DOCUMENTARY LETTERS OF CREDIT AS SECURITY FOR FINANCIAL OBLIGATIONS

by

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I have assumed that the draftsman of the title of this paper wished for a discussion of the circumstances in which, notwithstanding presentation of the documents called for by an irrevocable letter of credit, the apparent entitlement to payment may be displaced.

The primary question requiring discussion in this context is the effect of fraud on the part of the beneficiary. In Societe Metallurgique D'Aubrives v British Bank for Foreign Trade (1922) 11 LlLR 168, Bailhache J, in an obiter dictum, which was no more than an aside, said (page 170):

> "Did the person presenting (the letter of credit) misdescribe the goods in such a way as to be guilty of fraud? If that were so, then the bank in refusing to pay would be justified."

His Lordship cited no authority and gave no elaboration of this observation. The question received no further mention in English Courts for another thirty-five years.

In 1941, in Sztejn v J Henry Schroder Banking Corporation 31 NYS 2d 631, Justice Shientag, a Judge of the Supreme Court of New York, first gave considered recognition to the possibility that a customer, who procured the issue of a letter of credit by a bank, may be able to restrain payment by the bank. Since all subsequent discussion of this topic can be traced back to Sztejn and since Section 5-114 of the

Uniform Commercial Code is claimed to be a codification of the effect of Sztejn it is necessary to consider that decision in some little detail. Firstly, it should be noted that it was an application by a defendant to have the proceedings dismissed on the basis that the initiating process disclosed no cause of action. In accordance with accepted legal theory both in this country and the United States that meant that, for the purpose of the application, the facts alleged in the initiating process were required to be considered to be made out. The facts, therefore, taken as true, were that the plaintiff ordered a quantity of bristles from one of the defendants, Transea Traders Limited, of India. The plaintiff obtained the issue by J Henry Schroder Banking Corporation of an irrevocable letter of credit to Transea. Transea filled some fifty crates with rubbish, placed them on a steamer and obtained a bill of lading. Transea then drew a draft under the letter of credit to the order of the Chartered Bank of India, Australia and China which presented the draft along with the shipping documents to Schroder for payment. The judge described the nature of the proceedings before him as:

> "The plaintiff prays for a judgement declaring the letter of credit and draft thereunder void and for injunctive relief to prevent the payment of the draft."

The second noteworthy feature of the decision is that nowhere in the judgement is there any suggestion that the plaintiff's standing as an applicant for relief was ever questioned. It is, of course, trite that any transaction

involving the issue of a letter of credit involves the creation of a number of contractual relationships. There is the underlying contract which, in the case of orthodox letters of credit, is usually between buyer and seller of goods, whereby the seller agrees to payment under a letter of credit by presenting to the issuer the documents specified by the buyer. Then there is the contract between the buyer/customer and the bank/issuer which draws the letter of credit in favour of the seller/beneficiary. Then there is the obligation created between the bank issuing the letter of credit and the beneficiary of the letter of credit whereby the bank agrees to pay upon presentment of the specified documents. In this lastmentioned contractual relationship the buyer, the customer of the bank, has no role to play. The letter of credit contract is independent of the contract of sale between the beneficiary and the bank's customer. In the same way that the issuer cannot assert a breach of that latter contract as a defence to payment under letter of credit, the beneficiary cannot excuse deficiency in performance of the letter of credit terms by showing that performance accorded with the terms of the contract with the seller. Again, the beneficiary cannot compel payment by the issuer on the ground that the terms of the credit may be more onerous than those stipulated in the contract between issuer and bank's customer nor, finally, can the issuer justify non-payment on the basis of a breach of its contract with its customer. This being the accepted situation, one would have thought, with respect, that the

customer has no basis for restraining performance of the contract between issuer and beneficiary to which it is not a party. Therefore, even though by reason of the nature of the proceedings the facts were required to be taken to have been admitted, the proceedings should, in fact, have been dismissed by the learned judge simply on the basis that Sztejn could not intervene to seek injunctive relief even if, assuming for the sake of argument, the issuer of the letter of credit could assert a defence to its liability to pay on the ground of the beneficiary's fraud. I am bound to say that what authority there is in this country denies the proposition I have just stated. In Contronic Distributors Pty Limited v Bank of New South Wales (Helsham J - unreported 1975), the Judge said:

> "I believe that the person who will suffer the loss in the event of payment against false documents has a right, and as much right as a buyer, to seek an order to restrain the payment." (my emphasis)

In other words, His Honour regarded the status of a buyer as absolutely beyond question. With great respect, it is difficult to understand in principle why he took this view.

Notwithstanding this threshold problem, the only question which was in fact addressed in Sztejn was whether fraud on the part of the beneficiary/seller could work to relieve the issuer from the immediate obligation to pay. The judge recognised the long-standing principle that a letter of credit is independent of the underlying contract between the buyer and seller. Accordingly, as he rightly said, any

possible breaches of warranty under the primary contract were quite irrelevant to the obligation to pay. However, he distinguished that situation from a case of established fraud. He relied upon a statement in Old Colony Trust Co v Lawyers' Title & Trust Co 297 F 152. There the letter of credit required drafts to be drawn against "net landed weights". Net landed weights could only be ascertained after US Customs had weighed the goods to determine the duty payable. The weighing was not completed until after tender of the drafts and the expiration of the letter of credit. The invoices presented with the drafts stated that landed weights duty had been paid. That was obviously false. But the Court made it clear that was not the basis of its decision. The letter of credit also required a negotiable warehouse receipt. The warehouse receipts presented were untrue in stating that the goods were in the warehouse and the falsity was known to the defendant. Not only was there, therefore, a failure to comply with the terms of the letter of credit but the issue of the document was illegal. It was in that context that the Second Circuit Court of Appeals said (page 158):

> "Obviously when the issuer of a letter of credit knows that a document, although correct in form, is, in point of fact, false or illegal, he cannot be called upon to recognise such a document as complying with the terms of a letter of credit."

With great respect to Shientag J, his reliance upon that statement appears to me to have been misplaced. It is one thing to say that the documents presented in compliance with

the requirements of the letter of credit have to be genuine and conform with the requirements of the general law; it is quite another matter to say that fraud in the primary transaction may avoid the obligation under a letter of credit. Yet what the Judge said was:

> "...Where the seller's fraud has been called to the bank's attention before the draft and documents have been presented for payment, the principle of the independence of the bank's obligation under letter of credit should not be extended to protect the unscrupulous seller."

As a consequence of Sztejn's case, in general American jurisprudence has now accepted the following proposition:

> "If presentment and demand is made by the beneficiary or his agent and there are no innocent third party holders in due course involved and prior to payment the bank is notified by its customer of fraud, forgery, or other defect not apparent on the face of the documents presented, the bank has the option of honouring or not honouring the demand, although a court of appropriate jurisdiction may enjoin honour in such circumstance." (my emphasis) (Dynamics Corporation of America v The Citizens and Southern National Bank 356 FSupp 991)

This proposition is now enshrined in the Uniform Commercial Code Paragraph 5-114(2)(b). However, as will be seen, the adoption of this provision in the various States has not, in fact, been uniform with some startling results.

In none of the cases following Sztejn has the point been taken that the person who sought to "enjoin honour" had no standing to make such an application. It is interesting to observe that the doyen of the learning on letters of credit, Mr Henry Harfield, although noting the point, nonetheless accepts the decision in Sztejn. He considers that the

question of standing is no longer open in the light of Paragraph 5-114 of the Uniform Commercial Code. He then goes on:

> "In any event, the court (in Sztejn) was concerned with issues of greater commercial significance - namely, whether there should or should not be a mechanical application of the doctrine that, in letter of credit transactions, the criterion is form and not ultimate truth." (95 The Banking Law Journal 596 at 603)

In his view, Sztejn is authority simply for the proposition that a document which falsifies the facts it purports to evidence is a non-conforming document. If this is the true explanation then, contrary to the view I have expressed, it applies the principle of the Old Colony case and is explicable as but an extreme example of failure to comply with the demands of the letter of credit. In the same way that a genuine and not a forged shipping document is required, so a truthful and not deliberately deceitful document is called for by the letter of credit. It seems to me that ultimately one has to face the fact that Sztejn made a policy choice. As another learned commentator on the US scene, John F Battaile III, put it in "Guaranty Letters of Credit; Problems and Possibilities" 1974 16 ArizLR 822 at page 849:

> "In such situations, justice requires that the submitting party not prevail. But this result can only be reached by factual inquiry in violation of basic letter of credit precepts - the doctrines of strict compliance and the independence of the bank's obligation. Sztejn faced this issue squarely and resolved the impasse by creating a limited exception which operates where the customer, seeking to enjoin payment, alleges the documents are fraudulent. Once fraud has been raised, the court must examine the facts of the alleged fraud rather than the purely legal

> question of whether the documents comply with the terms of the credit."

Section 5-114 of the Uniform Commercial Code accepted the concept that an injunction may be granted, even though documents accurately reflect the facts they purport to reflect, if there is "fraud in the transaction". If one construes transaction as being the underlying contract, then the independence of letters of credit has been substantially eroded.

This is a position the American courts are apparently prepared to accept. Thus, in United Bank Limited v Cambridge Sporting Goods Corporation 392 NYS 2d 265, the New York Court of Appeals said (page 270):

> "Where 'fraud in the transaction' has been shown and the holder has not taken the draft in circumstances that would make it a holder in due course the customer may apply to enjoin the issuer from paying drafts drawn under the letter of credit (see 1955 Report of NY Law Rev Comm Vol 3 pp 1654-1559). This rule represents a codification of precode case law most eminently articulated in the landmark case of Sztejn v Schroder Banking Corporation 31 NYS 2nd 631, Shientag J, where it was held that the shipment of cow hair in place of bristles amounted to more than mere breach of warranty but fraud sufficient to constitute grounds for enjoining payment of drafts to one not a holder in due course. Even prior to the Sztejn case, forged or fraudulently procured documents were proper grounds for avoidance of payment of draft drawn under a letter of credit; and cases decided after the enactment of the code have cited Sztejn with approval."

The Court seems to put Sztejn more on the basis that I have suggested of fraud in the underlying transaction but then seems to equate that with forged documents.

In the United Bank case itself, the Court held that shipment of old, unpadded, ripped and mildewed gloves rather than the new boxing gloves ordered by Cambridge constituted "fraud in the transaction" within the meaning of the Uniform Commercial Code. The Court went on (page 271):

> "It should be noted that the drafters of Section 5-114, in their attempt to codify the Sztejn case and in utilising the term 'fraud in the transaction' have eschewed a dogmatic approach and adopted a flexible standard to be applied as the circumstances of a particular situation mandate. It can be difficult to draw a precise line between cases involving a breach of warranty (or a difference of opinion as to the quality of goods) and outright fraudulent practice on the part of the seller. To the extent, however, that Cambridge established that Duke (the supplier) was guilty of fraud in shipping, not merely non-conforming merchandise, but worthless fragments of boxing gloves, this case is similar to Sztejn."

The exact contours of "fraud in the transaction" are unsettled. In its analysis in Intraworld Industries Inc v Girard Trust Bank 336 A 2d 316 at 324, the Pennsylvania Supreme Court spoke of "situations of fraud in which the wrongdoing of the beneficiary has so vitiated the entire transaction that the legitimate purpose of the independence of the issuer's obligations would no longer be served". The exception of "fraud in the transaction" was much invoked in the plethora of litigation following the Iranian revolution. The litigation is examined in depth in "Fraud in the Transaction; Enjoining Letters of Credit during the Iranian Revolution" 93 HarvLR 992, and many other learned articles eg "The Role of Standby Letters of credit in International Commerce; Reflections after Iran" 1980 20 Virginia Jnl of Internat Law 460; "Letters of Credit; Injunction as a Remedy

for Fraud" 1979 63 Minnesota LR 487; "Standby Letters of Credit After Iran" 1982 Uni of Illinois LR 355. The views are in many respects difficult to reconcile and demonstrate that even with a code in place the room for argument and confusion persists (see "Enjoining the International Standby Letter of credit" 1980 21 Harv Internat LJ 189 at 203 et seq).

As I mentioned earlier, some of the States did not adopt the Model Uniform Commercial Code in its entirety. The California Legislature deleted the words "but a court of appropriate jurisdiction may enjoin such honor" from Section 5-114(2)(b). It is interesting to note the reason assigned for this by the Official Comment:

> "By giving the courts power to enjoin the honor of drafts drawn upon documents which appear to be regular on their face, the Commissioners on Uniform State Laws do violence to one of the basic concepts of the letter of credit, to wit, that the letter of credit agreement is independent of the underlying commercial transaction."

A Federal District Court accordingly held in Agnew v FIDC 548 F Supp 1234 that California State law did not permit injunctive relief even in the face of allegations of fraud.

Notwithstanding that Sztejn was decided in 1941, it was not until 1975 that the first reported case appears in which the fraud on the part of the seller was sought to be relied upon in an English court. In Discount Records Limited v Barclays Bank Limited 1975 1 AER 1071, Megarry J found it unnecessary to determine whether or not the principle in Sztejn was

correct or not and was content to hold that, in any event, the plaintiff's claim failed because it failed to establish fraud. There was merely an allegation of it. At page 1075 His Lordship said:

> "The Sztejn case is plainly distinguishable in relation both to established fraud and to the absence there of any possible holder in due course. I do not say that the doctrine of that case is wrong or that it is incapable of extension to cases in which fraud is alleged but has not been established provided a sufficient case is made out. That may or may not be the case."

In Hamzeh Malas & Sons v British Imex Industries Limited 1958 2QB 127, the Court of Appeal merely left the question open.

The question was next examined by Kerr J in R D Harbottle (Mercantile) Limited v National Westminster Bank Limited 1978 1QB 146. By contracts of sale between English vendors and Egyptian buyers, payment was to be made by irrevocable confirmed letters of credit. The vendor's obligations were to be secured by performance bonds established with two Egyptian banks. The plaintiff vendor instructed its own bank, the defendant, to confirm the guarantees to the Egyptian banks which, in turn, confirmed the guarantees to the buyers. Demands were made on the plaintiff's English bank and thereupon the plaintiff instituted proceedings against its own bank, the Egyptian banks and the buyers seeking, inter alia, injunctions restraining its own bank and the Egyptian banks from paying the buyers under the guarantees. At the hearing, the plaintiff contended that on

the evidence the buyers were not entitled to payment under the guarantees and that, therefore, their demands for payment were fraudulent. The dispute came before Kerr J. So far as the point presently under consideration is concerned, His Lordship pointed out that here again it was not a case of an established fraud at all. His Lordship contemplated that in exceptional cases the courts might interfere even with the machinery of irrevocable obligations assumed by banks. He said (page 155):

> "Except possibly in clear cases of fraud of which the banks have notice the courts will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts." (my emphasis)

I should like to draw attention to the extremely tentative way that His Lordship couched the nature of the claimed exception now under consideration.

Much the same circumstances arose in a matter which came before the English Court of Appeal later that year: Edward Owen Engineering Limited v Barclays Bank International Limited 1978 1QB 159. That was an appeal from Kerr J. The facts in this case were almost identical with the Harbottle case. The Lybian customer failed to supply an irrevocable letter of credit in accordance with the contract between customer and supplier. Nonetheless, it made a demand under a performance guarantee. The English supplier sought to enjoin the English bank from paying the Lybian bank conformably to the performance bonds. At first instance

Kerr J held that the performance bonds must be honoured as between the banks and that the relations between the English supplier and the Lybian customer were no concern of the bank. The English supplier appealed. The appeal was dismissed. However, Lord Denning MR said that there was, in the case of "established or obvious fraud to the knowledge of the bank", an exception to the general principle that when a letter of credit is issued and confirmed by a bank the bank must pay it if the documents are in order and the terms of the credit are satisfied. His Lordship approved the statement by Shientag J in Sztejn's case. He put it thus wise:

> "The bank ought not to pay under the credit if it knows that the documents are forged or that the request for payment is made fraudulently in circumstances when there is no right to payment." (page 169)

If one may say so, the width of the language employed may be misleading. It seems to me to be much wider than warranted by Sztejn.

In the light of what I intend to say later it is opportune to mention that His Lordship distinguished the question before the court from the Mareva injunction cases. Browne LJ emphasised that the fraud must be very clearly established.

Finally, the House of Lords in United City Merchants v Royal Bank of Canada 1983 AC 168 has firmly established that fraud by the seller displaces the liability of an issuing bank.

The letter of credit there in question was expressly made subject to the Uniform Customs and Practice for Documentary Credits 1974 ("UCP"). A Peruvian company agreed to buy goods, payment to be made by confirmed, irrevocable, transferable letter of credit payable in part on presentation of shipping documents. An employee of the loading broker to the carrier was found to have acted fraudulently in issuing the bills of lading bearing, what was to his knowledge, a false statement as to the date on which the plant was actually on board the ship. It was further found that neither the seller nor its transferee was a party or privy to any fraud by this employee of the loading broker. It can be seen that these proceedings were different from all the ones that have gone before in that the fraud alleged was not on the part of the beneficiary at all but on the part of the employee of a third party. Lord Diplock delivered the only judgement in the House of Lords. His Lordship accepted, as he was bound to do, that pursuant to Article 8 of the UCP the seller and the confirming bank dealt in documents and not in goods. If on their face the documents presented to the confirming bank by the seller conformed with the requirements of the credit the bank was under a contractual obligation to the seller to honour the credit notwithstanding any knowledge of a breach of the underlying contract. His Lordship identified an exception to this principle where the beneficiary for the purpose of drawing on the credit fraudulently presents to the confirming bank documents that contain "expressly or by

implication material representations of fact that to his knowledge are untrue" (emphasis added) (page 183). His Lordship identified the rationale in Sztejn's case as the application of the maxim that "fraud unravels all". He justified the application of the maxim by the proposition that courts will not allow their process to be used by a dishonest person to carry out a fraud. With the most profound respect, this appears to be an inappropriate application of the undoubted maxim. If, in fact, the issuing bank is obligated to pay against documents except in the case of forgeries then enforcing that obligation is not really allowing a dishonest person to use the processes of the court to carry out a fraud. The dishonest person is not seeking the aid of the court to effect the terms of the contract.

I find the whole concept of fradulent statement in documents presented to an issuing bank to be very difficult to reconcile with the provisions of Article 8(c) of the UCP. That provides that:

> "If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, that bank must determine, on the basis of the documents alone, whether to claim that payment, acceptance or negotiation was not effected in accordance with the terms and conditions of the credit."

It seems to me that the terms of the Article emphasise what is in any case accepted law that the duty of the issuer is confined to a consideration of the documents alone. The

question then is whether the issuer can be compelled to refrain from making payment by circumstances outside the face of the document. Forgery must be an obvious exception to any obligation to pay against documents. Although on its face the document may comply, if it can be shown that it is, in fact, a forgery then one would expect that the issuer could be enjoined from payment.

It is at this point that Lord Diplock's judgement in United City Merchants (supra) becomes somewhat difficult to follow. After referring to the undoubted fact that even a forged document does not detract from the rights of a holder in due course he went on (p 187):

> "I see no reason why, and there is nothing in the Uniform Commercial Code to suggest that, a seller/beneficiary who is ignorant of the forgery should be in any worse position because he has not negotiated the draft before presentation. I would prefer to leave open the question of the rights of an innocent seller/beneficiary against the confirming bank when a document presented by him is a nullity because unknown to him it was forged by some third party; for that question does not arise in the instant case. The bill of lading with the wrong date of loading placed on it by the carrier's agent was far from being a nullity. It was a valid transferable receipt for the goods giving the holder a right to claim them at their destination, Callao, and was evidence of the terms of the contract under which they were being carried.
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> But even assuming the correctness of the Court of Appeal's premises as respects forgery by a third party of a kind that makes a document a nullity for which at least a rational case can be made out, to say that this leads to the conclusion that fraud by a third party which does not render the document a nullity has the same consequence appears to me, with respect, to be a non sequitur, and I am not persuaded by the reasoning in any of the judgments of the Court of Appeal that it is not."

The heavy insistence of the House of Lords on knowledge by the beneficiary of the falsity effected by a third party has been strongly criticised by Mr F W Neate in a paper delivered to the Section on Business Law of the IBA in May 1984. Once one accepts that falsity, if established, disqualifies a letter of credit from enforceability, knowledge should not be a requirement.

The law of England and the United States, therefore, is that a false statement in a document, at least if known to the beneficiary, makes the letter unenforceable. In a matter of such importance to the commercial community where uniformity is essential, Australian courts can be expected to fall in line.

However, even though, in principle, established fraud may lead to relief against payment on a letter of credit, in practice proof of the fraud is extremely difficult.

Another method of launching an attack on the efficacy of letters of credit in practice may be by means of a Mareva injunction. This type of relief is generally available to a plaintiff who can show that a very clear claim against a defendant may be defeated by the defendant dissipating its assets before judgement. Let it be assumed that a purchaser who effects payment by means of an irrevocable letter of credit knows that the goods being supplied are grossly deficient in compliance with the terms of sale. In the absence of clear proof of fraud, the purchaser cannot

restrain the issuer of the letter of credit from effecting payment. Even if it seeks and obtains a Mareva injunction against the vendor that will not prevent payment being made to it under a letter of credit or under a bank guarantee (Z Ltd v A-Z and A-A 1982 1QB 558 at 574). Some comments of Lord Denning MR in Power Curber International Limited v National Bank of Kuwait 1981 3 AER 607 at 613 could be construed as denying the applicability of the Mareva principle to a seller who wishes to freeze the proceeds of a letter of credit he caused to issue. However, in the subsequent decision in Z Ltd (supra) Lord Denning clearly stated that an injunction against dealing with assets will prevent the seller from dealing with the proceeds of the letter of credit. Thus, the independence of the contract between issuer and beneficiary is preserved but an effective remedy is nonetheless provided in certain circumstances to the innocent buyer against the defaulting seller. On the other hand, it has to be noted that in the same case Kerr LJ held that:

> "whereas the proceeds of such documents might be frozen if they came to be paid into an account of the defendant to which the order applied, they should not otherwise be comprised within the terms of the order to which the banks were obliged to give effect. This latter view was based on the inconvenience to the banks in not having any central record system enabling them to locate the receipt of payment under such documents. The great disadvantage of this limitation of the scope of Mareva injunctions is that it enables the wary defendant to preserve from the reach of the order assets received by a bank on his behalf by instructing it beforehand not to credit the money to any of his accounts at the bank but simply to pay the money away to himself or a third party. It is respectfully suggested that a better course would be that if the bank is actually aware that payments received by it are within the scope of a Mareva injunction it ought not to dispose of the moneys without

> first obtaining the direction of the Court. If, due to lack of a central record system, the bank failed to realise that money received by it for the defendant was subject to an injunction and disposed of that money in accordance with the defendant's instructions, it should not be treated as in contempt of Court on that account."

An analogous mode of challenge was narrowly defeated in Lantz International Corporation v Industria Termotecnica Compana S.P.A. 358 F Supp 510. The customer in that case began a foreign attachment action in Pennsylvania naming the beneficiary as a defendant and the Pennsylvania bank which was the issuer as the garnishee. The attachment was intended to prevent the bank from remitting the funds to the supplier and preserve the proceeds of the letter of credit as a fund from which the damages claim could be satisfied. The tactic was only defeated because the supplier had already discounted the drafts drawn against the letter of credit. As the author of "Letters of Credit; Expectations and Frustration" 94 Banking LJ 493 points out:

> "This use of foreign attachment has a particularly insidious effect on the dependability of a letter of credit because it effectively interferes with the beneficiaries' expectations without directly challenging the theoretically strict character of the issuer's obligation.

Overall the lesson to be learnt is always to discount the letter of credit at the earliest possible time.

The reconciliation of competing interests was adverted to by the Master of the Rolls, Sir John Donaldson, in Bolivinter Oil SA v Chase Manhattan Bank 1984 1 AER 351 when he said at

page 352:

> "Judges who are asked, often at short notice and ex parte, to issue an injunction restraining payment by a bank under an irrevocable letter of credit or performance bond or guarantee should ask whether there is any challenge to the validity of the letter, bond or guarantee itself. If there is not or if the challenge is not substantial, prima facie no injunction should be granted and the bank should be left free to honour its contractual obligation, although restrictions may well be imposed on the freedom of the beneficiary to deal with the money after he has received it. The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear, both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it discharged." (my emphasis)

I might say that it seems to be a great pity indeed that, although the International Chamber of Commerce has obviously devoted a great deal of time and effort in producing the new UCP to commence operation 1 October 1984, it has not been found possible to clarify the position I have been discussing.