



HIGH COURT OF AUSTRALIA

Public Information Officer

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PACIFIC CARRIERS LIMITED v BNP PARIBAS

A cargo carrier's claim on a bank's letters of indemnity was upheld by the High Court of Australia today.

Grain trader New England Agricultural Traders Pty Ltd (NEAT) sold legumes – 10,000 tonnes each of chickpeas and dun peas – to Calcutta grain trader Royal Trading Company in 1998. While the cargo was in transit to India the world price of legumes fell and Royal delayed accepting the cargo and failed to pay the purchase price. The original bills of lading were not available to enable the cargo to be unloaded, and Pacific Carriers required bank-endorsed letters of indemnity before releasing the cargo. Two letters of indemnity, one for the dun peas and one for the chickpeas, were signed by NEAT and BNP Paribas's documentary credits department manager Ira Dhiri who faxed them to Pacific in January and February 1999, allowing legumes to be released to Royal. Discharge of legumes occurred in stages then stopped. Pacific sustained losses and claimed against BNP. NEAT became insolvent. BNP argued that it had simply verified NEAT's signature on the letters of indemnity and only NEAT was bound to indemnify Pacific. BNP also claimed that if the documents meant that BNP was an indemnifying party, then they were signed without its authority, and did not bind it.

In the New South Wales Supreme Court, Pacific sued BNP in contract, negligence and misleading conduct contrary to section 52 of the Trade Practices Act. Justice Robert Hunter awarded damages of US\$4.238 million plus interest to Pacific against BNP for negligent misrepresentation of NEAT's financial strength rather than contract and dismissed the section 52 claim. The NSW Court of Appeal held that the letters of indemnity should be construed as showing BNP indemnifying Pacific, but held that Ms Dhiri had no authority to bind the bank to an indemnity. The Court of Appeal also rejected the negligence and section 52 claims.

Pacific appealed to the High Court which unanimously held it could succeed in contract. The Court held that Ms Dhiri's belief about what the documents were meant to convey is irrelevant. Instead, construction was determined by what a reasonable person in Pacific's position would have understood them to mean, based on their wording and the surrounding circumstances. Nothing in the documents indicated BNP was merely authenticating NEAT's signature and nothing in the circumstances suggested Pacific would be satisfied by such verification. Ms Dhiri had authority to sign and stamp documents verifying NEAT's undertaking but no authority to sign letters of indemnity. Nothing put Pacific on notice or inquiry as to her lack of authority. The High Court held that Ms Dhiri did have apparent authority, Pacific reasonably relied on that authority, and BNP was bound. The Court allowed the appeal by Pacific and remitted the matter to the Court of Appeal to deal with outstanding issues including calculation of damages.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*