

SHIPPING

COURT GIVES WELCOME GUIDANCE ON BINDING NATURE OF GUARANTEES SENT BY SWIFT

WS Tankship II BV v Kwangju Bank Ltd and another; WS Tankship III BV v Seoul Guarantee Insurance Co; WS Tankship IV BV v Seoul Guarantee Insurance Co

[2011] EWHC 3103 QBD, Commercial Court, Blair J

In a dispute between the buyers of a ship and the Korean banks giving a refund guarantee, the court decided that a refund guarantee issued by SWIFT in the buyers' favour was a first demand refund guarantee, not a true "see to it" guarantee. The court then went on to consider whether the guarantee complied with the Statute of Frauds, which requires guarantees to be "signed." As it was not necessary to consider this point for the purposes of its decision, the court's comments are only persuasive but, given there is little authority on this point, those comments are nonetheless of value.

The guarantee in dispute was issued in the form of a letter of guarantee and sent by SWIFT message to the buyers' bank. The seller's bank's name, Kwangju Bank Ltd, did not appear anywhere in the body of the guarantee - the bank was merely referred to throughout as "we." The bank argued that the guarantee was not "signed" - although it did accept that the guarantee was properly issued, fully authorised and intended to be relied upon by the beneficiary.

The court clearly considered that it would be a surprising result for a guarantee not to be binding in such circumstances, saying that as a matter of common sense, authentication by sending (by SWIFT) was equivalent (in modern terms) to authentication by signing, and so within the spirit, if not the letter, of the Statute of Frauds. The court noted further that the words "Kwangju Bank Ltd" were contained in the header to the SWIFT message. The bank argued that, because this was not text which it typed in, but was merely an output message header, (i.e. text generated by the SWIFT messaging system), it consequently was not capable of being a signature. However, the court concluded that the fact that the bank's name appeared made it a sufficient signature for the purposes of the Statute of Frauds, and that this would be the case whether or not automatically generated by the system, and whether or not stated in whole, or abbreviated.

This decision therefore provides considerable comfort that letters of guarantee issued by SWIFT will be considered to be properly "signed" for the purposes of the Statute, even though they have no signature in the traditional sense, and that accordingly they can be relied upon by the parties to a transaction.

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