

CAROLINA INDUSTRIES, INC., PETITIONER, VS. CMS STOCK BROKERAGE, INC., (FORMERLY SISON, LUZ & JALBUENA, INC.), CARLOS MORAN SISON, LUIS F. SISON, AND THE HON. COURT OF APPEALS, R...

G.R. No. L-46908. May 17, 1980

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for review of the decision of the Court of Appeals in CA-G.R. No. 55680-R, promulgated on April 19, 1977, affirming with modification the judgment of the Court of First Instance of Rizal, Branch VIII, in Civil Case No. 12850, entitled "Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc. (Formerly Sison, Luz & Jalbuena, Inc.), Carlos Moran Sison and Luis F. Sison".

The factual findings of the Court of Appeals are as follows:

"Defendant CMS Stock Brokerage, Inc. (formerly Sison, Luz & Jalbuena, Inc.), for the calendar year 1969, was a licensed securities broker and dealer engaged, for compensation, in the business of buying and selling stocks and securities for and in behalf of investors, such as the plaintiff. The CMS Stock Brokerage, Inc. is a member firm of the Makati Stock Exchange. Defendant Carlos Moran Sison is the president and at the same time the major and controlling stockholder of defendant corporation. Defendants, in admitting the foregoing facts, made the qualification that during the period from January 10 to August 29, 1969, Arsenio N. Luz III was the president of defendant corporation.

"On or about June 17, 1969, plaintiff opened a margin account with defendants for purchasing, carrying and selling stocks and securities listed in the Makati Stock Exchange, as evidenced by a 'Margin Account Agreement' executed on that date by plaintiff through its treasurer and controlling stockholder, Mariano T. Lim, and approved by defendant corporation, acting through its vice-president and general manager, defendant Luis F. Sison.

"In that Margin Account Agreement, it was agreed that:

'1. All transactions for my account under this agreement shall be subject to the constitution, rules, regulations, customs and usages of the Makati Stock Exchange, Inc. and its clearing house, and, where applicable, to the provisions of the Securities Act and the rules and regulations of the Securities & Exchange Commission, and also to such rules you may adopt from time to time.

'x x x

'5. I will at all times maintain such margins as you may in your discretion require from time to time and will pay on demand any debit balance of my account with you.

'6. I will liquidate in full the margin you extend to me within a period of ninety (90) days from the date of its opening or renewal, as the case may be, and, if I fail to do so, you may without notice to me either:

(a) Close my account by selling so much of my securities held by you sufficient to cover in full my debit

balance; or

(b) Sell and repurchase, at the same price, my securities held by you, thereby liquidating and renewing my margin account for another period of 90 days.

'7. I will trade in securities with a volume of at least 150% of my margin line within a period of 90 days and should the volume of my transactions be less, you are hereby authorized on the 90th day, without notice, to effect the sale and repurchase, at the same price, of so much of my securities sufficient to cover the difference between 150% of my margin line and the volume of my transactions.

'8. The debit balance of my account shall be charged with daily interest at the rate of twelve per cent (12%) per annum, compounded monthly, plus other charges for servicing my margin account and other expenses incidental thereto.' (Exhibit 'B').

"On the following dates, plaintiff deposited to its margin account with defendant corporation the following sums:

1. June 17, 1969 O.R. No. 2354..

P 10,000.00

2. June 19, 1969 O.R. No. 2385..

9,796.00

3. June 26, 1969 O.R. No. 2487..

461,000.00

4. June 26, 1969 O.R. No. 2488..

79,000.00

5. July 2, 1969 O.R. No. 2580..

27,000.00

P 586,796.00

plus 400 Benguet shares covered by Receipt No. 1636, dated July 10, 1969, by reason of its (plaintiff's) stock trading transactions. Plaintiff gave the value of P48,000.00 to the 400 Benguet shares. With the 400 Benguet shares, valued at P48,000.00, the total amount deposited is P634,796.00.

"Plaintiff engaged in the buying and selling of stocks and securities listed in the Makati Exchange through defendants, utilizing for that purpose the credit or margin extended to it by defendants.

"Plaintiff alleged in its complaint, as first alternative cause of action, inter alia, that as of the close of business day on September 12, 1969, it owed defendants the net principal sum of P804,179.69, exclusive of the stipulated daily interest; that on September 15 and 16, 1969, defendants, without its (plaintiff's) authority, purchased for its account 14,235 shares of the capital stock of the Marinduque Mining & Industrial Corporation at a total price of P2,659,521.19, thereby increasing its liability to P3,463,700.88; that starting September 25, 1969, defendants uni-laterally liquidated its margin account by selling, at a tremendous loss, all the stocks and securities credited to its account prior to September 15, 1969, thereby completely wiping out its investment in the total sum of P634,796.00; that in extending to it (plaintiff) excessive credit or margin for purchasing, carrying or selling listed stocks and securities, in advising it in regard to the purchase and/or sale of specific stocks and securities, in managing its margin account, in selling their own stock to it, in unilaterally liquidating its margin account, in preferring their own interest over its interest particularly in the purchase of 14,235 Marinduque shares and the liquidation of its margin account, defendants, as its agents for compensation in the purchase and sale of stocks and securities, acted fraudulently, illegally, recklessly and in gross and evident bad faith, considering the nature of the stock brokerage business, defendants' superior and expert knowledge of the stock market, defendants' duty under the Securities Act to customers, and the highly fiduciary relationship between a broker and a customer; and that as a consequence of defendants' fraudulent, illegal, reckless and improvident conduct, it suffered actual damages in the amount of P634,796.00 in addition to un-realized profits.

"Plaintiff alleged, as second alternative cause of action, inter alia, that as of September 12, 1969, the credit or margin that defendants had extended to it is equal to 73.42% of the market; and that defendants' inducement of it to trade heavily on its margin account by extending to it excessive credit or margin was in clear violation of the provisions of Section 18 of the Securities Act and the implementing rules and regulations of the Securities and Exchange Commission.

"As third alternative cause of action, plaintiff alleged, inter alia, that after it had protested the unauthorized and improvident purchase of the Marinduque shares, defendants agreed not to charge the purchase to its (plaintiff's) account and instead to release to it the following stocks and securities: (i) 318,000 shares of Lepanto Consolidated Mining Company, plus a stock dividend of 33-1/3%; (ii) 94,000 shares of Palawan Quicksilver Mines, Inc.; and (iii) 70,000 shares of Copper Belt plus pre-emptive rights declared thereon on the condition that plaintiff would pay its liability as of September 14, 1969; and that pursuant to this agreement, it delivered to defendants its check for P500,000.00 which it subsequently replaced with a Philippine National Bank Cashier's Check No. 211367 for P500,000.00 and its own checks, Manila Banking Corporation Check No. 111790-A for P250,000.00, pending determination of the exact amount of its liability prior to September 15, 1969.

"Plaintiff claims that to minimize its losses, it was compelled to instruct the banks concerned to withhold payment on the PNB Cashier's check for P500,000.00 and its own check for P250,000.00.

"By its complaint, plaintiff seeks to order defendants, inter alia, to pay it, jointly and severally, the sum of P634,796.00, with interest thereon from the date of the filing of the complaint; or, in the alternative, inter alia, to order, jointly and severally, defendants to deliver to it (i) 318,000 shares of Lepanto Consolidated Mining Company, plus the stock dividend of 33-1/3% declared thereon in 1969; (ii) 94,000 shares of Palawan Quicksilver Mines, Inc., and (iii) 70,000 shares of Copper Belt plus pre-emptive rights declared thereon upon payment by it (plaintiff) to defendants of the sum of P804,179.00.

"Answering with counterclaim, defendants specifically denied the material allegations of the complaint, except those admitted; and alleged, among others, that the facts and surrounding circumstances of the transaction are as follows: (1) that after the trading hours on Friday, September 12, 1969, plaintiff's Mariano T. Lim came to the office of the defendants and placed an order for the purchase, on the cash basis, of 15,000 Marinduque shares for

plaintiff's account on the next trading day, September 15, 1969; (2) that on September 15, 1969, in partial execution of said order, defendant corporation purchased for plaintiff's account, 4,260 Marinduque shares worth P749,985.60; (3) that verbal confirmation of these purchases were immediately made that same day to plaintiff's Mariano T. Lim, who forthwith came to defendants' office to reconfirm said purchases, and Mariano T. Lim advised the defendants to continue purchasing the balance of the order at the market price prevailing the following day; (4) that on September 16, 1969, the defendant corporation purchased 9,975 more Marinduque shares worth P1,909,536.30, thereby making a total of 14,235 Marinduque shares already purchased for plaintiff's account; (5) that Purchase Confirmation Slips covering the purchases made on September 15, 1969, were sent to and received by plaintiff on September 16, 1969, while the Purchase Confirmation Slips covering the purchases made on September 16, 1969, were sent to and received by plaintiff on September 17, 1969; (6) that on September 19, 1969, plaintiff issued and delivered to the defendant corporation three (3) MBTC checks in the total amount of P500,000.00 as substantial payment on account of the 4,260 Marinduque shares purchased for its account on September 15, 1969, but all these three checks later bounced because of 'insufficient funds', a fact which became known to the defendants on September 23, 1969; (7) that after the trading hours on September 22, 1969, because the price of Marinduque shares had considerably gone down, plaintiff's Mariano T. Lim panicked and so he ordered the defendants to immediately sell at market on the next trading days all the 14,235 Marinduque shares previously purchased for plaintiff's account; (8) that in the execution of the said urgent order to sell, the defendant corporation sold on September 23, 1969 9,590 of plaintiff's Marinduque shares and Sales Confirmation Slips for these transactions were promptly sent to and received by the plaintiff, which suffered tremendous losses amounting to P528,175.65 as a consequence of the erroneous and precipitate order to sell said shares given by its treasurer and controlling stockholder, Mariano T. Lim; (9) that on September 24, 1969, plaintiff's Mariano T. Lim delivered to the defendants a PNB Cashier's check for P500,000.00, as replacement for plaintiff's previously dishonored three MBTC checks which were all returned to him, and at the same time Mariano T. Lim also delivered to them a TMBC check for P250,000.00 in further settlement of plaintiff's account; (10) that on September 25, 1969, with evident bad faith and in fraud of the defendant corporation, plaintiff stopped payment of both the PNB Cashier's check of P500,000.00 and TMBC check of P250,000.00, thereby compelling the defendants to liquidate plaintiff's margin account on September 25 and 26, 1969, with the sale of practically all the securities given as collaterals therefor.

"Defendants started to liquidate plaintiff's margin account on September 25, 1969, allegedly on the following considerations: (1) because on September 25, 1969, plaintiff deceitfully stopped payment not only of the PNB Cashier's check of P500,000.00 which it delivered to defendants as replacement for its three (3) previously dishonored MBTC checks for the same amount, but also of its TMBC check for P250,000.00 which it delivered to defendants in further payment on account of the purchase price of the Marinduque shares; (2) because plaintiff reneged in its promise to place its margin account in order; and (3) because the defendants had to comply with the then newly is-sued SEC rule that 'If an account should remain unsettled for a period of five (5) trading days from the date the transaction is effected, the broker must sell-out'.

"Defendants' counterclaim, under the first cause of action, is based on the fact that the three (3) MBTC checks for a total amount of P500,000.00, as substantial payment for the 4,265 Marinduque shares, were dishonored and returned by the drawee bank for reason of 'Insufficient Funds'; and the fact that plaintiff stopped payment of the PNB Cashier's check No. 211367 for P500,000.00, which Mariano T. Lim indorsed as replacement for plaintiff's previously dishonored three (3) MBTC checks, and TMBC Makati Branch Check No. G-111790-A for P250,000.00.

"Under the second cause of action, it is claimed that for allegedly filing with the Securities and Exchange Commission by plaintiff of its charges against defendants in S.E.C. Case No. 1101, coupled with the acts of pure

harassment it has committed even before the start of the investigation of the charges, they (defendants) suffered actual damages and moral damages, and incurred expenses of litigation. They had to engage the services of counsel in defending their rights and protecting their interest, good name and reputation against the groundless and harassing suit filed by plaintiff in S.E.C. Case No. 1101.

"Under the third cause of action, defendants alleged that when they liquidated plaintiff's margin account, and after the collaterals thereof were sold out, leaving only 33 Lepanto Consolidated shares still unsold, plaintiff owes defendant corporation the amount of P463,410.95 as the debit balance of its margin account as of March 17, 1970, excluding 'daily interest' on the running period of the account 'at the rate of twelve per cent (12%) per annum compounded monthly', compounded beginning March 1, 1970.

"Under the fourth cause of action, it is alleged that as a necessary consequence of plaintiff's clearly unwarranted filing of its unfounded and will continue to suffer moral and exemplary or corrective damages.

"Plaintiff Carolina Industries, Inc., when it bought shares of stock under the Margin Account Agreement, had to pay only so much as would maintain its debit balance with defendant CMS Stock Brokerage, Inc., to not more than 50% of the current market value of its securities held by defendant corporation on deposit as of the stipulated delivery date.

"As stipulated in the Margin Account Agreement, if plaintiff's debit balance on the margin account exceeds the 50% ceiling and the under-margin continues longer than the period of credit stipulated in the agreement, defendant CMS Stock Brokerage, Inc. may sell so much of the securities deposited as would cover the under margin, or as would be necessary to liquidate the debit balance.

"There is no dispute on the following facts:

"During the period from June 17, 1969 to July 10, 1969, plaintiff Carolina Industries, Inc. deposited with defendant CMS Stock Brokerage, Inc. various cash amounts totalling P586,796.00, as partial payments to the debit balance, and securities valued at P48,000.00, consisting of 400 shares of Benguet Consolidated.

"As of September 12, 1969, the account of plaintiff Carolina Industries, Inc. with defendant CMS Stock Brokerage, Inc. had a debit balance of P804,179.69 against a security deposit with a market value of a little over a million pesos. Its debit balance as of September 12, 1969, was over 70% of its security deposit, or more than 20% over the 50% ceiling set by Section 18(a)(1) of the Securities Act.

"On September 15, 1969, defendant corporation purchased for plaintiff's account 4,260 Marinduque shares worth P749,985.00, and on September 16, 1969, defendant corporation purchased also for plaintiff's account 9,975 more Marinduque shares worth P1,909,536.00.

"Plaintiff's Mariano T. Lim drew P100,000.00 on Manufacturers Bank on a loose check pre-signed by plaintiff's president, Rafael Alvarez, dated September 19, 1969. Then, Lim drew an additional P250,000.00 on Manufacturers Bank, on a loose check, also pre-signed by Alvarez, dated September 20, 1969. Defendant Luis Sison, vice-president and general manager of defendant corporation, issued a receipt for the two checks in 'payment for deposit'. Lim drew a third check, also dated September 20, 1969, on Manufacturers Bank for P150,000.00.

"On September 24, 1969, Lim signed his indorsement on a PNB Cashier's check for P500,000.00, payable to plaintiff, and delivered it to defendant Carlos Moran Sison. Defendant Luis Sison returned to Lim the three Manufacturers Bank checks.

"Lim drew another check for P250,000.00, also pre-signed by plaintiff's president, on Manila Banking

Corporation, dated September 25, 1969. The receipts issued therefore states, 'For deposit into his account'. The next day, Lim obtained from the PNB a Cashier's check for P250,000.00, payable to plaintiff and deposited it with the Manila Banking Corporation in time to answer for the September 25, 1969 Manila Banking check which he had delivered to defendant corporation.

"Later, plaintiff stopped payment of both PNB Cashier's check of P500,000.00 and TMBC check of P250,000.00.

"Defendants liquidated plaintiff's margin account with the sales of the securities given as collaterals therefor." (Annex "A", Petition, pp. 88- 99, Rollo).

The Court of First Instance resolved the case on the following issues, namely:

- Did the defendants extend to plaintiff excessive credit in violation of Section 18 of the Securities Act?
- Did plaintiff authorize the purchase for its account by the defendant of the 14,235 Marinduque shares on September 15 and 16, 1969?
- Was the defendants' unilateral liquidation of plaintiff's margin account on September 25, 1969 justified under the circumstances then obtaining?

On the first issue, the court said that:

"At first glance * * *, it would seem that the defendant brokerage firm extended to plaintiff excessive credit because it is provided under section 18 of the Securities Act that 'for the purpose of preventing the excessive use of credit for the purchase or carrying of securities', one of the standards set is that the credit extended should not exceed 'fifty per centum of the current market price of the security' (Section 18, par. (a), (1), Securities Act).

"In other words, applying the said standard on the maximum limit of allowable credit fixed by law to the case at bar, considering that the value of plaintiff's security position with the defendant brokerage firm was P1,168,478.00 as of September 12, 1969, the maximum credit that could legally be extended to plaintiff should only be fifty per cent of P1,168,478.00 or P584,239.00 at most, instead of the P804,179.69 actually extended by the defendant brokerage firm to plaintiff. Stated in the reverse, since the debit balance of plaintiff's margin account was P804,179.69 as of September 12, 1969, the value of its security position with the defendant brokerage firm should have been at least P1,608,359.38, instead of the P1,168,478.00 that it then had." (Record on Appeal, pp. 191-192).

Notwithstanding the foregoing, the court took into account the stock market boom of the period and the heavy volume of trading resulting therefrom, which prompted the Securities and Exchange Commission to suspend trading at the Manila and Makati Stock Exchanges on Wednesdays in order to enable stock brokers to update their records. It found that, in view of the circumstances obtaining, respondent brokerage firm, applying Sections 28(a)(2) and 40 of the Securities Act, had not wilfully violated the Securities Act. The Court said:

"No evidence has been presented by plaintiff to prove that the defendant brokerage firm 'wilfully' violated Section 18 of the Securities Act * * *. On the contrary, the evidence presented by the defendants, through witness Carlos Moran Sison, proved beyond doubt that if there was any violation of the law at all, it was done in absolute good faith and without malice whatsoever, considering the circumstances surrounding the case.

"To the mind of the Court, the fact that Carlos Moran Sison, upon discovering on September 8 or 9, 1969 that plaintiff's account was under-margin, summoned Mariano T. Lim immediately and told him to put the account of plaintiff in proper order or else it will be liquidated in four days, shows beyond dispute that the defendant brokerage firm did not intend at all to violate Section 18 of the Securities Act. At least, not wilfully. Moreover, there is the testimony of Carlos Moran Sison that one of the reasons why he fired Arsenio N. Luz III as

President of the defendant broker-age firm is the fact that its records were in such a mess that it was impossible to ascertain at the time whether a particular account was undermargin or not. Precisely because of this unfortunate situation, the first step that Carlos Moran Sison took when he re-assumed the presidency of his firm on September 2, 1969, was to hire a special accountant to go over the messy records and give him an accurate report on the status of the margin accounts. And once the report on the margin accounts was submitted to him and he discovered that the plaintiff was under margin, he lost no time in summoning Mariano T. Lim to his office and informing him to put plaintiff's account in proper order or else it will be liquidated within four days. If any proof of good faith on the part of Carlos Moran Sison, the controlling stockholder of the defendant brokerage firm, is needed at all, this is it.

"On the other hand, Mariano T. Lim, plaintiff's treasurer and authorized trader, admitted on cross examination that since July, 1969, he knew all the time that plaintiff's margin account was no longer in proper order. He was already thirty-one years old then, a graduate from the University of North Carolina, and has been engaged in business for the past several years. Stock trading on margin was not new to him, for before becoming a customer of the defendant brokerage firm on June 17, 1969, plaintiff was already trading on margin with Philsec since March, 1969, with whom it executed a margin agreement containing the rules on margin trading.

* * * * *

(Record on Appeal, pp. 198-200).

"This Court believes that under the time-honored principle of equity – that one who comes into equity must come with clean hands – plaintiff cannot now be allowed to take advantage of defendants' alleged violation of Section 18 of the Securities Act if only because it was itself guilty of the same act. And 'both parties being in pari delicto, they shall have no action against each other' (Art. 1411, New Civil Code). Obviously, defendants could not have been guilty of such violation of the law had not plaintiff cooperated as co-principal; hence, it cannot now be heard to complain of whatever damages it may have suffered as a consequence of such violation. The maxim is that 'in pari delicto, potior est conditio defendantis et possidentes', that is, 'where both parties are equally in fault, the condition of the defendant is preferable' (Bouvier, L. D.), or, as stated in a case, 'among those in equal wrong, the situation of the defendant is the stronger' (Norris v. York, 105 Kan. 448, 450, 185 P 43; 32 CJ 577." (Record on Appeal, p. 209).

On the second issue – whether or not plaintiff authorized the purchase for its account by the defendant brokerage firm of the 14,235 Marinduque shares on September 15 and 16, 1969 – the court concluded from the conflicting testimonies and other evidence that the purchase was authorized by the plaintiff.

The court arrived at said conclusion largely on account of the following:

"According to him (Mariano T. Lim), on September 16, 1969, when he was informed that the defendant brokerage firm had bought for plaintiff's account Marinduque shares, he protested and complained (t.s.n., p. 56, July 16, 1970). Yet he did not even bother to ask how many Marinduque shares were bought for the account of plaintiff, or even when they were bought, * * * perhaps his protest and his complaint would have been humorous if only 100 Marinduque shares were bought for plaintiff's account and at a price which might have been profitable for the plaintiff then.

"Again, on September 19, 1969, according to Mr. Lim, he went to the office of the defendant brokerage firm and delivered to the firm three (3) MBTC checks in the total amount of P500,000.00 (Exhs. XX, YY & AAA, or 4, 5 & 6). These checks were deposited by him with the said firm 'to straighten up our margin' (t.s.n., pp. 19, 25, June 25, 1970), that is, to place plaintiff's margin account in proper order, and not to pay on account of the 4,260 Marinduque shares bought for plaintiff by the defendant brokerage firm on September 15, 1969. He presented Exhs. ZZ and BBB, the two official receipts issued by the defendant brokerage firm for the said three checks to show that the amount of P500,000.00 was a deposit. But if, as claimed by Mr. Lim, the

above-mentioned amount of P500,000.00 was deposited by him to put plaintiff's margin account in order, then he made an overdeposit because at that time, plaintiff's debit balance was P804,179.69 while its security position was P1,168,478.00. In other words, Mr. Lim did not have to deposit half a million pesos to place plaintiff's margin account in proper order because all he needed then was to deposit only the amount of P219,940.69, to be exact for that would have reduced plaintiff's debit balance of P584,239.00, which is exactly one-half or 50% of plaintiff's security position then of P1,168,478.00, as required under Section 18, paragraphs (a)(1), of the Securities Act. Furthermore, if it were really true, as claimed by Mr. Lim, that the half a million pesos delivered by him to the defendant brokerage firm on September 19, 1969 was to place plaintiff's margin account in proper order, there was no reason at all why it was done that early. For the plaintiff was given one to two weeks from September 8 to 9, 1969, within which to straighten up its margin account or, as testified to by Mr. Lim, 'a week from September 16' (t.s.n., p. 64, July 16, 1970), which was until September 23, 1969. And considering the three MBTC checks amounting to P500,000.00 which he delivered to defendant brokerage firm on September 19, 1969, purportedly to place plaintiff's margin account in proper order, bounced for 'insufficient funds' (Exhs. 4-A, 5-A, 6-A & 9), it certainly defies human credulity why Mr. Lim should attempt to make payment on something that was not yet due and by checks which had no sufficient funds." (Record on Appeal, pp. 221-223).

The Court of First Instance gave credence to the claim of defendant brokerage firm that the checks for P500,000.00 and P250,000.00 delivered by Mr. Lim were in payment of the purchase price of the 4,260 Marinduque shares bought on September 15, 1969 by defendant on spot cash basis for plaintiff's account, payment for which was due on September 19, 1969, since spot purchases must be paid within four (4) days.[1]

On the issue of whether or not CMS Stock Brokerage, Inc. was justified in liquidating petitioner's margin account, the trial court said:

"The reason for such a liquidation was testified to by Atty. Teodoro R. Dominguez, the corporate secretary-treasurer and legal counsel of defendant brokerage firm. According to him, between 10:30 and 11:00 o'clock in the morning of September 25, 1969, he went to the Merchants Banking Corporation in Makati, Rizal to deposit in the account of defendant brokerage firm the PNB Cashier's check of P500,000.00 (Exh. CCC or 10) and TMBC check of P250,000.00 (Exh. EEE or 12); that before depositing these two checks, he first asked the branch manager of the Merchants Banking Corporation to find out by telephone from the Manila Banking Corporation if the Manila Banking check for P250,000.00 marked Exhibit 12 was a good check or has funds to support it; that the information received was that Exhibit 12 had no sufficient funds to back it up; and that notwithstanding this information, he still deposited the said check and promptly relayed said information to Carlos Moran Sison, who immediately called up his son, Luis F. Sison, who was on the floor of the Makati Stock Exchange and ordered him to immediately liquidate the account of the Carolina Industries, Inc. (t.s.n., pp. 8-11, Jan. 7, 1971)." (Record on Appeal, pp. 283-284).

The Court chose to believe this version as against petitioner's assertion that the payments on the checks were stopped precisely because liquidation of its margin deposit was already being commenced, and thus arrived at the conclusion that the liquidation was justified.

Considering the foregoing, and ruling on the counterclaims of CMS Stock Brokerage, Inc., the court rendered judgment in favor of the latter, the dispositive portion of which reads as follows:

"WHEREFORE, the Court hereby renders judgment as follows:

"1. dismissing plaintiff's complaint;

"2. ordering plaintiff to pay defendants on their counterclaims:

(a) The amount of P507,085.21 as the debit balance of its account with defendants brokerage firm as of December 2, 1970, plus daily interest on the running balance of said amount at the rate of 12% per annum,

compound-ded monthly, computed from December 1, 1970, until the said amount, together with the stipulated interest, shall have been fully paid, pursuant to paragraph 8 of their Margin Account Agreement of June 17, 1969;

(b) The amount of P500,000.00 as actual consequential damages suffered by defendant brokerage firm arising from its loss of many clients which greatly reduced the volume of its business and earnings in 1970 brought about by plaintiff's imputations of fraud and dishonesty, against the said brokerage firm;

(c) The amount of P100,000.00 as reasonable moral damages recoverable under the circumstances of this case;

(d) The amount of P100,000.00 as reasonable exemplary or corrective damages, by way of example or correction for the public good;

(e) The amount of P100,000.00 by way of attorney's fees which defendants have incurred and bound themselves to pay their counsel and which this Court considers reasonable and recoverable;

(f) The amount of P2,447.40 as actual expenses of litigation incurred by defendants; and,

(g) Costs.

"3. Ordering the Philippine National Bank, Manila, to honor its Cashier's check No. 211367 in the amount of P500,000.00 dated September 24, 1969, pursuant to the commitment stated in its letter of October 29, 1969, and the amount thereof shall hereby apply in partial stipulation of the judgment herein rendered in favor of defendants.

SO ORDERED." (Record on Appeal, pp. 298- 300).

On appeal to the Court of Appeals, the judgment of the trial court was affirmed with modification, as stated above. The dispositive portion of the decision of the Court of Appeals reads as follows:

"WHEREFORE, with the modification that the awards of moral damages in the amount of P100,000.00 and exemplary damages in the amount of P100,000.00 should be reduced each to P25,000.00, and the attorney's fees in the amount of P100,000.00 should be reduced also to P25,000.00, the decision appealed from is AFFIRMED in all other respects.

"With costs against plaintiff-appellant.

SO ORDERED." (Annex "A", Petition, pp. 110, Rollo).

Petitioner elevated the case to this Court, posing the following issues for resolution:

"1. May a broker make valid and binding stock purchases for customers under margin accounts in excess and in violation of the credit ceiling under Section 18 of the Securities Act and Rule 12 of SEC Regulations Governing Securities Exchanges and Their Members, Brokers, Dealers, Salesmen and Customers?

"2. May a broker make valid and binding stock purchases for customers on verbal and telephone buy or sell orders without complying with the mandatory requirements of Rule B-7 of the SEC Rules and Regulations that verbal buy and sell orders must be entered in buy or sell forms and time-stamped both upon their receipt and their execution?

"3. May a broker unilaterally and without notice to customers sell out the shares on deposit and thereby liquidate the margin account in violation of the mandatory provisions of SEC Rules B-19, 14 and 15 implementing the Securities Act?

"4. Should not the requirements of the Securities Act and its implementing rules and regulations be construed strictly against the stock broker and liberally in favor of the investors whom the law seek to protect?

"5. Is not a stock broker who violated the mandatory provisions of the Securities Act and its implementing SEC Rules and Regulations liable to the customers for consequential damages?

"Quite apart from, and independently of, the foregoing important and novel substantial issues, the following legal issues should also be resolved in order to make a complete and just disposition of the case at bar:

"6. Whether or not the Court of Appeals erred as a matter of law in drawing conclusions that petitioner was guilty of fraud and bad faith which were not supported by the evidence.

"7. Whether or not the Court of Appeals erred as a matter of law in adopting the findings and conclusions of the trial court grounded entirely on speculations, surmises or conjectures, which are manifestly absurd or impossible." (Petition, Rollo, pp. 19-20).

While the general rule is that findings of fact of the trial court and the Court of Appeals are binding upon this Court, said rule nevertheless admits of certain exceptions. Thus, this Court retains the power to review and rectify findings of fact of said courts (1) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; and (5) when the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee.[2] The same rule applies where the lower court manifestly overlooked certain relevant facts not disputed by the parties, which if properly considered, would justify a different conclusion.[3]

There are facts and circumstances in the record which render untenable the conclusion of the trial court and the Court of Appeals that petitioner Carolina Industries, Inc., thru its treasurer, authorized the disputed purchase of Marinduque shares. It will be recalled that the court a quo arrived at the conclusion that the purchase was authorized by petitioner on the basis of its assumption that the checks issued and endorsed by Carolina Industries, Inc. to CMS Stock Brokerage, Inc. were in payment of the purchase price of the Marinduque shares in question.

It will be noted, however, that all receipts issued by CMS Stock Brokerage, Inc. for the checks aforementioned clearly and categorically stated that the same were for deposit. Certainly, if the said checks were delivered in partial payment for the Marinduque shares, the aforesaid receipts would have so stated, considering that the receipts were prepared and issued by the CMS Stock Brokerage, Inc. The excuse offered by CMS Stock Brokerage, Inc. to the effect that this practice of receipting for all moneys received as deposits is resorted to by brokers to avoid confusion of records during the rush of buying and selling appears unpersuasive, considering that the payments were never denominated even afterwards in the records of said brokerage firm that those were actually partial payments of the Marinduque shares. Thus, as found by the trial court in the criminal cases for estafa against petitioner's officers,[4] the monthly statements of CMS Stock Brokerage, Inc. which should reflect the true purpose of the payments made, still characterize the same as deposits and not payments for the purchase, on cash basis, of the Marinduque shares.

Moreover, on September 29, 1969, after payments on the PNB and TMBC checks had been stopped, Atty. Dominguez of CMS Stock Brokerage, Inc. wrote a letter (Exhibit "19") to petitioner, protesting the stopping of payment of "TMBC Check No. G-111790A for P250,000.00 dated September 25, 1969, which you delivered to us on that same date to cover your margin account with us." Why should Atty. Dominguez specifically state in his letter for CMS Stock Brokerage, Inc. on September 29, 1969 that the checks were delivered to them to cover the margin account of the petitioner, if such was not the case? Certainly, when the letter was prepared, there was no longer any necessity of "avoiding confusion of records during the rush of buying and selling" of shares.

It would be an imposition on human credulity to believe that Carlos Moran Sison, knowing that petitioner's account was substantially undermargin and that petitioner could not even update the same, would be willing to

purchase for petitioner 14,235 Marinduque shares, worth P2,659,521.19 on spot cash basis meaning payable within four (4) days – when, from all indications and as admitted by Carlos Moran Sison himself, petitioner would be unable to pay for the same. It appears that at the time the alleged order for Marinduque shares was executed, there was substantial unloading of Marinduque shares at the Exchange and very few were buying the same. Thus, on the two trading days of September 15 and 16, 1969, respondent CMS Stock Brokerage, Inc. sold an overall total of 38,660 Marinduque shares with an aggregate value of P7,027,980.30 (Exhibits "SS-8" to "SS-9"; "TT-5"; "WWW", "WWW-1" to "WWW-31"; "XXX--11", "XXX-13" to "XXX-17"; "YYY", "YYY-1" to "YYY-14"). During the same two days the respondent brokerage purchased only 18,415 Marinduque shares, to wit:[5]

D A T E

NO. OF SHARES

CHARGED TO

PERCENTAGE

(AMOUNT)

PETITIONER

(AMOUNT)

Sept. 15

4,360

4,260

97.70%

(P767,660.00)

(P749,985.60)

Sept. 16

14,055

9,975

71.14%

(P2,684,347.70)

(P1,909,536.30)

What makes the transaction rather suspicious is the admission of Carlos Moran Sison himself that in the afternoon of September 12, 1969 when petitioner Mariano T. Lim came to his office and told him to buy 15,000 Marinduque shares because Lim had a tip that the shares would go up in price, Atty. Carlos Moran Sison told him that it was not true, saying: "Well, Mr. Jacob Cabarrus must be fooling you be-cause my information is very reliable * * *". Right then and there, respondent Sison phoned Cabarrus who confirmed Sison's previous information.[6] If it were true that respondent Carlos Moran Sison in-formed Lim to withdraw the enormous stock purchase order because according to the Executive Vice-Pres-ident of Marinduque Mining and Industrial Corpora-tion himself the information given to Lim was not true, it is rather unusual and inconsistent with the ordinary instincts and promptings of human nature for Lim to have still insisted in his order. If, according to respondent Sison his brokerage firm had serious difficulty with its cash position and was so concerned with the deficiency of petitioner's margin account, why did his brokerage not wait for petitioner to deposit to them half-a-million pesos worth of stocks or the P300,000.00 cash deposit be-fore purchasing for petitioner P2,600,000.00 worth of stocks? And since Lim failed to deliver the requisite cash and security, why did respondent Sison not demand from Lim the promised P1,000,000.00 in cash, or at least require him to confirm in writing the alleged purchase of more than two million pesos worth of shares when he met Lim in the afternoon of September 15, 1969? The conclusion of the Court of Appeals that because of the return only on September 29, 1969 of the fifteen (15) Purchase Confirmation Slips after the price of Marinduque shares had gone down creates the presumption that petitioner authorized the purchase is refuted by the facts of record. The Appellate Court totally ignored the testimony of Lim that in the afternoon of September 16, 1969, Lim disowned the purchases and Carlos Moran Sison said that he was taking back the shares so that there was no need to return the Purchase Confirmation Slips. It was only after Lim was informed by Luis Sison on September 26, 1969 that his father, Carlos Moran Sison, decided to consider the purchases of Marinduque shares for petitioner's account did peti-tioner consult its lawyers and decided to return the Purchase Confirmation Slips. The Appellate Court did not make any ruling why it did not give credence to this portion of Lim's testimony. Where there are directly conflicting versions of the same incident, the court, in its search for the truth, perforce has to look for some facts or circumstances which can be used as valuable aid in evaluating the probability or improbability of a testimony, for after all, the element of probability is always in-volved in weighing testimonial evidence.[7]

It is undisputed that the alleged orders made by petitioner for 14,235 shares of Marinduque Mining and Industrial Corporation were neither entered on purchase forms nor time-stamped upon receipt, as required by Rule B-7 of the SEC Implementing Rules and Regulations. There is evidence to the effect that private respondent brokerage firm had the re-quired buying and selling forms and that these were usually filled out by the customers. Thus, it was petitioner's trading practice to utilize these buy and sell order forms. It appears that the disputed Marinduque purchase allegedly for petitioner departed from this trading practice. It is significant to note that, according to the documentary evidence submitted by the Makati Stock Exchange, the sales of respondent brokerage of 14,160 Marinduque shares to various customers on September 15, 1969 were all time-stamped in Exchange Contract Slips (Exhibits "WWW", "WWW-1" to "WWW-31"; "SS-8"). If it were true that Lim or the petitioner gave to

respondent brokerage the order to purchase, it is rather unusual why the alleged order of petitioner for 15,000 Marinduque shares were (a) not placed in writing; (b) much less entered in the buying order form; or (c) time-stamped to indicate the date and time of the order. Considering that, as testified to by Carlos Moran Sison, Mariano Lim went to his office several times regarding the purchase of Marinduque shares, it seems incredible that he or the respondent brokerage never bothered to have Lim fill out the required form, considering the magnitude of the purchase and the financial situation of the purchaser. This is significant because even verbal orders are required to be recorded and time-stamped.

Rule B-7 of the SEC Implementing Rules and Regulations provides as follows:

"7. Timing of orders and their execution. Verbal and telephone orders received by a member shall be entered on the forms used by him for his customer's buying and selling orders. All buying and selling orders received by him, including the forms on which verbal and telephone orders are entered, shall be coursed thru his office and shall be time-stamped upon their receipt and also upon their execution, withdrawal or cancellation so as to indicate the date and time on which they were received, executed, withdrawn or cancelled.

"All brokers, who deal for their own account or trade for discretionary account, as well as their partners, floor traders, officials and employees, shall place their orders on the same forms used by such brokers for their customers, and such forms shall also be time-stamped with other buying and selling orders received, as herein required in the case of other buying and selling orders.

"All buying and selling orders referring to the same security and under the same terms and conditions, including those placed by the broker for his own account or for discretionary accounts and those placed by his partners, floor traders, officials and employees, shall be executed by him in the order in which they were received."

The obvious purpose of this rule is to safe-guard public interest and protect the investing public from fraud and deceit in securities transaction. It is intended to prevent stock brokers from dumping to the account of stock investors unprofitable stock transactions initially purchased by brokers on their own account. It is conceded that the alleged verbal orders of petitioner for the purchase of Marinduque shares were not recorded in accordance with the mandatory requirements of Rule B-7 of the SEC Implementing Rules and Regulations. Rules, regulations and general orders enacted by administrative authorities pursuant to the powers delegated to them have the force and effect of law.[8] Pursuant to Section 1 of the Margin Account Agreement, all transactions shall be subject, among others, "to the provisions of the Securities Act and the Rules and Regulations of the Securities and Exchange Commission."

We have consistently held that under such situation, such rules and regulations become special terms of the contract. It was held in *Benett v. Logan*,[9] that, where a customer orders securities to be purchased "subject to the rules, regulations, and customs of the exchange in which the order is executed", such rules, regulations and customs thereby become special terms of the contract. This very same doctrine has been consistently adopted in interpreting contracts in this jurisdiction and We have never deviated therefrom.[10]

Private respondents offered the excuse that non-compliance with the foregoing requirement was due to the stock market boom and the rush of trading which resulted in the near impossibility of complying therewith. It is argued that as a matter of fact, Rule B-7 was suspended, or, at least, not enforced by the Securities and Exchange Commission during the period of the boom.

No proof is presented by private respondent showing the official suspension by the Securities and Exchange Commission of the aforesaid Rule. On the contrary, what appears on record is that the Securities and Exchange Commission took measures to ensure compliance therewith. Thus, it issued the following Memorandum Circular

(Exhibit "1") on August 28, 1969:

"MEMORANDUM CIRCULAR

"TO: The Manila Stock Exchange and
The Makati Stock Exchange, Inc.

In view of the heavy volume of transactions in the Manila and Makati Stock Exchanges, the Commission has observed that the member-firms are not up-to-date in their records. Likewise, it has also been observed that transfer agents have plenty of back-logs.

In order to afford stock brokers more time in keeping up-to-date their records and to help transfer agents reduce their back-logs the Commission, pursuant to Section 28(b) of the Securities Act, hereby orders that, effective September 3, 1969 and until further notice, trading in both exchanges be suspended on Wednesday of every week. Trading hours should be from 9:00 in the morning up to 12:00 o'clock noon.

Manila, Philippines, August 28, 1969."

And, as shown by the records of the Makati Stock Exchange adverted to in the preceding paragraphs, the sales of respondent brokerage of Marinduque Mining shares on September 15, 1969 were all recorded in the required form and time-stamped.

Even assuming that the factual findings of the trial court and the Court of Appeals were correct, We are of the view that the resolution of the legal questions determinative of this controversy would not change respondents' situation. The primary legal issue concerns the effect on subsequent transactions of the over-extension of credit made by private respondents in favor of petitioner.

During a period of three months, from June 17, 1969 to September 12, 1969, respondent CMS Stock Brokerage, Inc. extended loans or credit to the petitioner in the purchasing and carrying of securities under an agreement entitled "Margin Account Agreement" (Exhibit "B"). The loans were secured by collaterals consisting of registered securities which were purchased thru respondent brokerage firm. It is not disputed that the margin account of the petitioner with respondent corporation was consistently undermargin at all times during the period from June 23, to September 12, 1969. In other words, its debit balance was over the 50% ceiling of its security deposit set by Section 18(a)(1) of the Securities Act. Petitioner's total margin deposit amounted to only P634,796.00 and that from June 23 to September 12, 1969, all credits extended to it were over the ceiling allowed, as a result of which it was consistently undermargin. Thus, the percentage of petitioner's debit balance to the market value of its security deposit deteriorated during the period from June 17 to September 12, 1969, from 49.48% on June 17 to 90.39% on September 8; 90.55% on September 9; 82.93% on September 11; and 78.57% on September 12. This was a patent violation of Section 18 (a) of the Securities Act, and Rule 12 of the Implementing Rules and Regulations, which provide:

"SEC. 18. Margin requirements. – (a) For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Commission shall prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security) registered on a securities exchange. For the initial extension of credit, such rules and regulations shall be based upon the following standard:

"An amount not greater than whichever is higher of –

(1) Fifty per centum of the current market price of the security, or

(2) One hundred per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than sixty-five per centum of the current market price.

x x x x x x x

"12. In trading on margin a broker shall not extend credit to his customers beyond the following maximum:

(a) on securities which are duly registered and/or licensed by the Insular Treasurer or by the Commission, but not listed on any exchange, 30 per centum of the current market value of the securities;

(b) on securities duly registered and/or licensed by the Insular Treasurer or by the Commission, and listed on an Exchange, an amount whichever is the higher of:

(1) 40 per centum of the current market price of the securities; or

(2) 100 per centum of the lowest market price of the securities during the preceding 36 months but not more than 50 per centum of the current market price."

The main purpose of Section 18(a)(1) of the Securities Act and Rule 12 of the Implementing Rules and Regulations is "to give a government credit agency an effective method of reducing the aggregate amount of the nation's credit resources which can be directed by speculation into the stock market" and also for the protection of the small speculator by making it impossible for him to spread himself too thin.[11] Such requirements are intended to prevent the excessive use of credit for the purchase and carrying on of securities, and of reducing the aggregate amount of the national credit resources which are directed by speculation into the stock market and of achieving a more balanced use of such resources. The secondary purpose is the protection of the investor.[12]

It is noteworthy that the foregoing provisions enjoin the over-extension of credit and not the application for excessive credit. It does not mean that the customer to whom credit has been extended or for whom it has been arranged has acted in violation of the Act or any rule or regulation there-under.[13] The nature of the brokerage business is such that it is the broker, not the client, who is in a position to verify, at any time, the status of the client's account. It is only the broker, therefore, who can prevent the over-extension of credit. In the instant case, it should be noted that petitioner did not know the exact amount of its undermargin, and that even after its request for a statement of account (Exhibit "20"), it was only some three months thereafter that private respondents were able to comply.

Neither is private respondents' reason that their records are messy sufficient to exonerate respondent brokerage from the effects of its statutory violations. It is the duty or obligation of respondent brokerage firm to keep its records in proper order. The disorderly or messy condition indicates negligence or lack of genuine concern for the updating of its records and not good faith. There is admission to the effect that Atty. Carlos Moran Sison of the CMS Brokerage, Inc. learned on September 8 or 9, 1969 of the excessive undermargin of petitioner's account. As a matter of fact, according to Sison, he told Lim on September 8 or 9, 1969 that his account was undermargin and gave Lim one week to put his margin account in order. He told Lim to deliver security stocks worth half a million pesos, or to deposit with them in cash P300,000.00. And yet, despite the failure of petitioner to cover its deficiency, private respondent allegedly bought for the account of petitioner on September 15 and 16, 1969 Marinduque shares for P2,659,521.90 and on September 23, 1969, Atlas and Lepanto Consolidated Mining shares for P1,069,991.88, at a time when petitioner's margin account was admittedly undermargin or above the 50% ceiling required by law. This excessive extension of credit by the broker cannot be considered innocent or inadvertent mistake. The kind of error which is considered innocent or inadvertent refers only to mechanical mistake made in good faith in determining, recording or calculating any credit, balance, market price or loan value or due to other similar mechanical mistake, and the broker concerned promptly, upon discovery of the mistake, takes whatever action is practicable to remedy the non-compliance.[14] This is not the case here.

Pursuant to the clear and explicit provision of Section 38(b) of the Securities Act, "(E)very contract made in

violation of any provision of this Act or of any rule or regulation thereunder * * *, shall be void: (1) As regards the rights of any per-son who, in violation of any such provision, rule or regulation, shall have made or engaged in the per-formance of any such contract * * *." Section 38(b) (1) of the Securities Act is copied from Section 29 of the United States Securities Exchange Act. The aforesaid Section 29 of the Securities Exchange Act of the United States has been uniformly construed, thus:

"The statute proscribes the extension and maintenance of credit for the purchase of stock. This does not mean that the customer to whom cre-dit is extended or from whom it is arranged has acted in violation of the Act or any rule or regulation thereunder. As was well stated by Wyzanski, J. in *Remar v. Clayton Securities Corp.* (supra, 81 F. Supp. p. 1017):

'* * * Broadly stated, the rule is that where defendant's violation of a prohibitory statute has caused injury to plaintiff the latter has a right of action if one of the purpo-ses of the enactment was to protect individual interests like the plain-tiff's.

* * *

'Plaintiff's right of action is not affected by his participation as borrower in the transaction in which Clayton and the bank violated the sta-tute. Since the statute was passed for the benefit of people like plain-tiff, and since the Legislature re-garded him as incapable of protecting himself, he is not disabled from suing for the injury he sustained. * * * This principle may be compared with the rule that allows a plaintiff to enforce or rescind a contract made in violation of a statute if the viola-tion was by defendant and the plain-tiff belongs to the class for whose benefit the statute was enacted.'***" (*Myer v. Shields & Company*, 267 N.Y.S. 2d. 872, 875).

We have previously stated that in case of laws patterned after or adopted from those of the United States, decisions of United States courts construing similar laws are entitled to great weight. Gene-rally speaking, when a statute has been adopted from another State and such statute has previously been construed by the courts of such State or country, this statute is deemed to have been adopted with the construction so given it.[15] It has been uni-formly held that if a broker extends credit to a customer in violation of the Securities Act or the regulations promulgated pursuant thereto, all to induce a customer to purchase securities, then the broker has violated the law and the customer may recover from him any loss proximately resulting therefrom.[16] The customer's right of action is not affected by his participation in the transaction "since the legislation regarded him as incapable of protecting himself." [17] It has been held that such protection was intended to apply only to innocent investors as distinguished from those who lose their innocence and wait to see how their investments turn out before deciding to invoke the act.[18] The acts of protecting of investors extends to corporations as well as to individuals.[19] We hold that such principles are applicable to the case at bar.

The instant controversy is neither an adminis-trative case for willful violation before the Secu-rities and Exchange Commission, in which case Section 28(a)(2) of the Securities Act would properly apply, nor a criminal prosecution for such willful viola-tion, in which case Section 40 of the same Act would be applied for the imposition of the corresponding penalty. The instant case is an ordinary civil case seeking to nullify certain acts, alleged to be con-trary to law, arising from violation of the margin agreement between petitioner and private respondent brokerage firm, and relating to acts committed by the latter in the course of their business relation-ship. Its purpose is to recover substantial business losses incurred by petitioner resulting from the assailed acts of respondent broker, Compliance to said requirement cannot be waived. The validity of transactions relative to securities trading is squarely provided for in Section 38, the full con-text of which reads as follows:

"Sec. 38. Validity of Contracts. – (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this Act or of any rule or regulation thereunder, or of any rule of an exchange required thereby, shall be void.

(b) Every contract made in violation of any provision of this Act or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, any provision of this Act or any rule or regulation thereunder, shall be void:

(1) As regards the rights of any person who, in violation of any such provision, rule or regulation, shall have made or engaged in the performance of any such contract, and

(2) As regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation.

(c) Nothing in this Act shall be construed –

(1) To effect the validity of any loan or extension of credit made or of any lien created prior or subsequent to the effectiveness of this Act, unless at the time of the making of such loan or extension of credit or the creating of such lien, the person making such loan or extension of credit or acquiring such lien shall have actual knowledge of the facts by reason of which the making of such loan or extension of credit or the acquisition of such lien is a violation of the provisions of this Act or any rule or regulation thereunder, or

(2) To afford a defense to the collection of any debt, obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this Act or any rule or regulation thereunder affecting the legality of such debt, obligation or lien."

It appears also in the record that while petitioner had an outstanding debt to respondent broker-age in the amount of P838,616.73, the same had been fully offset by proceeds of the liquidation sale of petitioner's shares of stock beginning on September 25, 1969, where the total sales proceeds received by respondent brokerage amounted to P999,324.19. It also appears that during the period from June 17, 1969 to September 12, 1969, petitioner deposited to respondent brokerage various sums totalling P586,796.00, plus securities valued at P48,000.00 consisting of 400 shares of Benguet Consolidated stock deposited on July 10, 1969 (Exhibits "VV" to "VV-5") totalling P634,796.00.

On the third issue, it appears that respondent brokerage unilaterally began the liquidation of petitioner's account on September 25, 1969 by selling the securities of the latter even before the two checks of P750.00 were dishonored by the banks. Petitioner's deposits to respondent brokerage in the late afternoon of September 24, 1969 of P750,000.00 were with the specific understanding that the brokerage shall compute the balance of petitioner's indebtedness so that it can pay in full all its margin account. Certainly, petitioner would not have deposited the checks that afternoon if it knew that its margin account was going to be liquidated the following day. The least that private respondent should have done is to have given to petitioner at least forty-eight (48) hours notice prior to liquidation. Pursuant to Rule 14 of the SEC Rules, a broker shall not sell the customer's securities for insufficiency of margin until after the broker has given the customer at least forty-eight (48) hours to maintain the margin. Under these circumstances, the liquidation was, therefore, premature.

In sum, We hold that under the attendant circumstances, the over-extension of credit by CMS Stock Brokerage, Inc. to Carolina Industries, Inc. beyond the 50% allowed by law, and the non-compliance with Rule B-7 of the Implementing Rules and Regulations rendered null, insofar as the rights of CMS Stock Brokerage, Inc. are concerned, the purported purchase for petitioner's account on September 15 and 16, 1969 of Marinduque shares worth P2,659,521.90 and on September 23, 1969 of Atlas and Lepanto Consolidated shares for P1,069,991.88. Petitioner is, therefore, entitled to the return of the P634,796.00 deposited with respondent brokerage and to the amount of P500,000.00 deposited with the Bank of the Philippine Islands, as per PNB Cashier's check No.

211367.

WHEREFORE, the decision appealed from is REVERSED, and private respondent CMS Stock Brokerage, Inc. is ordered to pay Carolina Industries, Inc. the amount of P634,796.00, representing its liquidated margin deposit, with interest at 12% per annum from the time of the filing of the complaint until fully paid; and P20,000.00 as attorney's fees. Private respondents are directed to secure the release from the Bank of the Philippine Islands the amount of P500,000.00, together with all its earnings, in favor of the petitioner. Costs against private respondents.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and Abad Santos, JJ., concur.

[1] T.s.n., Hearing on Sept. 25, 1970, pp. 84, 86-87.

[2] Ramos v. Court of Appeals, L-25463, April 4, 1975, 63 SCRA 331; Philippine American Life Insurance Co. v. Santamaria, L-26719, Feb. 27, 1970, 31 SCRA 798; Aldaba v. Court of Appeals, L-21676, Feb. 28, 1969, 27 SCRA 263; Cui v. Court of Appeals, L-24072, July 29, 1968, 24 SCRA 189.

[3] Abellana v. Dosdos, L-19498, Feb. 26, 1965, 13 SCRA 244; Uytiepo v. Aggabao, L-28671, Sept. 30, 1970, 35 SCRA 186.

[4] Criminal Cases Nos. 131-M(1202) and 132-M(1203), Annex "D", Petition.

[5] Brief for Petitioner, pp. 37-41.

[6] Brief for Respondents. pp. 18-19.

[7] People v. Boholst-Caballero, L-23249, Nov. 25, 1974, 61 SCRA 180.

[8] Columbia Broadcasting System v. United States, 97 L Ed (Adv 1066), cited in Geukeko v. Araneta, Etc., L-10182, Dec. 24, 1957, 102 Phil. 706, 713.

[9] 80 Cal. App. 571, 252 Pac. 662 (1927).

[10] De Borja v. CAR, L-24398, Oct. 25, 1977, 79 SCRA 557; Basa, et al. v. FOITAF, et al., L-27113, Nov. 19, 1974, 61 SCRA 93; Central Bank v. Hon. Cloribel and Banco Filipino, L-26971, April 11, 1972, 44 SCRA 307; Maritime Co. of the Phils. v. Reparations Commission, L-29203, July 26, 1971, 40 SCRA 70; Lakas ng mga Manggagawang Makabayan v. Hon. Carlos Abiera, L-29474, Dec. 19, 1970, 36 SCRA 437.

[11] Remar v. Clayton Securities Corporation, 81 F. Supp. 1017.

[12] 69 Am. Jur. 2d. 842-843.

[13] Myer v. Shields & Co., 267 N.Y.S. 2d. 872.

[14] 69 Am. Jur. 2d. 852.

[15] Tamayo v. Gsell, No. 10765, Dec. 22, 1916, 35 Phil. 953, citing Cerezo v. Atlantic, Gulf & Pacific Co., 33 Phil. Rep. 425, citing in turn 2 Lewis Sutherland on Statutory Construction, sec. 783. See also Campos Rueda Corp. v. Sta. Cruz Timber Co., Inc. and Felix, L-6884, March 21, 1956, 98 Phil. 627, 630, wherein the Court, through Jus-tice J.B.L. Reyes ruled that the "jurisdiction of the court depends, not upon the value or demand in each single cause of action, but upon the totality of the demand in all the causes of action", since the rule appears to be, among others, "to be in accord with the weight of American authority including the federal courts and

those of the State of California from which our own rules of practice and procedure were mainly taken."

[16] *Smith v. Bear*, 237 F. 2d. 79.

[17] *Remar v. Clayton Securities Corporation*, supra; *Myer v. Shields & Co.* (1966), 267 N.Y.S. 2d. 872, 874.

[18] *Hecht v. Harris, Upham & Co.*, (DC Cal.) 283 F. Supp. 417 mod. on other grounds (CA 9) 430 F. 2d. 1202.

[19] *Superintendent of Ins. v. Bankers Life & Casualty Co.*, 404 U.S. 6, 30 L. ed. 2d. 128, 92 S. Ct. 165.

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