SPC Guiding Case No. 111: The Guangzhou Liwan Sub-branch of China Construction Bank Co., Ltd. v. Guangdong Lanyue Energy Development Co., Ltd. et al. (Letter of Credit Issuance Dispute)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Civil / issuance of letter of credit / bill of lading / true intention / pledge of rights / priority right of satisfaction

Holding

1. Whether a holder of a bill of lading acquires a real right, and what type of real right it acquires, by receiving delivery of the bill of lading depends on the contractual agreement. Where the issuing bank holds the bill of lading pursuant to its contractual agreement with the applicant for issuance of the letter of credit, the people's court shall, in light of the characteristics of letter of credit transactions, reasonably interpret the contract in issue to determine the issuing bank's true intention in holding the bill of lading.

2. Where the issuing bank has a pledge over the bill of lading among the documents under the letter of credit and over the goods under the bill of lading, the manner in which the issuing bank exercises the pledge over the bill of lading is the same as the manner in which it exercises a pledge over the movable property of the goods under the bill of lading, that is, it has a priority right of satisfaction over the proceeds obtained from discounting, selling, or auctioning the goods under the bill of lading.

Basic Facts

China Construction Bank Co., Ltd. Guangzhou Liwan Sub-branch ("CCB Liwan Sub-branch") and Guangdong Lanyue Energy Development Co., Ltd. ("Lanyue Energy") entered into a Trade Finance Line Contract and a Special Agreement on Issuance of Letters of Credit and other relevant attachments in December 2011, agreeing that the bank would provide Lanyue Energy with a trade finance line of no more than RMB 550 million, including issuing usance letters of credit for an equivalent amount. Huilai Yuedong Electric Power Fuel Co., Ltd. ("Yuedong Electric Power") and other guarantors entered into guarantee contracts. In November 2012, Lanyue Energy applied to CCB Liwan Sub-branch to issue a usance letter of credit for RMB 85.92 million. To issue the letter of credit, Lanyue Energy issued a Trust Receipt to CCB Liwan Sub-branch and entered into a Margin Pledge Contract. The Trust Receipt confirmed that, from the date the receipt was issued, CCB Liwan Sub-branch would acquire the ownership of the documents and goods under the letter of credit, that CCB Liwan Sub-branch was the principal and beneficiary, and that Lanyue Energy was the trustee of the trust goods. After the letter of credit was issued, Lanyue Energy imported 164,998 tons of coal. CCB Liwan Sub-branch accepted the letter of credit and made a payment of RMB 84,867,952.27 to Lanyue Energy, which Lanyue Energy used to repay the letter of credit advance from CCB Seoul Branch. After performing its obligations of issuance and payment, CCB Liwan Sub-branch obtained the full set of documents including the bill of lading in issue. Because Lanyue Energy's business deteriorated and it failed to pay and redeem the documents, CCB Liwan Sub-branch continued to hold the bill of lading and related documents during the trial of this case. The coal under the bill of lading was sealed by the Gangkou District People's Court of Fangchenggang City, Guangxi, due to another dispute. CCB Liwan Sub-branch brought a lawsuit, requesting an order that Lanyue Energy repay the letter of credit advance principal of RMB 84,867,952.27 and interest to CCB Liwan Sub-branch; confirmation that CCB Liwan Sub-branch had ownership of the 164,998 tons of coal under the letter of credit and a priority right to

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be satisfied from the proceeds of disposing of that property for the debts under the letter of credit; and that Yuedong Electric Power and other guarantors bear guarantee liability.

Judgment

On April 21, 2014, the Guangzhou Intermediate People's Court of Guangdong Province rendered Civil Judgment (2013) Sui Zhong Fa Jin Min Chu Zi No. 158, supporting CCB Liwan Sub-branch's claims that Lanyue Energy repay principal and interest and that the guarantors bear corresponding guarantee liability, but dismissing CCB Liwan Sub-branch's claims for confirmation of ownership of the coal and priority right of satisfaction, on the ground that the trust receipt and delivery of the bill of lading could not be set up against third parties. CCB Liwan Sub-branch was dissatisfied with the first-instance judgment and appealed. On September 19, 2014, the Guangdong High People's Court rendered Civil Judgment (2014) Yue Gao Fa Min Er Zhong Zi No. 45, dismissing the appeal and affirming the original judgment. CCB Liwan Sub-branch was dissatisfied with the second-instance judgment and applied to the Supreme People's Court for retrial. On October 19, 2015, the Supreme People's Court rendered Civil Judgment (2015) Min Ti Zi No. 126, supporting CCB Liwan Sub-branch's claim to a priority right of satisfaction over the proceeds obtained from disposing of the goods corresponding to the bill of lading under the letter of credit in issue, and dismissing its claim for ownership of the goods under the bill of lading in issue.

Reasoning

The Supreme People's Court held that a bill of lading has the dual attributes of a document of creditor's rights and a document of ownership, but this does not mean that whoever holds the bill of lading necessarily has ownership of the goods under it. For a holder of a bill of lading, whether it can acquire a real right and what type of real right it acquires depends on the contractual agreement between the parties. CCB Liwan Sub-branch performed its obligations of issuance and payment and obtained the bill of lading under the letter of credit, but because there was no intention between the parties to transfer the ownership of the goods, it could not be considered that CCB Liwan Sub-branch acquired ownership of the goods under the bill of lading by obtaining the bill of lading. Although the Trust Receipt agreed that CCB Liwan Sub-branch would acquire ownership of the goods and entrusted Lanyue Energy to dispose of the goods under the bill of lading, pursuant to the principle that real rights are determined by law, that agreement could not produce real-right effect because it constituted a transfer-for-security arrangement. However, although the transfer-for-security agreement could not produce real-right effect, the agreement still had contractual effect, and the Special Agreement on Issuance of Letters of Credit agreed that, upon Lanyue Energy's default, CCB Liwan Sub-branch had the right to dispose of the documents and goods under the letter of credit. Therefore, according to the overall interpretation of the contract and the characteristics of letter of credit transactions, the true intention of the parties was to establish a pledge over the bill of lading through the circulation of the bill of lading. This case met the two elements required for the establishment of a pledge of rights, namely a written pledge contract and publicity of the real right, and CCB Liwan Sub-branch, as the holder of the bill of lading, enjoyed a pledge of rights over the bill of lading. If CCB Liwan Sub-branch's pledge of rights over the bill of lading conflicts with any lien, pledge of movable property, or other rights that other creditors might enjoy over the goods under the bill of lading, it may be resolved in accordance with the law in the enforcement and distribution proceedings.

Relevant Legal Provisions

Article 71 of the Maritime Law of the People's Republic of China

Article 224 of the Property Law of the People's Republic of China

Paragraph 1 of Article 80 of the Contract Law of the People's Republic of China

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