Grains and Industrial Products Trading Pte Ltd *v* Bank of India and another [2014] SGHC 274

Case Number : Suit No 802 of 2012

Decision Date : 30 December 2014

Tribunal/Court : High Court

Coram : Lee Kim Shin JC

Counsel Name(s) : Winston Kwek, Winston Wong and Max Lim (Rajah & Tann Singapore LLP) for the plaintiff; Sarjit Singh Gill, Probin Dass and Ng Wenling (Shook Lin & Bok LLP) for the first defendant; Tan Teng Muan and Loh Li Qin (Mallal & Namazie) for the second defendant.

Parties : Grains and Industrial Products Trading Pte Ltd — Bank of India and another

Bills of Exchange and Other Negotiable Instruments – letter of credit transaction

30 December 2014

Lee Kim Shin JC:

Introduction

1 The plaintiff, Grains and Industrial Products Trading Pte Ltd, is a company within the Bunge group of companies and it is responsible for the Bunge group's trade and structured finance functions in Singapore. Suit No 802 of 2012 ("S 802") was a claim by the plaintiff for sums allegedly owing to it under a letter of credit issued by the second defendant, Indian Bank ("the Indian Bank LC"), and under which the first defendant, Bank of India, was named as "Nominated Bank".

2 The Indian Bank LC was issued by the second defendant on 24 February 2012. The initial credit amount was US$6,500,000.91. This was amended twice, to US$8,299,995.51 on 27 February 2012, and to the final amount of US$9,993,239.54 on 29 February 2012. The Indian Bank LC had an expiry date of 25 March 2012. The Indian Bank LC was stated to be available by acceptance with the first defendant. The Indian Bank LC was governed by the *Uniform Customs and Practice for Documentary Credits (2007 Revision)* (International Chamber of Commerce Publication No 600) ("UCP 600"), this being a set of rules expressly incorporated into the Indian Bank LC.

3 On 15 March 2012, the plaintiff sent the documents required under the Indian Bank LC ("the LC Documents") for presentation to the first defendant through Standard Chartered Bank. Standard Chartered Bank was the plaintiff's Collecting Bank. The first defendant received the LC Documents the next day, 16 March 2012, that is, prior to the expiry date of the Indian Bank LC. The first defendant then transmitted the LC Documents to the second defendant on 18 April 2012, after the expiry date of the Indian Bank LC. On 19 April 2012, the second defendant notified the first defendant that it was rejecting the LC Documents and would not honour the Indian Bank LC on the grounds of late negotiation and expiry of the Indian Bank LC.

4 On 25 September 2012, the plaintiff instituted S 802 against the first and second defendants.

5 The plaintiff's claim against the first defendant was based upon the first defendant being the "Confirming Bank" and/or the "Negotiating Bank" under the Indian Bank LC, in addition to being the

"Nominated Bank". Pertinently, the plaintiff alleged that the first defendant had orally agreed to confirm and/or honour and/or negotiate the Indian Bank LC during a telephone conversation between the plaintiff's Mr Bhasi and the first defendant's Mr Prabhu on 24 February 2012 ("the 24 February 2012 Telephone Conversation").

6 Alternatively, the plaintiff claimed that the first defendant was the Confirming Bank because the second defendant had asked the first defendant to confirm the Indian Bank LC and the first defendant had not informed the second defendant that it was not prepared to do so.

7 To the extent that the first defendant was alleged to be the Confirming Bank, the plaintiff claimed the full amount of US$9,993,239.54 against the first defendant. To the extent that the first defendant was alleged to be the Negotiating Bank, the plaintiff claimed the discounted amount of US$9,890,408.63 against the first defendant. This was on the basis that the first defendant had allegedly agreed to discount the Indian Bank LC as part of negotiating it.

8 The plaintiff's claim against the second defendant was based on the second defendant's liability as the Issuing Bank under the Indian Bank LC. The plaintiff asserted that because a complying presentation of the LC Documents had been made to the Nominated Bank (that is, the first defendant) within the validity period of the Indian Bank LC, the second defendant was obliged to honour the Indian Bank LC and pay the plaintiff the full amount of US$9,993,239.54.

9 The first and second defendants also filed a claim and a counterclaim against one another respectively. The first defendant claimed an indemnity or contribution from the second defendant in the event that it was found to be liable to the plaintiff as the Confirming Bank or the Negotiating Bank under the Indian Bank LC. The second defendant, on the other hand, counterclaimed for an indemnity or contribution from the first defendant in the event that it was found to be liable to the plaintiff as the Issuing Bank, for various alleged breaches of the first defendant's obligations under the Indian Bank LC.

My Decision

10 On 21 July 2014, I delivered a brief oral judgment where I:

(a) dismissed the plaintiff's claim against the first defendant;

(b) allowed the plaintiff's claim against the second defendant with interest to run from the date of the judgment;

(c) dismissed the second defendant's counterclaim against the first defendant; and

(d) made no order on the first defendant's claim against the second defendant.

11 On 22 August 2014, I delivered my decision on the remaining issues of pre-judgment interest and costs. I was not satisfied that the plaintiff had made out a case for pre-judgment interest to be awarded and therefore made no order on this. As for costs, my orders were as follows:

(a) the plaintiff shall pay the first defendant's costs in defending the plaintiff's claim against the first defendant from the date of the writ to the date of the judgment, to be taxed if not agreed.

(b) the second defendant shall pay the first defendant's costs in defending the second

defendant's counterclaim against the first defendant from the date of the counterclaim to the date of the judgment, to be taxed if not agreed; and

(c) the second defendant shall pay the plaintiff's costs in prosecuting its claim against the second defendant from the date of the writ to the date of the judgment, to be taxed if not agreed.

12 I was not minded to make a *Bullock* or a *Sanderson* order, such as to require the second defendant to pay or contribute towards the plaintiff's costs in prosecuting its claim against the first defendant.

13 The plaintiff has since filed an appeal against my decision to dismiss its claim against the first defendant and my orders on pre-judgment interest and costs. The second defendant has filed a cross-appeal against the whole of my decision. I therefore set out the grounds of my decision in full.

The Plaintiff's Claim against the First Defendant

14 The plaintiff's claim against the first defendant depended on whether the first defendant was the Confirming Bank and/or the Negotiating Bank under the Indian Bank LC. This was critical because if the first defendant had not assumed either of these roles, the first defendant would not have incurred any liability towards the plaintiff to honour or negotiate the Indian Bank LC. This flows from the plain language of Art 12 of UCP 600, which provides as follows:

Nomination

a. *Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary*.

b. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

c. Receipt or examination and forwarding documents by a nominated bank that is not a confirming bank does not make that nominated bank liable to honour or negotiate, nor does it constitute honour or negotiation.

[emphasis added]

15 It is also instructive to refer to the definition of "Confirming Bank" set out in Art 2 of UCP 600:

Confirming bank means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.

16 "Confirmation" is in turn defined in Art 2 of UCP 600 to mean:

Confirmation *means a definite undertaking of the confirming bank*, in addition to that of the issuing bank, *to honour or negotiate a complying presentation*.

[emphasis added]

The Alleged Oral Agreement

17 In this respect, the plaintiff's principal case at trial hinged on whether the first defendant had orally agreed to confirm, honour or negotiate the Indian Bank LC, within the meaning of Art 2 of UCP 600, during the 24 February 2012 Telephone Conversation between the plaintiff's Mr Bhasi and the first defendant's Mr Prabhu.

The subject matter of the 24 February 2012 Telephone Conversation

18 The obvious difficulty with this part of the plaintiff's case was that the 24 February 2012 Telephone Conversation related to a different letter of credit, issued by Bank of Baroda ("the Bank of Baroda LC") instead of Indian Bank. Therefore, even if an oral agreement to confirm, honour or negotiate had been reached on 24 February 2012, the agreement would have been in relation to the Bank of Baroda LC and not the Indian Bank LC.

19 When this was put to Mr Bhasi in cross-examination, he agreed that the 24 February 2012 Telephone Conversation concerned the Bank of Baroda LC. However, he suggested for the first time in the proceedings that there was a second telephone conversation between himself and Mr Prabhu sometime between 24 February and 1 March 2012 ("the Second Alleged Telephone Conversation"). According to Mr Bhasi, the first defendant had agreed to confirm, honour or negotiate the Indian Bank LC during the Second Alleged Telephone Conversation. When the plaintiff's other witnesses, Mr Chew and Ms Yeo later took the stand, they too, incredibly, sang from the same hymn sheet.

20 I did not believe their evidence. To begin with, the Second Alleged Telephone Conversation was never pleaded by the plaintiff. None of the affidavits of evidence-in-chief ("AEICs") of Mr Bhasi, Ms Yeo and Mr Chew make any mention of the Second Alleged Telephone Conversation even though this was clearly an important fact given the plaintiff's case. In my view, Mr Bhasi had fabricated his evidence relating to the Second Alleged Telephone Conversation on the stand upon his realisation then that there was a missing link between the alleged oral agreement concluded during the 24 February 2012 Telephone Conversation and the Indian Bank LC. Unfortunately, the plaintiff's other witnesses elected to latch upon Mr Bhasi's concoction when they gave their evidence.

21 In any event, their evidence on the Second Alleged Telephone Conversation was far from unequivocal. Mr Bhasi himself testified that there *may* have been a second telephone conversation but he could not be sure. Nor could he recall what was discussed during the Second Alleged Telephone Conversation. Ms Yeo, on the other hand, barely asserted that Mr Bhasi must have spoken to Mr Prabhu. However, she was not in a position to testify as to the contents of the Second Alleged Telephone Conversation because she did not participate in it. Likewise, Mr Chew's evidence added a further layer of hearsay to the issue of the Second Alleged Telephone Conversation. Mr Chew's evidence was that Ms Yeo had told him about a discussion which she had with Mr Bhasi about a conversation which Mr Bhasi had with Mr Prabhu. However, Mr Chew later shifted his position and claimed that Ms Yeo had not told him about the Second Alleged Telephone Conversation. Instead, he had inferred that such a conversation must have occurred based on Ms Yeo's email to Mr Prabhu dated 1 March 2012 where she made a "revised offer" in relation to the Indian Bank LC.

Relevance of evidence of subsequent conduct

22 In closing submissions, counsel for the plaintiff, Mr Winston Kwek ("Mr Kwek"), did not really contend that the Second Alleged Telephone Conversation had taken place. Instead, Mr Kwek submitted that there could be no doubt that the Indian Bank LC was in fact the subject matter of the oral agreement reached during the 24 February 2012 Telephone Conversation based on the *subsequent conduct* of the plaintiff and the first defendant. I did not agree with this submission.

23 In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*"), the Court of Appeal made the following observations at [132(d)] on the relevance of the contracting parties' subsequent conduct on the issue of contractual interpretation:

> The extrinsic evidence in question is admissible so long as it is relevant, reasonably available to all the contracting parties and relates to a clear or obvious context … However, the principle of objectively ascertaining contractual intention(s) remains paramount. *Thus, the extrinsic evidence must always go towards proof of what the parties, from an objective viewpoint, ultimately agreed upon*. Further, where extrinsic evidence in the form of prior negotiations and subsequent conduct is concerned … there should be no absolute or rigid prohibition against evidence of previous negotiations or subsequent conduct, although, in the normal case, such evidence is likely to be inadmissible for non-compliance with the [requirement that extrinsic evidence must go towards proving what the parties had objectively agreed upon]. (We should add that the relevance of subsequent conduct remains a controversial and evolving topic that will require more extensive scrutiny by this court at a more appropriate juncture.) …
>
> [emphasis added]

24 While *Zurich Insurance* was concerned with the issue of contractual *interpretation*, I am of the view that the principles enunciated there on the relevance of evidence of subsequent conduct can be properly applied to the issue of contract *formation*, which, like contractual interpretation, turns on the intentions of the contracting parties objectively ascertained. This was also the view of the Singapore High Court in *Bridgeman Pte Ltd v Dukim International Pte Ltd* [2013] SGHC 220. Having noted that the cases authorities were not clear on the issue, Lai Siu Chu J observed at [14]–[16] that:

> 14 Although *Zurich Insurance* concerned the interpretation of a contract, I am of the view that the principles enunciated there can equally apply to the present case. Like the interpretation of contractual terms, the ascertainment of the terms of a contract involves an inquiry as to what the parties had objectively and ostensibly agreed upon. As contractual terms are to be determined at the time the contract was entered into, evidence of subsequent conduct would usually be irrelevant to this exercise, and therefore, *inadmissible as direct evidence of contractual terms*.
>
> 15 However, as neither party made submissions on this issue, I am prepared to assume that evidence of subsequent conduct is admissible as direct proof of contractual terms. This however, is subject to the caveat that the subsequent conduct relied upon must be unequivocal evidence of the existence of the alleged contractual term.
>
> 16 For completeness, I would add that evidence of subsequent conduct would also be relevant [in] assessing the credibility of a witness. This is a pertinent point in cases like the present where the contract was not in writing and where the parties' versions of the terms of the contract are diametrically opposite.
>
> [emphasis in original omitted; emphasis added in italics]

25 I agree with these observations. Where an oral agreement is alleged and sought to be proven by oral evidence given at trial, it would be unrealistic to assert that evidence of subsequent conduct should be inadmissible to determine the veracity of that oral evidence. Therefore, at some level at least, the existence of an oral agreement can be inferred from the conduct of the parties, both before

and after the time the oral contract was allegedly concluded.

26 In this regard, reference may also be made to the following observations of the Court of Appeal in *OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206 ("*OCBC Capital Investment Asia Ltd*") at [37], where the court explained the relevant issue which the court must grapple with in determining whether an oral contract existed:

> The decision of this court in relation to this particular issue turns on the answer to one straightforward question: Do the *objective facts* demonstrate that the parties had entered into a binding oral contract at the 23 June 2009 meeting, or do they support, instead, the opposite conclusion ...
>
> [emphasis in original omitted; emphasis added in italics]

27 What is clearer, however, is that the court must be concerned with what the parties had objectively intended *at the time* the oral contract is alleged to have been formed. In this regard, evidence of subsequent conduct cannot be used to add to, vary or contradict the terms of the oral contract once the contract is formed. In applying the foregoing principles to the present case, I find that the plaintiff could not prove that the Indian Bank LC was in fact the subject matter of the 24 February 2012 Telephone Conversation based on the subsequent conduct of the parties.

The materiality of the identity of the Issuing Bank under the alleged oral agreement

28 Mr Kwek submitted that the identity of the Issuing Bank was immaterial under the oral agreement concluded during the 24 February 2012 Telephone Conversation. This was because the second defendant, like Bank of Baroda, was an Indian nationalised bank. In my view, there was no merit in this submission. In this regard, it was not disputed that the 24 February 2012 Telephone Conversation related to the Bank of Baroda LC only. The plaintiff adduced no evidence to show that the first defendant had agreed, during the 24 February 2012 Telephone Conversation, to confirm, honour or negotiate *any* letter of credit so long as it was issued by an Indian nationalised bank. I should also add that under cross-examination, Mr Bhasi agreed that it would be open to the first defendant to refuse to deal with the second defendant under the Indian Bank LC.

29 In so far as the plaintiff's claim against the first defendant was premised upon the first defendant having orally agreed to confirm, honour or negotiate the Indian Bank LC, the only oral agreement alleged was the one concluded during the 24 February 2012 Telephone Conversation. It was not alleged that the first defendant had agreed to confirm, honour or negotiate the Indian Bank LC at some point after this. In my judgment, and for the reasons which I have already given, the fact that the 24 February 2012 Telephone Conversation related to a different letter of credit was fatal to the plaintiff's case on this claim.

Whether an oral agreement was concluded during the 24 February 2012 Telephone Conversation

30 Even if I were wrong on this point, in that the subject matter of the alleged oral agreement concluded during the 24 February 2012 Telephone Conversation was indeed the Indian Bank LC, the plaintiff's claim against the first defendant remained untenable. This was because the plaintiff did not discharge its burden of proving the oral agreement it had alleged.

31 A critical piece of evidence in this regard, by reason of its contemporaneity, is an email sent by Ms Yeo to Mr Prabhu on 24 February 2012, shortly after the 24 February 2012 Telephone Conversation. The relevant portions of Ms Yeo's email read as follows:

> Further to your discussion with our [Mr Bhasi], *this email offer* is to confirm in writing the pricing and other terms and conditions pertaining to the confirmation and discounting of the following Instrument (as defined below) on a without recourse basis.
>
> *Please provide your confirmation and agreement to the offer and procedures* within the next 2 business days by confirming your acceptance over return email to the above addresses.
>
> [emphasis added]

32 In cross-examination, Ms Yeo claimed that she had sent this email to Mr Prabhu to "record" the terms of the oral agreement which was concluded during the 24 February 2012 Telephone Conversation. She insisted that her email was a mere formality based on a standard template employed by the plaintiff and it did not beg or require any acceptance from the first defendant.

33 Ms Yeo's evidence was tenuous based on the plain meaning of the words she had used in her email. In my view, Ms Yeo's email was what it said it was – an *offer* to the first defendant to take up confirming and discounting the Indian Bank LC on the terms proposed by the plaintiff. It was clear to me that the email did not merely record the terms of an oral agreement concluded during the 24 February 2012 Telephone Conversation as alleged by Ms Yeo.

34 In closing submissions, Mr Kwek urged me not to place excessive weight on the legal meaning of the words Ms Yeo had used in her email. Mr Kwek cited the decision of *OCBC Capital Investment Asia Ltd*, where the Court of Appeal observed at [41] that:

> ... where the witnesses themselves are not legally trained, counsel ought not – as the Respondent's counsel sought to do in oral submissions before this court – to forensically parse the words they use as if they were words in a statute. ...

35 I did not think that the Court of Appeal's *dicta* assisted Mr Kwek's argument. To begin with, it should be noted that the Court of Appeal went on to observe in the same paragraph of its judgment that:

> ... There is, however, no magic formula in determining the appropriate weight that should be given to witness testimony. Much would depend on the precise factual matrix before the court. *However, it bears reiterating that the court would always look first to the most reliable and objective evidence as to whether or not a binding contract was entered into between the parties and such evidence would tend to be documentary in nature*.
>
> [emphasis in original omitted; emphasis added in italics]

36 Furthermore, Ms Yeo did not testify that she did not understand the legal meaning of the words "offer" and "acceptance". In any event, if she had given evidence to that effect, I would not have believed it. Ms Yeo was a regional director in the Trade & Finance Department of the Financial Services Group of Bunge Agribusiness Singapore Pte Ltd ("Bunge Singapore"). She had worked for Bunge Singapore for ten years. She worked at Standard Chartered Bank previously. She graduated from the National University of Singapore with a degree in business administration, in which she admitted to having studied a law module. In my judgment, Ms Yeo knew the legal meaning of the words "offer" and "acceptance". Her use of the words "email offer" was inconsistent with her testimony that an oral agreement had been concluded during the 24 February 2012 Telephone Conversation.

37 Moreover, the plaintiff's contention that an oral agreement to confirm, honour or negotiate the Indian Bank LC was concluded on 24 February 2012 was belied by the correspondence flowing between the plaintiff and the first defendant after that date.

38 On 27 February 2012, the first defendant sent a letter to the plaintiff to advise the plaintiff of the Indian Bank LC. Pertinently, the first defendant added the following caveat:

> Please note that this letter does not constitute a confirmation of the credit on our part. …
>
> ...
>
> We shall be glad to consider negotiating documents / drafts drawn in compliance with the terms and conditions of the letter of credit. We have pleasure in stating that we are prepared, at our option, to negotiate / discount bills drawn in compliance with the terms of the credit, but this advice carries no undertaking on the part of this branch. …

39 On 28 February 2012, the first defendant sent a letter to the plaintiff to advise the plaintiff of an amendment to the amount of the Indian Bank LC. Again, the first defendant reiterated as follows:

> Please note that this letter does not constitute a confirmation of the credit on our part. …

40 On 1 March 2012, Ms Yeo sent an email titled "Revised Offer: change in Issuing Bank" to Mr Prabhu to note the change in the issuing bank from Bank of Baroda to the second defendant. In her email, Ms Yeo attached her email to Mr Prabhu of 24 February 2014 (see [31] above) and stated that:

> All other terms and conditions stipulated *in our offer* below remained unchanged. *Please accept* via return email.
>
> [emphasis added]

41 Given the first defendant's letters to the plaintiff on 27 and 28 February 2012, I am of the view that if Ms Yeo had genuinely believed that an oral agreement to confirm, honour or negotiate the Indian Bank LC had been concluded between the plaintiff and the first defendant on 24 February 2012, she would not have couched her email of 1 March 2012 in that manner. Instead, she would have objected to the first defendant's letters on the basis that the first defendant had already agreed to conform, honour or negotiate the Indian Bank LC.

42 On 2 March 2012, the first defendant sent a letter to the plaintiff to advise it of a further amendment to the amount of the Indian Bank LC. Again, the first defendant's letter stated that "this letter does not constitute a confirmation of the credit on our part". Again, Ms Yeo did not object.

43 Mr Prabhu did not reply to Ms Yeo's "revised email offer" sent on 1 March 2012. On 10 April 2012, which was more than a month later, and after the Indian Bank LC had expired, Ms Yeo sent a follow-up email to Mr Prabhu, referring to her 1 March 2012 email, and stated:

> Hi Mr Prabhu
>
> Can you please accept ?

Under cross-examination, Ms Yeo testified that she was not asking Mr Prabhu to accept the terms of

her email offer or her subsequent revised offer. She said that this was not necessary because Mr Bhasi had already reached an oral agreement with Mr Prabhu on 24 February 2012. Instead, she merely wanted a "file copy" for her reference. I did not believe this part of her evidence.

The State Bank of India LCs

44 In closing submissions, Mr Kwek also referred to a previous letter of credit transaction between the plaintiff and the first defendant regarding two letters of credit issued by the State Bank of India ("the SBI LCs"). Mr Kwek submitted that the evidence showed that the same *modus operandi* had been used in respect of the SBI LCs and the Indian Bank LC. In particular, Mr Kwek said that Mr Prabhu had orally agreed to confirm, negotiate or discount the SBI LCs in a telephone conversation with Mr Bhasi on 18 January 2012, and on the same day, Ms Yeo had emailed Mr Prabhu to record the terms of the parties' agreement. The material parts of Ms Yeo's email dated 18 January 2012 read as follows:

> Further to your discussion with our Mr Shrikant, this email offer is to confirm in writing the pricing and other terms and conditions pertaining to the confirmation and discounting of the following instrument (as defined below) on a without recourse basis.
>
> Please provide your confirmation and agreement to the offer and procedures within the next 2 business days by confirming your acceptance over return email to the above addressees.

45 In my judgment, Mr Kwek's submission was misconceived because it totally ignored the fact that Mr Prabhu had, on 20 January 2012, replied in writing to Ms Yeo's email to *confirm* that the first defendant was prepared to negotiate or discount the SBI LCs. The material parts of Mr Prabhu's email in reply read as follows:

> We confirm negotiation/discounting of the L/Cs at L+275 bps. …
>
> *For adding confirmation we shall not be able to do the same presently. Once current account is opened by your company with us and the transactions are routed through us we may later on take up the same*. …
>
> [emphasis added]

46 Therefore, the factual circumstances surrounding the SBI LCs were fundamentally different from those surrounding the Indian Bank LC. Mr Prabhu did not reply in writing to Ms Yeo to confirm negotiation or discounting the Indian Bank LC. Far from corroborating the plaintiff's allegation that an oral agreement had been reached during the 24 February 2012 Telephone Conversation, the facts relating to the SBI LCs actually contradicted it.

The current account requirement

47 In his AEIC, Mr Prabhu deposed that he would not have agreed to confirm, honour or negotiate the Indian Bank LC during the 24 February 2014 Telephone Conversation and did not, in fact, do so. This was because the first defendant did not wish to entertain further letter of credit transactions until the plaintiff had opened a current account with the first defendant and thereby become a customer of the first defendant. This requirement flowed from cl 7.1 of the first defendant's internal Manual of Instructions which provides as follows:

> When Documentary Export collection bills are received by us, it should first be confirmed that the

> drawer is a customer of our bank, and that the covering schedule…is signed by an authorised representative of the company. This aspect should be importantly ensured, since the schedule contains various rights and privileges conferred on us in consideration of our receiving the drafts and documents for handling as per the customer's instructions, and hence the mandate given to the Bank can be valid only if it is given by an official of the Company authorised for that purpose.

Mr Prabhu also deposed that he had informed Mr Bhasi of this requirement.

48 Mr Prabhu's evidence on this point was credible and supported by the objective evidence in the present case. The requirement of having to open a current account was first communicated by Mr Prabhu to Ms Yeo in his email dated 20 January 2012 in relation to the SBI LCs (see [45] above). Ms Yeo replied on the same day to acknowledge this in the following terms:

> *Since we have not opened the account with your bank and it is a requirement*, we will proceed with this deal without confirmation first. Kindly send us the account opening forms so that my colleagues can proceed to start the opening of accounts.
>
> [emphasis added]

49 On 22 March 2012, Mr Prabhu sent a further email to the plaintiff's Mr Bangera in relation to the Indian Bank LC to say:

> Today I tried to call you, I think you were not available. Regarding the opening of CD account, we had a discussion and it may not be possible if the account opening form is modified for us to open the account.
>
> Regarding the L/C discounting, we may take up the same once the CD account is opened. Kindly ensure that the CD account is opened at the earliest so that we may take this issue forward.

50 On 16 April 2012, Mr Chew sent an email to Mr Prabhu stating that:

> As discussed with Mr Alam, we will like BOI Spore to discount the LC immediately and keep our discounted proceed with BOI spore until we have gotten our account opened with BOI spore. Thereafter we have gotten the account open with BOI Spore, we will instruct BOI to remit the discounted proceed to our Cash Management Bank (either Standard Chartered Spore or JPM)

51 The evidence also showed that between 24 February 2012 and 16 April 2012, the plaintiff had attempted to open a current account with the first defendant but was unsuccessful in doing so because of the plaintiff's attempts to amend the first defendant's standard account opening forms and conditions. Instead, the plaintiff only opened a current account with the first defendant on 20 April 2012.

52 The plaintiff's witnesses were evasive when they were cross-examined on this issue. Ms Yeo denied that the opening of a current account with the first defendant was a requirement to be fulfilled before the first defendant would agree to undertake transactions relating to the Indian Bank LC. She initially claimed that she was merely following Mr Prabhu's email dated 20 January 2012 (see [45] above) when she used the word "requirement" in her reply (see [48] above). Ms Yeo's evidence was patently untrue because Mr Prabhu had not used the word "requirement" in his email.

53 Thereafter, Ms Yeo insisted that the requirement of opening a current account with the first defendant was not linked to letter of credit transactions but to other banking business between the

plaintiff and the first defendant instead:

Q: So the word "requirement" came from you, right?

A: Yes, sorry.

Q: And obviously told to you by [Mr Bhasi] that it was a requirement that you open a current account before the bank will confirm, correct?

A: Not confirm, but for business relationship, for banking relationship for future --

Q: For future business, correct?

A: Yes.

Q: Does the Bank of Baroda L/C, which you say was converted to an Indian Bank L/C, fall within the future business that you are talking about?

A: No, as far as I understand from [Mr Bhasi], it's -- other business means, you know, maybe deposit or whatever, not on confirmation, not on L/Cs.

54 I did not believe Ms Yeo's explanation. It was clear from the contemporaneous documentary evidence that the requirement of opening a current account with the first defendant was linked to future letter of credit transactions.

55 As for Mr Chew, he initially denied that Mr Prabhu was telling the plaintiff that the first defendant would not discount the Indian LC until the current account was opened when Mr Prabhu used the words "[k]indly ensure that the CD account is opened at the earliest so that we may take this issue forward" in his email to Mr Bangera on 22 March 2012 (see [49] above). However, Mr Chew eventually conceded that this was in fact what Mr Prabhu had meant:

Q: It says that the bank will take up L/C discounting once the current account is opened. Doesn't it say that?

A: Yeah, they will discount if the L/C is -- if the account is opened.

Q: Yes. It will discount if the account is opened, correct? That's your own words, it's been recorded.

A: Yes.

56 In closing submissions, Mr Kwek submitted that the opening of a current account was a separate process altogether from, and not a condition precedent to, the first defendant agreeing to confirm, negotiate or discount the Indian Bank LC. Mr Kwek further submitted that the first defendant had attempted to link the two processes together in the course of their dealings with the plaintiff to exert pressure on the plaintiff to become their customer. Mr Kwek said that this pressure became more acute after the plaintiff had presented the LC Documents to the first defendant on 16 March 2012 and was awaiting payment by the first defendant.

57 Mr Kwek's submission was not borne out on the evidence. Conversely, I found that the plaintiff knew the first defendant would not undertake any transactions in relation to the Indian Bank LC until the plaintiff had opened a current account with it. This, in turn, made it improbable that the first

defendant would have orally agreed to confirm, honour or negotiate the Indian Bank LC during the 24 February 2012 Telephone Conversation.

58 Mr Kwek also relied on the fact that the first defendant had discounted the SBI LCs to contend that the opening of a current account by the plaintiff was not a condition precedent to the first defendant undertaking transactions in relation to the Indian Bank LC. Mr Prabhu's evidence on this point was that an exception had been made for the SBI LCs. This was partly because the State Bank of India had made a direct request to the first defendant to discount the SBI LCs for the State Bank of India's "esteemed client" (that is, the plaintiff), and partly because the first defendant had hoped the plaintiff would become a customer. Mr Prabhu's evidence on this point was both cogent and remained unchallenged during cross-examination. I therefore accepted Mr Prabhu's evidence and found that Mr Kwek's contention was not borne out on the evidence.

The 18 April 2012 Letter

59 To advance its case that the first defendant was the Negotiating Bank under the Indian Bank LC, the plaintiff relied extensively on a letter sent by the first defendant to the second defendant on 18 April 2012 ("the 18 April 2012 Letter"). This letter was prepared by one Ms Kamala who worked for the first defendant as an assistant manager. In that letter, the first defendant had stated, "We certify that the amount negotiated has been endorsed on the reverse of the original credit."

60 In his AEIC, Mr Prabhu deposed that the 18 April 2012 Letter was the first defendant's standard covering letter. He said that the words "[w]e certify that the amount negotiated has been endorsed on the reverse of the original credit" should be disregarded because it did not accord with the fact that the first defendant had never agreed to, and did not in fact negotiate, the Indian Bank LC.

61 Mr Kwek submitted that since Ms Kamala was not called as a witness in these proceedings, there was no evidence to establish that the 18 April 2012 Letter was a standard letter or that it was sent mistakenly. Mr Kwek further submitted that Mr Prabhu's evidence on the issue was inherently incredible. Mr Kwek said that the inescapable conclusion to be drawn from the documentary evidence was that Ms Kamala must have sighted internal documents of the first defendant confirming that the first defendant had negotiated the Indian Bank LC.

62 I did not follow Mr Kwek's submission. For a start, as counsel for the first defendant, Mr Sarjit Singh Gill SC ("Mr Gill"), pointed out, the question of whether the first defendant had negotiated the Indian Bank LC was to be determined as a matter of fact, in the light of all the circumstances of the case, and not merely by the label the parties had placed on the transaction. In this regard, the term "negotiation" is defined by Art 2 of UCP 600 to mean:

> ... the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, *by advancing or agreeing to advance funds* to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.
>
> [emphasis added]

63 It was not disputed that the first defendant did not advance funds to the plaintiff to purchase drafts or the LC Documents. Instead, the plaintiff's case was that the first defendant had agreed to advance such funds. To this end, the plaintiff's case was premised solely upon the alleged oral agreement concluded during the 24 February 2012 Telephone Conversation for the first defendant to negotiate the Indian Bank LC.

64 In many senses, Mr Kwek's submissions on the issue suggested that I should disregard all the other clear and objective evidence in the case which pointed against the existence of the alleged oral agreement, and to find that an oral agreement was in fact concluded during the 24 February 2012 Telephone Conversation based solely on the 18 April 2012 Letter. This was illogical.

65 In relation to the plaintiff's allegation that the first defendant was the Negotiating Bank under the Indian Bank LC, Mr Gill also submitted that this was an afterthought on the plaintiff's part. I agree. To begin with, the Indian Bank LC was stated to be available with the first defendant by acceptance and not by negotiation. Further, in none of the correspondence between the plaintiff and the first defendant, before the second defendant had refused to honour the Indian Bank LC, did the plaintiff's representatives use the words "negotiate" or "negotiating". The plaintiff's representatives used the words "discount" and "discounting" on multiple occasions instead.

66 It should be noted that discounting and negotiation are different processes. The difference between them was explained by Chan Seng Onn JC in *Kredietbank NV v Sinotani Pacific Pte Ltd (Agricultural Bank of China, third party)* [1999] 1 SLR(R) 274 (at [48]–[49]) in the following terms:

> 48 Another related question is whether the plaintiffs here merely discounted the bill drawn by the defendants or had they negotiated the LC. As I understand it, "discounting" means the discounting bank advancing or lending money after the bill has been accepted, which becomes the security for the advancement or loan, and upon failure of that security, there is recourse to the borrower for reimbursement of the moneys advanced or lent. *A discounting transaction is in fact a separate "side" transaction outside the credit to which the issuing bank is not privy to*.
>
> 49 Whereas "negotiation" under a credit in its technical and legal sense, within the meaning of the UCP 500, generally means giving value to or purchasing the bill usually prior to acceptance and making payment to the beneficiary without recourse, after the negotiating bank is satisfied that the documents tendered for negotiation are in compliance with the credit. Here, the negotiating bank relies purely on the creditworthiness of the issuing bank, and the negotiating bank can no longer look towards the seller of the bill for reimbursement, should the issuing bank fail to pay under the credit. *A negotiation is a transaction under the credit, to which the issuing bank is privy to*, because the negotiation by that bank will have to be first authorised or allowed under the credit. ...
>
> [emphasis added]

67 To put this simply, while negotiation is a transaction under a letter of credit, discounting is a transaction separate from the letter of credit, to which the Issuing Bank is not privy.

68 Even after the second defendant had refused to honour the Indian Bank LC, the plaintiff did not initially assert that the first defendant had negotiated the Indian Bank LC:

> (a) In its letter to the second defendant on 27 April 2012, the plaintiff demanded that the second defendant notify the first defendant of its "acceptance of the compliant documents presented under the [Indian Bank] LC". There was no mention of negotiation.
>
> (b) In its letter to Standard Chartered Bank on 8 May 2012, the plaintiff asked Standard Chartered Bank to "request the [first defendant] to send their acceptance at the earliest". Again, there was no mention of negotiation.
>
> (c) In its letter to the first defendant on 10 May 2012, the plaintiff asserted that "as the

nominated Drawee Bank [the first defendant was] deemed to have accepted the draft and document presented under the [Indian Bank] LC on or after the fifth banking day from the date of presentation". Again, there was no mention of the first defendant having negotiated the Indian Bank LC.

69 Instead, the plaintiff alleged for the first time that the first defendant had negotiated the Indian Bank LC on 3 July 2012 when the plaintiff's solicitors sent a letter of demand to the first defendant. This was after the LC Documents had been returned to the plaintiff on 29 May 2012. Based on the above, it seemed to me that the plaintiff's allegation that the first defendant had negotiated the Indian Bank LC was an afterthought, and based solely on the 18 April 2012 Letter.

70 In the circumstances, I found that the plaintiff had not discharged its burden of proving the oral agreement which it alleged.

The effect of Art 8(d) of UCP 600

71 The plaintiff also relied on Art 8(d) of UCP 600 to contend that the first defendant was the Confirming Bank under the Indian Bank LC. Article 8(d) reads as follows:

Confirming Bank Undertaking

…

d. If a bank is authorized or requested by the issuing bank to confirm a credit but is not prepared to do so, it must inform the issuing bank without delay and may advise the credit without confirmation.

72 In this regard, Mr Kwek noted that Field 49 of the Indian Bank LC contained the message "CONFIRM". Mr Kwek submitted that this meant that the second defendant had requested the first defendant to add its confirmation to the Indian Bank LC. Mr Kwek submitted that because the first defendant had not informed the second defendant that it was not prepared to confirm the Indian Bank LC, the first defendant was the Confirming Bank by virtue of Art 8(d) of UCP 600. In other words, silence constitutes confirmation.

73 I found Mr Kwek's proffered interpretation of Art 8(d) to be untenable for two reasons. First, the second defendant's SWIFT message to the first defendant only *requested* that the first defendant confirm the Indian Bank LC. Without more, I did not see how this was capable of giving rise to a contractual relationship as between *the plaintiff and the first defendant*.

74 Second, and more importantly, Mr Kwek's interpretation of Art 8(d) was inconsistent with Art 12(a) of UCP 600, as well as the definition of "confirmation" under Art 2 of UCP 600 (see [14]–[16] above). Under Art 12(a) of UCP 600, a Nominated Bank is not obliged to honour or act on its nomination "except when *expressly agreed to* by that nominated bank *and so communicated to the beneficiary*" [emphasis added]. Likewise, under Art 2 of UCP 600, confirmation requires a "*definite undertaking* of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation" [emphasis added].

75 Reading Art 8(d) together with Arts 2 and 12(a) of UCP 600, it was clear that a Nominated Bank did not become a Confirming Bank only by virtue of the fact that it had not informed the Issuing Bank of its unwillingness to confirm the letter of credit. Instead, the Nominated Bank's express agreement to confirm the letter of credit was required and this had to be communicated to the beneficiary. As

discussed at [17]–[70] above, the plaintiff failed to discharge its burden of proving this.

76 In the circumstances, I dismissed the plaintiff's claim against the first defendant.

The Plaintiff's Claim against the Second Defendant

77 I turn to the plaintiff's claim against the second defendant as Issuing Bank under the Indian Bank LC. To this end, the plaintiff contended that because a complying presentation of the LC Documents was made to the first defendant, as Nominated Bank, and within the validity period of the Indian Bank LC, the second defendant was bound to honour the Indian Bank LC as the Issuing Bank.

78 This was also the first defendant's position in these proceedings.

79 With regard to the second defendant's liability as Issuing Bank under the Indian Bank LC, the operative provision is Art 7(a)(iv) of UCP 600, which reads as follows:

> Issuing Bank Undertaking
>
> a. Provided that the stipulated documents are presented *to the nominated bank or to the issuing bank* and that they constitute a complying presentation, the issuing bank must honour if the credit is available by:
>
> ...
>
> iv. acceptance with a nominated bank *and that nominated bank does not accept a draft drawn on it* or, having accepted a draft drawn on it, does not pay at maturity;
>
> [emphasis added]

80 In my judgment, it was clear from Art 7(a)(iv) that if a complying presentation of documents was made to the Nominated Bank *or* the Issuing Bank within the validity period of the letter of credit, the Issuing Bank was obliged to honour the letter of credit. In this regard, the presentation of the documents to the Nominated Bank also tolled the expiry date and timelines under the letter of credit.

81 In the present case, this meant that the second defendant was liable to honour the Indian Bank LC because a complying presentation of the LC Documents had been made to the first defendant as Nominated Bank on 16 March 2012, and this was within the validity period of the Indian Bank LC.

82 The above analysis is supported by the commentary on the issue. In Ali Malek & David Quest, *Jack: Documentary Credits: The law and practice of documentary credits including standby credits and demand guarantees* (Tottel Publishing, 4th Ed, 2009), it is observed at p 97 that:

> *If the credit is expressed to be available with a bank other than the issuing bank – such a bank being a 'nominated bank' in the terminology of the UCP – then the seller may present the documents to that bank instead of the issuing bank.* Suppose that the nominated bank refuses documents which conform to the terms of the credit and are presented within time. If, but only if, the nominated bank has confirmed the credit then the seller has an action against it to enforce the credit. *But the seller can also sue the issuing bank without the need to present the documents again. The issuing bank's undertaking under Article 7 is to honour the credit if documents are presented either to the nominated bank or to the issuing bank. The nominated bank can be regarded as acting as the issuing bank's agent for receipt of the documents. This may be important because if the documents were presented to the nominated bank close to the*

expiry of the credit then it may be too late to make a second presentation. ...

[emphasis added]

83 Similarly, the authors of James E Byrne *et al*, *UCP600: An Analytical Commentary* (Institute of International Banking Law & Practice, 2010) explain at p 367 that:

UCP600 Article 7(a)(ii) through (v) addresses the situation where another bank is nominated to act ("available with another bank") and it fails to do so—either at all, or having incurred a deferred payment undertaking or having accepted, fails to pay at maturity. *In such a situation, UCP600 Article 7(a) obligates the issuer to fulfill the obligation of the nominated bank*.

[emphasis added]

84 This is also the view expressed in the *Commentary on UCP 600* (International Chamber of Commerce Publication No 680) (International Chamber of Commerce, 2007) at p 62:

A nominated bank (that is not obligated as a confirming bank) may "act on its nomination" by express agreement as provided in sub-article 12 (a), or by examining the presentation for compliance with the documentary credit and, in most countries, charging a fee. Receipt of documents by a nominated bank that has neither expressly agreed to honour nor negotiate a complying presentation, nor acted on its nomination, *constitutes presentation by the beneficiary under the documentary credit*, but does not obligate the nominated bank to observe the provisions of sub-articles 14(a) or (b).

[emphasis added]

85 It is also pertinent to note that under UCP 600, there can only be one presentation of documents under the letter of credit; this will either be to the Nominated Bank or the Issuing Bank. Moreover, if a complying presentation of documents is made to the Nominated Bank, as it was in the present case, UCP 600 does not provide for a fixed period by which the Nominated Bank is to transmit the documents to the Issuing Bank. The policy reasons for this are explained in *UCP 500 & 400 Compared* (International Chamber of Commerce Publication No 511) (International Chamber of Commerce, 1993) at p 110 in the following excerpt:

Expiry Date for Payment, Acceptance or Negotiation – The NCs addressed the issue raised before the ICC Banking Commission concerning the erroneous practice of certain banks which issue Credits stipulating that payment/acceptance/negotiation under a Credit had to take place or become effective within the expiry date of such Credit.

NCs believe that this is wrong both in terms of the UCP and of equity. *Making the rights of the Beneficiary subject to an action over which he can have no control – that is, the action, slow action or inaction of the Nominated Bank to pay, accept or negotiate within the expiry date of the Credit – is improper. Negotiation is an action outside the control of the Beneficiary, while presentation is an action that is controllable by the Beneficiary.* Therefore, the new wording of [Article 42] clearly states that if banks continue to include such a condition in the Credit, it will be construed only as an expiry date for presentation of the documents and not as a restriction on the date for payment, acceptance or negotiation by the Nominated Bank.

[emphasis added]

86 It should be noted that Art 6 of UCP 600 is worded identically to Art 42 of the *Uniform Customs and Practice for Documentary Credits (1993 Revision)* (International Chamber of Commerce Publication No 500) discussed in the excerpt above. Both do not stipulate a fixed period within which the letter of credit documents must be transmitted by the Nominated Bank to the Issuing Bank.

87 The aforementioned suggests to me that so long as a complying presentation of documents is made to the Nominated Bank within the validity period of a letter of credit, the Issuing Bank cannot disclaim its liability to honour the letter of credit on the basis that the documents were transmitted to it after the letter of credit has expired.

88 Against the view stated above (at [80]–[87]), counsel for the second defendant, Mr Tan Teng Muan ("Mr Tan"), appeared to submit that the second defendant's liability to honour the Indian Bank LC as the Issuing Bank was contingent on the first defendant having agreed to act on its nomination under the Indian Bank LC. I did not agree with Mr Tan's submission.

89 Under Art 7(a)(iv) of UCP 600, the second defendant's liability to honour the Indian Bank LC as the Issuing Bank was not in any way premised upon the first defendant agreeing to act on its nomination. Rather, *as a matter of the contract between the second defendant and the plaintiff*, the second defendant's liability to honour the Indian Bank LC depended on whether a complying presentation had been made to the Nominated Bank (that is, the first defendant) within the validity period of the Indian Bank LC.

90 Further, and to the extent that Mr Tan appeared to suggest that the issue of whether the first defendant was the Nominated Bank depended on whether it had agreed to act on its nomination, I did not agree with his submissions. The term "Nominated Bank" is defined under Art 2 of UCP 600 to mean "the bank with which the credit is available or any bank in the case of a credit available with any bank". To my mind, this did not depend on whether the first defendant had agreed to act on its nomination.

91 I add that if the second defendant had wished to protect itself from the inaction or delay of the first defendant as the Nominated Bank, the second defendant could have contracted, as between itself and the first defendant, for a time period within which the LC Documents were to be transmitted to it. However, it did not do so.

92 Finally, I note that the second defendant did not contend that the LC Documents did not constitute a "complying presentation". Indeed, such a contention would have been untenable in light of Field 47A of the Indian Bank LC:

> **F47A: Additional Conditions**
>
> ...
>
> 4. FAX COPIES OR PHOTOCOPIES OF DOCUMENTS PRESENTED FOR NEGOTIATION ACCEPTABLE.
>
> ...
>
> 8. DOCUMENTS ACCEPTABLE INSPITE OF ANY OR ALL DISCREPANCIES WITH THE EXCEPTION THAT INVOICE VALUE DRAWN MAY NOT EXCEED THE MAXIMUM VALUE AND THE LETTER OF CREDIT IS NOT EXPIRED.

93 Rather, the second defendant's sole ground for refusing to honour the Indian Bank LC was late

negotiation and expiry of the Indian Bank LC. In view of the above discussion (at [79]–[87]), this was not a valid ground for refusing to honour the Indian Bank LC.

94 Therefore, I allowed the plaintiff's claim against the second defendant and entered judgment for the sum of US$9,993,239.45.

The Second Defendant's Counterclaim against the First Defendant

95 This brings me to consider the second defendant's counterclaim against the first defendant. In so far as the second defendant's counterclaim was premised upon the first defendant having agreed to act on its nomination, it was untenable. As I have found at [17] to [70] above, the first defendant did not agree to act on its nomination under the Indian Bank LC. In that event, there was no contractual relationship between the first defendant and the second defendant under the Indian Bank LC.

96 The second defendant also contended that the first defendant, as Nominated Bank, had breached the Indian Bank LC by failing to examine the LC Documents to determine whether they constituted a complying presentation within five days of their presentation. In this regard, the second defendant relied on Arts 14(a) and (b) of UCP 600, which provide as follows:

> a. A nominated bank *acting on its nomination*, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.
>
> b. A nominated bank *acting on its nomination*, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.
>
> [emphasis added]

97 In my judgment, the second defendant's reliance on Arts 14(a) and (b) was misplaced. These Articles only applied if the first defendant had acted on its nomination. The first defendant did not do so. Furthermore, these Articles appear to protect the beneficiary of the letter of credit and not the Issuing Bank. I did not think that these Articles could support a cause of action by the Issuing Bank against the Nominated Bank.

98 Finally, even if the first defendant had breached some duty owed to the second defendant (whether contractual or otherwise), I did not see how this would have caused the second defendant to have suffered loss, such as to justify an indemnity being ordered against the first defendant. As I found above (at [77]–[94]), the second defendant owed a separate and independent obligation to the plaintiff to honour the Indian Bank LC. Being ordered to honour the Indian Bank LC in accordance with its terms could not be said to have amounted to loss on the second defendant's part.

99 In the premises, I dismissed the second defendant's counterclaim against the first defendant.

The First Defendant's Claim against the Second Defendant

100 Given my decision on the earlier issues, it was not necessary for me to make any order on the first defendant's claim against the second defendant.

Pre-Judgment Interest and Costs

101 This leaves for me to deal with the issues of pre-judgment interest and costs.

Pre-judgment interest

102 As for pre-judgment interest on the plaintiff's claim against the second defendant, I had sought to confirm with Mr Kwek, in the course of delivering my oral judgment on 21 July 2014, whether the plaintiff was seeking pre-judgment interest. This was not clear from the plaintiff's pleadings or in its closing submissions. Mr Kwek confirmed at this hearing that the plaintiff was not seeking pre-judgment interest.

103 Subsequently, Mr Kwek wrote to the Registry to say that he had given this confirmation inadvertently and the plaintiff was in fact seeking pre-judgment interest. He requested that I direct parties to file submissions on the issue. Mr Tan then wrote in to object to the plaintiff's belated request. I was minded to hear submissions on pre-judgment interest as I was of the view that doing so would not have prejudiced the second defendant. Parties were accordingly informed of this.

104 In his submissions on the issue of pre-judgment interest, Mr Tan raised the preliminary objection that the plaintiff had not specifically pleaded this. In response to Mr Tan's objection on the pleadings, Mr Kwek cited the decision of *Ng Swee Kin v Ng Tian Hock and other appeals* [1992] 1 SLR(R) 266 ("*Ng Swee Kin*"). There, the Court of Appeal held at [8] that "it [was] not necessary to specifically plead interest for the court to exercise its discretion to award it". *Ng Swee Kin* is binding on this Court. I was therefore unable to accept Mr Tan's preliminary objection.

105 However, I noted that under s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed), both the decision to award pre-judgment interest and the quantum of pre-judgment interest are entirely discretionary. On the facts of this case, I was not minded to award pre-judgment interest for two reasons.

106 The first was that the plaintiff did not see it fit to claim pre-judgment interest until after I had delivered oral judgment on 21 July 2014. Pertinently, its closing submissions were entirely silent on the point.

107 The second reason was that the plaintiff made no real arguments as to why I should exercise my discretion to award pre-judgment interest in its subsequent submissions on the issue. In effect, the plaintiff's submissions pre-supposed that pre-judgment interest should be awarded as a matter of right and the submissions were instead solely directed at which date interest was to accrue.

Costs

108 Turning finally to the issue of costs, I was of the view that the general rule that costs follow the event should apply. Therefore, I ordered that:

(a) The plaintiff shall pay the first defendant's costs in defending the plaintiff's claim from the date of the writ to the date of the judgment, to be taxed if not agreed.

(b) The second defendant shall pay the first defendant's costs in defending the second defendant's counterclaim against the first defendant from the date of the counterclaim to the date of the judgment, to be taxed if not agreed.

(c) The second defendant shall pay the plaintiff's costs in prosecuting its claim against the second defendant from the date of the writ to the date of the judgment, to be taxed if not

agreed.

109 The issue then was whether I should also make a *Bullock* or a *Sanderson* order, both of which would have required the second defendant to pay or contribute towards the plaintiff's costs in prosecuting its unsuccessful claim against the first defendant. I was not minded to do so.

110 First, the plaintiff's claims against the first and second defendants were premised upon quite distinct causes of action. In particular, the plaintiff's claim against the first defendant turned, in the main, on whether the first defendant had orally agreed to confirm, honour or negotiate the Indian Bank LC. Conversely, the plaintiff's claim against the second defendant turned on the interpretation of UCP 600.

111 Second, as I had observed in delivering my oral judgment on 21 July 2014, the plaintiff had elected to mount a very expansive case against the first defendant, which was proven at trial to rest on extremely tenuous factual foundations. In that event, I did not think it would be fair for the second defendant to be made to bear the plaintiff's costs in prosecuting those aspects of its claim.

Conclusion

112 For all the reasons given above, I made the orders at [10]–[12] above.