

192 Although Cartone wrote to the Plaintiff to say that the SBLCs were to be considered invalid as they had been issued in a "fraudulent way", the Plaintiff rejected the notification and made a formal demand for payment on the SBLCs.

193 On 18 January 2000, when the Defendant first discovered the chequeing fraud, Cartone immediately telephoned the Plaintiff and spoke to its senior officers requesting that they freeze the bank accounts of Ghosh and his companies but the Plaintiffs declined to do so. The Plaintiff represented to him that it would be more effective if the Defendant made a police report and let the authorities freeze the accounts instead. As the Defendant did not have an office in Singapore, the Plaintiff's senior officer suggested that they seek the assistance of one Mr Giorgio Rosica, the Managing Director of Cariplo Singapore, in lodging the police report. The advice was accepted and subsequently, Mr Rosica and the Plaintiff's Vivien Chan went to lodge a report at the Commercial Affairs Department.

194 Cartone was of the view that it was dishonest of the Plaintiff to be pursuing their claim under the SBLCs while denying at the same time the validity of the other financial instruments created in the course of the conspiracy. It was clear that Samuel Lee was trying to conceal the chequeing fraud by not returning them to the presenting bank. On top of that, Samuel Lee had also written the documents mentioned earlier and appeared not only to be making unauthorized representations but unauthorized payments as well. It was not possible to segregate the chequeing fraud from the SBLC fraud because of the proximity in time and the common participants. Samuel Lee, being a participant in the chequeing fraud, must clearly be aware that the SBLCs were fraudulent.

195 The conduct of Pigozzo, Ghosh and Samuel Lee constituted criminal offences under Italian law. Pursuant to the complaint filed on 7 February 2000, the Public Prosecutor in Italy applied to the Court at Udine and obtained a "Decree of Preventive Seizure" prohibiting the Plaintiff from calling and the Defendant from paying on the SBLCs. The decree was executed on 12 April 2000.

196 On 22 February 2000, the Defendant commenced legal proceedings in the Civil Court of Udine against Pigozzo, Ghosh, Cenacle, Sofia Palace, Global and the Plaintiff for payment of about US\$25 million and a declaration that the two SBLCs were null and void and for damages and costs. On 16 March 2000, an interim injunction was applied for in Udine and that was granted subsequently on 21 July 2000 prohibiting the Plaintiff from enforcing in any way the two SBLCs. That order was served on the Plaintiff on 24 July 2000 and became final as no appeal was lodged. That order stated the criminal participation of Samuel Lee and Quinton Chew was very likely. It would therefore be grossly unjust and unconscionable for the Plaintiff to profit from the wrongdoing of its own officers.

197 Cartone was referred in cross-examination to a brochure entitled "Banking and Financial Services from Italy's Leading Private Bank" produced and circulated by the Defendant to let "everyone know what the Bank is doing in Italy and in other countries" (Cartone's words). In it, it was represented that the Udine Branch, like all other branches, could handle international transactions and that it was advisable to correspond directly with the branches by SWIFT and telex. Cartone said the branches would still have to act according to its regulations and as circumscribed by its powers. All correspondent bankers in the world knew that to understand what the branches were authorized to do, other documents had to be looked at. The powers of the persons working in the branches were documented in internal regulations of the Defendant which were deposited in the Court house. Neither Pigozzo, his office nor the Udine Branch ever had the authority to issue letters of credit.

198 Cartone was not aware of the exact number of people in the Defendant who had access to the SWIFT key. Not everybody was permitted to use the SWIFT key, which was made up of two personal keys and not merely one. This was to ensure that only authorized messages were sent out. Internal controls existed so that the Defendant was not compromised as SWIFT messages committed the bank and were valid if the internal regulations had been complied with.

199 Cartone was of the view that a rational banker, faced with high risk operations, would verify even when the SWIFT system was used in order to be sure that no errors had been made. High risk matters included transactions of very, very high amounts such as US\$1 million, where strange clauses appeared or where the duration was unusually long. If there was fraud, the issuing bank could not be bound as the instrument, i.e. SWIFT, had been utilized in a fraudulent way. Asked how a recipient bank would know whether there was fraud in any transaction, Cartone replied that it could make verification using the ordinary methods like telex, fax, SWIFT and "all instruments that give you tranquility". Banks would not verify low risk transactions. The Plaintiff may not know who in the Defendant held the keys to the system at any point in time but it knew who had the power to confirm the verification.

200 Asked whether a sending bank was committed if the only fraud that occurred was on the part of one of the officers of the sending bank, Cartone was of the opinion that it was not liable.

201 When Cartone wrote the letter dated 27 January 2000 to the Chairman and CEO of the Plaintiff, he asked for confirmation of certain matters by SWIFT or tested telex from the President or the General Manager of the Plaintiff. Asked how he could be sure that the confirmation would come from the intended persons, he said he could look at the books exchanged between the correspondent banks. He would verify by checking the account and not the signature. If the Plaintiff had sent the money to the Defendant after that 27 January 2000 letter, there would be no further need to verify the SWIFT message as money had gone in.

202 Cartone did not do the investigations personally. What he had reported to the Public Prosecutor in Udine and his testimony in Court were based on what had been reported to him by his staff. In his statement to the said Public Prosecutor, Cartone said, "What obviously did not occur in this case was that the SWIFT messages – which are binding upon BAV – did not correspond to any authorisation that could have only been given by any branch official". Cartone explained that if there was fraud and in particular, where the beneficiary bank's employees were involved, the binding effect disappeared. He agreed that the Defendant was trying to show the Public Prosecutor in Italy that the Defendant had suffered damage. Asked what damage could have been caused by the SBLCs if they had no binding effect, Cartone said he was presenting the extreme situation where the Court might rule that the SWIFT messages created liability for the Defendant.

203 Cartone explained that SWIFT messages sent to the Defendant's Head Office would arrive at a centre which would act like a post office and relay the messages. The Plaintiff should have sent the messages to the International Department of the Defendant which was moved in January 1999 in the Intesa Group. This was made known to all correspondent banks from January 1999. If the SWIFT messages had arrived at the proper office, they would have been sufficient for the Defendant's Head Office to verify the transactions in question. As it turned out, the confirmation emanated from the Udine Branch which did not have the power to confirm its own power.

204 Cartone confirmed that the Defendant had an insurance policy which covered fraud of employees. The Defendant made a claim for its losses. The insurance company had not paid up although it should be doing so soon. The policy's maximum coverage was 25 billion Italian Liras but the overall losses suffered by the Defendant as a result of the fraud was about 80 billion

Liras (or about US\$39 million). This included the sum sent to the Plaintiff to collect and which was not paid and the losses on the two SBLCs. The insurers intended to pay only about 20 to 21 billion Liras.

205 Where the chequeing fraud was concerned, if the Plaintiff had returned the cheques to the Defendant at the Udine Branch, the fraud would have been discovered. Pigozzo was taking care of the cheques but that was unlawful because it was somebody else's job and not his. The fraudulent crediting of the accounts at the Udine Branch was not discovered because Pigozzo had hidden the evidence and did not record the necessary information.

206 There were some fifteen cheques not issued by the Plaintiff but by other banks, which had also been credited into Ghosh's or his related accounts before they were paid. Those cheques were sent for collection but were returned unpaid and the accounts were debited. Asked why the Defendant did not discover the fraud of Pigozzo then, Cartone said it was because other funds had arrived in those accounts. The Defendant did not discover the wrongful crediting by Pigozzo because he had hidden all the evidence relating to the cheques and had made the funds available. He sent the cheques to the Plaintiff and if the Plaintiff had returned them unpaid, the Defendant would have accounted for them and thereby discovered the fraud. Cartone believed that Pigozzo had an accomplice working in the Plaintiff as well as in UOB (one of the other banks involved in the cheques). He did not agree with the suggestion that Pigozzo and Ghosh needed no accomplice in the other banks because Ghosh could always issue new cheques to cover the old ones.

207 The amendments made to the SBLCs would have taken some time for approval and almost certainly would not have been approved by the Defendant.

208 When the Defendant wrote to Ghosh's lawyers on 23 March 2000 to ask him to pay what he owed to the Plaintiff, it was not because the Defendant believed that the SBLCs were valid. Since the Plaintiff had demanded the money from the Defendant, if Ghosh had paid up, that would have been the end of the matter. The Defendant did not wish to damage the very good relationship it had with the Plaintiff.

209 The Defendant had a system which monitored all SWIFT messages sent by the Defendant on a daily basis. This daily report would be given to the different departments and branches. In the Udine Branch, Pigozzo would have received it because he was the person in charge there. The SWIFT code for the Defendant's Head office was "XXX" while that for the Udine Branch was 601. Pigozzo's user-ID was "F 601 US 06".

210 In his letter dated 27 January 2000 to the Plaintiff, Cartone had asked for written confirmation through express courier anticipated by an authenticated SWIFT message and not merely by SWIFT message or tested telex.

211 The next witness for the Defendant, Maurizio Spinelli, was an officer in the Auditing Department in Milan. His duties included the inspection of client accounts and foreign transactions. He also testified via video conference.

212 On 14 January 2000, he did a random check on all foreign accounts in the Defendant's branches. He used a computer programme with a search engine that showed up substantial transactions in the accounts keyed into the system two working days earlier. During the search, he noticed a transaction crediting US\$2 million into Cenacle's account on 12 January 2000 at the Udine Branch. He checked the account and found a lot of transactions many of which were for US\$2 million.

213 Spinelli then informed his superior, Gallo, about this. Gallo asked him to continue his investigations. Spinelli also telephoned the Udine Branch's audit department to investigate this account.

214 That same day, the Udine Branch called back to inform Spinelli that the account in question was operated by NOEM in Udine. As NOEM was not supposed to be handling crediting of cheques and telegraphic transfers, he became more suspicious and went to the Udine Branch on 18 January 2000 where he asked to meet the person in charge of NOEM, Pigozzo.

215 Pigozzo was not there when Spinelli went to NOEM. Spinelli asked one of the officers to show him the documents pertaining to the account in question but was told that all the transactions were carried out by Pigozzo personally.

216 When Pigozzo returned to NOEM in the late afternoon, Spinelli asked him for all the documents concerning the transactions in the past several months. The practice for NOEM was to have the accounting documents for each day's transactions kept in an envelope. However, Pigozzo took out a stack of disorganized documents from his drawer. They appeared to relate mostly to cheques and telegraphic transfers and looked incomplete. As it was late in the evening and Pigozzo had to leave the office, they agreed to look at the documents the next day.

217 On 19 January 2000, Pigozzo informed Spinelli upon questioning that Cenacle was using the account for fund transfers and chequeing purposes and that the Plaintiff in Singapore was also operating a similar account for that client. He told Spinelli that the transactions carried out at the Plaintiff and the Defendant were mirror images of one another and that the principal business of Cenacle was to speculate in foreign currencies, capitalizing on the time difference between Italy and Singapore.

218 Not convinced, Spinelli began going through the documents while one of the officers from the Udine Branch's audit department started questioning Pigozzo on whether the account was used for money laundering activities. Spinelli found some letters requesting payment on the same cheques drawn on an account with the Plaintiff, addressed to both the Plaintiff and an American clearing bank. That would mean asking to be paid twice on the same cheques. The letters were also typed and not obtained through the procedure provided by the Defendant for that purpose. Spinelli also discovered that Pigozzo had been keying in American clearing banks randomly into the computer system although the letters and the cheques appeared to have been sent to the Plaintiff directly. There was thus a conflict between the system-generated letters and those manually prepared by Pigozzo.

219 Spinelli next discovered that there were thirteen outstanding cheques for US\$2 million each which had been credited into Cenacle's account.

220 Since the situation was very serious, Spinelli went to see the head of the Friuli Venezia Giulia Area on 20 January 2000. Both the Udine Branch and NOEM reported to this head. The head called for Pigozzo who told him that US\$26 million remained unpaid. The Deputy General Manager at the Defendant's Head Office was then informed.

221 On 21 January 2000, Pigozzo was suspended from duties. Between 21 and 27 January 2000, Spinelli and some officers from the audit department made copies of everything in NOEM. On 27 January 2000, Pigozzo brought more documents which he had kept elsewhere. After analyzing all the documents, a criminal complaint was filed by Cartone with the Public Prosecutor at the Tribunal of Udine on 7 February 2000.

222 Commenting on the SWIFT messages sent by the Plaintiff to enquire about the authority of the Udine Branch, Spinelli testified that they were received at the Defendant's SWIFT office at Assago, Milan, which received about 3000 messages a day. From there, on the basis of references or information contained in Field 21 of the message, which referred to the Udine Branch, the messages were transmitted there electronically. "BAVE IT MMA XXX" was the Defendant's general SWIFT address. When the Udine Branch replied to the Plaintiff, so long as the messages were addressed properly, they would go through the Defendant's SWIFT system to the Plaintiff directly.

223 Under cross-examination, Spinelli said that once a SWIFT message was sent to the Udine Branch, it resided in the system and anyone with a personal password could access and print it. At that time, there were eight users who did data entry and three users who did verification. Anyone of those eleven users could access and print SWIFT messages.

224 Messages sent with the code "XXX" to Assago, Milan were re-routed by the operators at the SWIFT office who would look at the information in Field 21 which had the code of the SBLC in question. The operators were not concerned with the contents of the SWIFT messages or the fact that one of the Plaintiff's enquiries was specifically addressed to the Head, International Department of the Defendant.

225 Spinelli agreed that the Defendant had very strict controls and security procedure for sending out SWIFT messages to ensure that they were authorized. This was because the receiving banks would act on the messages as they were entitled to assume that they had been sent with authority.

226 The "Message Trace Display" of two SWIFT messages showed a different user-ID was used together with Pigozzo's on the two occasions.

227 Spinelli agreed that cheques issued on other banks were returned to the Defendant without the Defendant discovering the alleged fraud. He also agreed that if the Plaintiff had returned the unpaid cheques, Ghosh could have issued new ones to cover them.

228 Spinelli maintained that the Defendant's Head Office never received the Plaintiff's SWIFT messages enquiring about the authority of the Udine Branch. They were received by the SWIFT Centre. While the Head Office was in Milan, the SWIFT Centre was in Assago, at the outskirts of Milan.

229 In normal transactions, two persons were required to send a SWIFT message – one to create the message, the other to verify and send it. Pigozzo could only verify. He could not prepare messages in the SWIFT system. It was possible for Pigozzo to steal another user's password and use it to prepare a message, then send it using his own password. Two user-IDs should appear in a message together with the numbers of two different computer terminals. Everyone in the Defendant's branches had his own workstation together with his own personal computer which was identified by a number. In some messages, there were two user-IDs but only one terminal's number. This was abnormal as it meant that the creation of the message and its verification had been done at the same terminal. Spinelli said it was the Defendant's case that Pigozzo had used the password of more than one colleague. He had admitted as much to the Public Prosecutor in Udine.

230 Spinelli felt that the Plaintiff ought to have asked the Defendant's Head Office about the authority of the Udine Branch using other means, such as the telephone, followed by a written request.

231 Samuel Lee's letters dated 11 January 2000 and 21 January 2000 advising that the Plaintiff had received payment instructions from Sofia Palace were abnormal. Cheques were either paid or not paid. There could not be an instruction to pay a bank by a certain deadline.

232 Anthony Beadon Dodd, the Director of Audit and Risk Assurance at SWIFT since 1994, was the Defendant's expert witness. His responsibilities included the management of three groups as well as the coordination of the Audit and Finance Committee and providing support to SWIFT's regulatory and market infrastructure supervision. The first was the Technology Risk Assurance Group which reviewed continuously SWIFT's network reliability, confidentiality and security mechanisms. The second, the Security Management Centre handled the most sensitive security including the technology which allowed customers to connect to the SWIFT system. The third was the Financial Risk Assurance Group which provided internal audit services and supported the external auditors.

233 Dodd had more than 20 years of experience in the international financial services industry. He explained that SWIFT was a limited liability cooperative society wholly owned by its member banks. It was established in 1973 in Brussels, Belgium as a secure messaging service with pre-agreed standards and formats. It evolved over time to providing technology-based communication services across all financial markets through member banks. The relationship between SWIFT and its members/users and among the members/users was described in a number of documents collectively known as the SWIFT User Handbook which provided the standards and guidelines for the usage of the system and eligibility criteria. Both the Plaintiff and the Defendant were members of SWIFT.

234 Banks had to address three different kinds of risk – credit, market and operational. SWIFT messages were intended to deal with a specific kind of operational risk only. There were agreed text standards for a wide variety of business communications. Receipt of a SWIFT message was no guarantee that the individual sending the message was authorized to do so or authorized for the given amount. Individual institutions had their own internal control systems to ensure, to the satisfaction of their management, that only authorized messages were sent and authorized actions taken on receipt. Only the technical authenticity of the message was guaranteed by SWIFT and not the business appropriateness. It was therefore not correct to say that an authenticated SWIFT message relieved the recipient bank of the need to investigate whether the sender had the appropriate authority to do so. SWIFT was concerned with technical authenticity and confidentiality and not with authority.

235 Banks could choose to rely on SWIFT messages without checking on the authority for various reasons such as the sheer volume and impracticality but would assume the risk of doing so. The assumption was that any error, omission or other loss would be resolved between the parties with no undue enrichment because there was a two-way exchange and a presumption of an ongoing business relationship. Thus the vast majority of disputes were settled amicably.

236 In the present case, there were two transactions of relatively high value between two banks which had no normal course of dealing with each other. The SBLCs emanated from a branch in a small town in Friuli in the extreme northeastern part of Italy with a population of some 100,000 people. Udine could therefore be regarded as a small town and minor business centre of only local importance and could not be compared with a large New York bank. Information as to how the major banks of the world were organized could be easily obtained from public domain information such as the Bankers' Almanac. It would therefore be surprising if the Defendant's Head Office had delegated its functions fully to or had conferred complete authority on the Udine Branch without any limit. If the Plaintiff's argument was correct, then the entire capital of the Defendant could be assigned away by the Udine Branch via a SWIFT message!

237 The reply from the Udine Branch to the queries sent by the Plaintiff to the Defendant's Head Office should raise more questions rather than less in the Plaintiff's mind. The Plaintiff could have obtained independent confirmation of the SWIFT messages by a telephone call to the Defendant's Head Office. SWIFT was ideal for an established relationship and not for setting up a completely new business relationship.

238 Where the technical aspects of SWIFT were concerned, SWIFT was responsible for the maintenance of security within its own network, which meant that SWIFT took responsibility for a message from the time it reached the network to the time it left. The recipient of a SWIFT message therefore had the following assurances:

- (1) the message came from the particular sending Bank/Branch;
- (2) the sender could not repudiate having sent the message which was archived in encrypted form at SWIFT for four months;
- (3) the message had not been changed in transit;
- (4) the message had not been copied except where authorized; and
- (5) the best commercial practice was used to prevent disclosure.

239 The SWIFT system could also control access and prevent the insertion or deletion of messages. Messages with financial value could be authenticated by the addition of a message authentication code. There was also provision of a Bilateral Key Exchange which used the secure SWIFT system as a means for exchanging cryptographic keys using dedicated messages.

240 Dodd then pointed out a number of technical inaccuracies in the Plaintiff's expert's affidavit. It was incorrect to say that messages were sent to a switching centre in Brussels as the operating centres were in other countries. The sending bank would not "enter a code" and the "computer" did not recognize the coded message in the way described by Colleran. While the receiving bank could rely on the fact that the message came from the named sending bank, that was not the same as a manual signature from an individual authorized to perform that operation. Finally, the master smartcards for setting up access to the system were never supplied to individuals but only to a named security officer who would in turn set up the other users who could send live messages. The security officer of the Defendant in the records of SWIFT was one Maurizio Ormagli.

241 Explaining the bank identification code (BAVE IT MMA XXX), Dodd said "BAVE" represented the name of the Defendant, "IT" the country, "MMA" was the location code which was not used and "XXX" represented the Head Office or a branch. When the Defendant's operator saw and recognized "601" on a message as the Udine Branch's code, he would re-route the message, usually without having read the text thereof. In this case, the Defendant's software would re-route the message directly to the Udine Branch without manual intervention at the Defendant's SWIFT Centre.

242 Dodd in cross-examination agreed that he had no experience in trade finance which dealt with letters of credit.

243 Tested telexes had largely disappeared and had been replaced by SWIFT. Dodd was of the view that tested telexes were not binding on the sender and it was a business judgment on the part of the recipient whether to act on it or not. Unauthorized SWIFT messages might be regarded as binding depending on the jurisdiction in question and other factors. For that reason, banks had their own internal controls to protect themselves against such unauthorized SWIFT messages.

244 SWIFT was not privy to authentication keys between institutions for security reasons. Banks would not be told by one another what measures they had in respect of the keys. There would also be no communication as to who was authorized to send SWIFT messages.

245 The fourth and final witness for the Defendant was not cross-examined by the Plaintiff. Riccardo Luzzatto, a full Professor of International Law in the Faculty of Law of the State University in Milan, was also Professor of International Trade Law. He was also a practising attorney in Italy.

246 Commenting on the effect of SWIFT messages under international usage and under Italian law, Professor Luzzatto stated that the SWIFT system assured the authenticity of a message but not the authority of the sender or issuer. He referred to the United Nations Commission on International Trade Law's 1987 Legal Guide on Electronic Funds Transfer which defined authentication as identification and not authority. He stated that Italian law took the same position. He was of the view that the said Legal Guide, which was descriptive of the existing international practice, was persuasive.

THE DECISION OF THE COURT

247 The Plaintiff submitted that the burden on the Defendant proving fraud on the part of Pigozzo was a heavy one and that the Defendant must satisfy a "high standard of proof", relying on the Court of Appeal's decision in *Yogambikai Nagarajah v Indian Overseas Bank* [1997] 1 SLR 258. In that case, commenting on arguments that the trial judge there had erred in finding that a signature was not forged, the Court of Appeal agreed with the English authorities cited "which impose a burden of proof more onerous than the ordinary civil standard where what is alleged is as serious and grave as fraud or forgery."

248 More recently however, in dealing with the question of proof of homicide in an insurance claim, the Court of Appeal said:

"Having come to this conclusion, it is unnecessary to go further and consider whether, on a balance of probabilities, Mr Lim intentionally caused the death of the deceased". (*Yap Chwee Khim v American Home Assurance Co & 4 Ors - judgment delivered on 9 April 2001*).

There are not many things more serious and grave than homicide. It would seem therefore that in proving matters which could amount to criminal conduct, the standard of proof is still the ordinary civil standard.

249 It is true that Cartone and Spinelli did not have personal knowledge of each and every detail of the matters relating to Pigozzo's alleged fraudulent conduct. To call each and every person to flesh out every tiny piece of the complex jigsaw puzzle would entail such expense and delay as would probably be unreasonable in the circumstances of this case. The statements made to Spinelli would therefore be admissible under Section 32 (b) of the Evidence Act. More importantly, Spinelli was not really asserting the truth of the things that he heard but was merely setting out the background inquiries which then led him to do the investigations that he did. The conclusion that he arrived at was essentially formed from studying the documents and from his personal knowledge of the workings of the Defendant. The documents and the "confession" made by Pigozzo would be admissible under Section 32 (b) and (c) of the Evidence Act as well as they were documents made in the ordinary course of business and the "confession" was made against Pigozzo's own interest and it was highly unlikely that he would come to Singapore to testify for the Defendant. Even if Pigozzo's "confession" was not proved in that no evidence was adduced from

his interviewers, the exclusion of such confession would not materially alter the conclusions of the investigators. Cartone's evidence was an overview of what the Defendant thought and did after hearing the report of Spinelli.

250 Many of the facts alleged by the Defendant could be supported by or inferred from the signed documents and by those kept in the ordinary course of business. As I have stated, all these would be admissible under Section 32 (b) of the Evidence Act and there is no need to resort to Section 35 of the Evidence Act (which deals with evidence of computer output).

251 Where the SBLC fraud was concerned, I was satisfied that Pigozzo issued the SBLCs without any proper request or application by Ghosh or Cenacle. The Defendant could not find any such document and the Plaintiff did not allude to any. On a balance of probabilities, Pigozzo and Ghosh did commit fraud against the Defendant. Whether there were others (other than the Plaintiff's officers) involved need not concern us here.

252 In my opinion, the chequeing fraud was also committed by Pigozzo and Ghosh. It was apparent from the Defendant's records that Pigozzo had credited Ghosh's and Cenacle's accounts when the cheques were not cleared or paid. He had also sent SWIFT messages to the Plaintiff to cancel the cheques and to return them to Ghosh.

253 Insofar as Ghosh and Pigozzo were concerned, it was clear that the SBLC fraud and the chequeing fraud were part and parcel of their devious scheme to cheat the Plaintiff and the Defendant. Once the money started rolling from the Plaintiff's end with the loans covered by the SBLCs, the train of fraudulent cheque transactions was set in motion.

254 The next question to consider is, what is the effect of authenticated SWIFT messages. *Standard Bank v Bank of Tokyo* [1995] 2 LIR 169 was a case involving three letters of credit with a total face value of US\$19.8 million. That case concerned tested telexes and the Plaintiff's expert here (Colleran) also testified in that case. Waller J, after setting out Colleran's testimony which was not seriously challenged there, said (at page 173 LHC):

"What was unchallenged was that the banking system relies with complete confidence on tested telexes; the tested telex system is meant to avoid arguments in relation to authority."

The Judge went on to note that it was not seriously in dispute that the tested telexes which came from Bank of Tokyo only came because some fraudsters managed either to send the messages themselves or trick some employees of the Bank of Tokyo into sending them.

255 The SWIFT system is a more advanced means of communication than tested telexes. Clearly the system was meant to be an improvement over tested telexes in terms of speed and security. SWIFT is bank-to-bank communication and the identity of the individual sender is not an integral part of the message. Two passwords held by different individuals are required for every SWIFT message. These external security measures coupled with the internal technical inviolability of the system ensure that only authentic and authorized communication enters the system and that such communication can be accessed or copied by only authorized persons at the destination. The authentication thus assures the users of the system that what one sees in the system has been introduced into it lawfully.

256 If SWIFT messages have to be further "authenticated" by telephone enquiries, fax or even "snail mail", one wonders what all the security arrangements are about and what advantage in terms of speed the system offers over other means of communication. Further, if no name appears on the SWIFT message, how would the recipient verify authority? Getting confirmation by the more traditional means of communication is also perhaps more fraught with opportunities for fraud. For instance, making a telephone call to seek confirmation would only be useful if the caller knows the person at the other end or recognizes his voice at least.

257 It is my view therefore that SWIFT messages have the legal effect of binding the sender bank according to the contents. The fact that a recipient bank may still wish to protect itself by doing checks on credit standing or other aspects does not detract from this proposition. SWIFT communication is still subject to the general law of contract. For example, if the sender's

message has not been acted upon, there is no acceptance and no contract.

258 What I have said above applies only to the situation where the SWIFT message emanates from the sender as is the case here. If it can be shown that a message was introduced into the system by a third party (e.g. a hacker) without the fault or collusion of the sender's employees or agents, then obviously the message cannot be enforced against the sender. Similarly, if the recipient has knowledge or notice of a fraud at the sender's end before it acts on a SWIFT message, the message cannot be enforced against the sender.

259 It is unrealistic to demand that recipient banks conduct a study of sender banks' organization structure by checking on the relevant branch through the Bankers' Almanac or otherwise each time a legal document like a SBLC arrives. This is even more so in the present commercial age of mergers, acquisitions and constant reorganization.

260 Even if SWIFT messages do not have legal consequences unless the sender's authority has been verified, it was plain that the Plaintiff did enquire about the authority of the Udine Branch. There was no dispute that the Plaintiff's three enquiries were sent to the correct SWIFT address of the Defendant. It was certainly no fault of the Plaintiff that the Defendant's system automatically or even manually re-routed the enquiries to the Udine Branch which replied by SWIFT. It was natural and logical that the Plaintiff would include the code numbers pertaining to the SBLCs as a reference point of their enquiries. In the circumstances, it was perfectly reasonable for the Plaintiff to assume that the Defendant's Head Office had somehow directed or delegated the task of replying to the subject branch itself.

261 The Defendant suggested through Spinelli that there was a distinction between the Defendant's Head Office in Milan and its SWIFT Centre at the outskirts of the city. The SWIFT system is concerned with SWIFT addresses, not physical locations. For example, the Plaintiff could not plead that its SWIFT Centre was actually in UOB and that SWIFT messages addressed to its Main Branch actually arrive at a place located some distance from it. These are internal organizational matters of no consequence to its correspondents in the SWIFT system.

262 I now come to the question whether Quinton Chew and/or Samuel Lee were involved in the fraudulent acts of Ghosh and Pigozzo.

263 Ghosh was a customer of the Plaintiff since 1996. He had good credentials from the Defendant and from a well-established law firm in Singapore. He was apparently connected to royalty. He also had tangible proof of his considerable wealth in his deposits, his shares and his residential and commercial properties overseas. He was also able to procure from a reputable foreign bank SBLCs with face values running into millions of US dollars. He was obviously a high worth individual. Any banker who knew him would most assuredly view him as a valued customer. Joseph Wong certainly did. It was no surprise that Quinton Chew and Samuel Lee did also.

264 Quinton Chew took over as Branch Manager from Joseph Wong about one month after the Ghosh SBLC was issued. It was Joseph Wong who had suggested to Ghosh that SBLCs be used as security. Quinton Chew's role was to co-sign the letter of offer after the loan had been approved. He could not have been involved in any fraud in respect of the Ghosh SBLC.

265 Where the Global SBLC was concerned, the application for the facilities was already underway when Quinton Chew appeared on the scene. There was no suggestion that Quinton Chew arranged for himself to be transferred as Branch Manager there. He even went on leave shortly after assuming his new post.

266 It was unremarkable that a banker should be seen in the office of a seemingly important and high worth client on several occasions, whether for business or for social purpose. Samuel Lee's remarks about Quinton Chew having the door access cards to the office of Global and the company stamp were apparently made only to the Plaintiff's internal auditors and not in the presence of Quinton Chew. Samuel Lee has acknowledged that he could be wrong about all this. I accepted Quinton Chew's evidence that he was not given the access cards nor the company stamp.

267 Quinton Chew's veracity as a witness was confirmed in the cross-examination about the share certificates that he sent to the

Defendant. He did so because of Ghosh's lawyers' instructions and even then took the effort to make it clear to the Defendant in his letter that the Plaintiff was not assuming any responsibility nor making any representation to any party by doing so.

268 The amendments sought to the SBLCs, some of which increased the Defendant's liability and extended the period of validity of the SBLCs, could be said to be "detrimental" to the Defendant only in the same way that when one party to a bargain seeks better terms from the other, those terms become "detrimental" to the other party. Some of the amendments (on interest rate and the place of expiry) were not even Quinton Chew's ideas. In any event, the Plaintiff was entitled under the letters of offer to demand terms acceptable to itself. The speed at which the amendments were effected by the Defendant would at best show that the Defendant was an efficient outfit and/or that Ghosh was equally influential within the Defendant and that should surprise nobody.

269 Quinton Chew's actions in communicating openly with his superiors and his colleagues about the facilities granted to Ghosh and to Global made it even clearer that he was not a participant in any fraudulent scheme. He took steps to verify the Udine Branch's authority when that was required. There was no suggestion that anyone in the Plaintiff knew at that time that the SWIFT messages to the Defendant's Head Office would be re-routed in the way already discussed. Indeed, the evidence showed convincingly that Quinton Chew was making genuine attempts at independent verification which would and should have revealed any fraud.

270 I accepted Quinton Chew's testimony that he did not recall having seen the letters dated 16 November 1999 which purported to state that Ghosh and Global did not require the additional facilities from the Plaintiff. In any event, the offer of additional facilities was subsequently taken up.

271 I was therefore satisfied that Quinton Chew had no knowledge of any fraudulent scheme and had no part in any alleged criminal conspiracy to cheat the banks.

272 Samuel Lee's conduct was a lot more questionable. It was apparent from his evidence that he had failed to differentiate personal matters from professional ones, despite his assertions about his ability to do so. He accepted money and benefits from Ghosh for his son and himself. He prepared and signed official letters on his own. Unlike Quinton Chew, he apparently saw no need to consult anyone in the Plaintiff about those matters.

273 What was clear, however, was that Samuel Lee had no role where the two SBLCs were concerned other than the obviously insignificant one of getting a copy of the Plaintiff's standard SBLC for Ghosh at his request. His signing of the letter dated 11 October 1999 to inform the Defendant of the change of name to Global was a mere administrative act which had no significance at all in any fraudulent scheme. He performed the secretarial tasks of preparing the letters on the increase of value of the Global SBLC and the extension of the expiry dates of both SBLCs. This appeared to be going beyond the call of his duty but, as already emphasized, this was no ordinary customer. Any young banker in Samuel Lee's position would have gladly obliged, happy in the thought that he could be of service to so important a customer.

274 I accepted Samuel Lee's explanation about the test message from the Defendant on 11 June 1999, shortly before the Ghosh SBLC was issued. There may have been nothing wrong with the SWIFT system but Samuel Lee was told that there was a hitch. There was no reason for him to disbelieve Ghosh or Pigozzo then. In any event, the most that could be made of this episode was that Pigozzo, Ghosh and Samuel Lee were trying out the SWIFT system before sending the first of the two fraudulent SBLCs. This hypothesis must then be tested against the rest of the evidence.

275 The fact that Samuel Lee's name appeared in the subsequent correspondence pertaining to the SBLCs did not advance the Defendant's case any further. The SBLCs were not sent to Samuel Lee alone. If the intention was to keep him informed of all developments in the scheme, surely it would have been much better to communicate by telephone or by fax rather than to call attention to him by including his name in an authenticated SWIFT message.

276 Pigozzo's "confession" and statements in Italy, which the Plaintiff argued were hearsay, not only did not implicate Samuel Lee (and Quinton Chew), they appeared to exonerate him. The Defendant's case against Samuel Lee was essentially a

circumstantial one – that he was a participant in the chequeing fraud and, because of the common persons involved and the proximity in time, Samuel Lee must have known about the fraudulent SBLCs as well. I therefore turn now to the chequeing fraud.

277 What Samuel Lee did in holding the cheques sent from the Defendant for some time and then returning them unpaid to Ghosh was unusual. However, the situation that existed then was equally unusual. He trusted Ghosh and obviously looked up to this wealthy and important man with the financial *savoir-faire*. Ghosh had explained to him why he kept issuing those cheques drawn on Sofia Palace's account with the Plaintiff. All that he knew about Ghosh's relationship with the Defendant came from Ghosh himself. When Ghosh told him to hold on to the cheques and to expect instructions from the Defendant, the instructions would come via SWIFT. Ghosh appeared to be a man of his word. Further, the Defendant did not "chase" for payment or ask about the status of the cheques. Whether or not the cheques had already been credited by the Defendant therefore became immaterial. The same could be said about the other documents he signed at the behest of Ghosh and sent to the Defendant.

278 At that point in Samuel Lee's life, he was a vulnerable man. He had been through a divorce, had to take care of a young son and make financial re-adjustments. Ghosh would have appeared to Samuel Lee then as a financial saviour of sorts. He was wealthy. He was generous. He seemed to like Samuel Lee and his son. He needed small favours like typing letters. By early October 1999, this wealthy man was talking about acquiring a bank and offering the top job to Samuel Lee. Suddenly, Samuel Lee saw a bright future for himself and his son, if not as CEO of a bank, then at least from the business that would be generated by Ghosh. That was probably why he lost his sense of judgment and started to do all of Ghosh's biddings without too much thought, even to the extent of travelling to London at short notice. Of course, a man in that position could also be enticed into illegal activity. After observing, questioning and listening to Samuel Lee, I was satisfied that he was too trusting, nave, perhaps even stupid and that he had forgotten his duties to his employer but I was not able to come to the conclusion that this man was a crook. If he was one, he would have destroyed all the documents as advised by Ghosh on 24 January 2000.

279 In any event, the unauthorized letters that he sent to the Defendant were all received by Pigozzo. There was no evidence that the Defendant's losses were caused in anyway by its reliance upon any of those letters.

280 The evidence also showed that the chequeing fraud was not confined to the Plaintiff's cheques. Cheques had been drawn on other banks and although the unpaid cheques in those cases were returned to the Defendant, the fraud went undetected. Ghosh could have issued fresh cheques to cover up the fraud even if Samuel Lee had returned the cheques to the Defendant. After all, the returned cheques would have been sent to Pigozzo.

281 Quinton Chew and Samuel Lee were the only officers in the Plaintiff accused by the Defendant of being involved in the fraud. Having found that neither of them was implicated in any way in the SBLC fraud or in the chequeing fraud, I do not find it necessary to address the Plaintiff's arguments that even if either or both were involved or had knowledge of the fraud, the Plaintiff would nevertheless not be precluded from enforcing the SBLCs. It is also unnecessary for me to address the Defendant's arguments that it would be unconscionable for the Plaintiff to call on the SBLCs, save to say that such arguments must be premised on the participation of Quinton Chew and/or Samuel Lee in the fraud and, as I have indicated, the fraudulent parties were Pigozzo and Ghosh, whether in collusion with others or not, but certainly not with Quinton Chew or Samuel Lee.

282 I therefore found that the Plaintiff had proved its case against the Defendant and ordered that judgment be entered for the Plaintiff as claimed. The Defendant asked that interest be ordered to run only from 12 February 2000 (the date of demand) to 20 March 2000 (the date of the Italian Decree of Preventive Seizure) as the Defendant could not have made payment upon the making of that decree. As it was not the Defendant's position that it would have paid but for that decree, I saw no reason to grant this application.

Tay Yong Kwang

Judicial Commissioner

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