

FEATI BANK & TRUST COMPANY, PETITIONER, VS. COURT OF APPEALS AND QUALITY TOBACCO CORPORATION, RESPONDENTS.

G.R. No. L-47011. September 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

On June 13, 1973, the Court of First Instance of Manila, Branch XVI, rendered a decision in Civil Case No. 84509, brought by Quality Tobacco Corporation (formerly U.S. Tobacco Corporation) against Feati Bank and Trust Co., with the following dispositive portion:

"IN VIEW OF THE FOREGOING, the Court renders judgment as follows:

- 1) Plaintiff's claim for the amount of P30,312.29 is hereby denied;
- 2) Defendant is entitled to the return of \$110,000.00 and plaintiff is ordered to return the same to defendant upon reimbursement of the amount of P471,600.00 paid by plaintiff to the defendant. No cost or attorney's fees."

On appeal by Quality Tobacco Corporation to the Court of Appeals (CA-G.R. No. 53640-R), the decision of the trial court was reversed; the counter-claim was dismissed; and the appellee was ordered to pay the appellant the sum of P30,312.29, and the costs.

Its motion for reconsideration of the judgment having been denied, Feati Bank elevated the case to Us for review.

The antecedents are the following:

On December 7, 1967, U.S. Tobacco Corporation (predecessor of Quality Tobacco Corporation) opened with Feati Bank and Trust Co. a letter of credit No. 67-571 for US \$120,000.00 in favor of Tatan Corporation, in the principality of Liechtenstein to cover the freight charges in its exportation of 1,980,194 kilos of local Virginia leaf tobacco, to be shipped "C & F" to Tatan Corporation. (Shipment under "C & F" basis, symbol for "cost" and "freight, means that the seller or shipper pays for freight charges from the point of origin to the point of destination, as the price quoted to the buyer includes the cost and freight.)

U.S. Tobacco Corporation paid P471,600.00 at P3.939 for every dollar for the letter of credit. Of the amount covered by the letter of credit, Feati Bank (through the National Bank of North America), remitted to Tatan Corporation US \$110,000.00, leaving an unremitted amount of US \$10,000.00. After the remittance to Tatan, Feati Bank's account with the National Bank of North America was debited in the amount of \$110,221.00 including charges.

On January 18, 1968, U.S. Tobacco Corporation shipped the tobacco to Switzerland and as a result letter of credit No. 20678 was issued by Swiss Credit Bank in its favor upon application of Tatan Corporation. The said letter of credit showed that the tobacco shipment was made on "FOB, Manila" basis. ("FOB" stands for "free on board, " wherein the seller shall deliver and load the goods at seller's point at his expense or free of charge to the buyer but

the duty to pay freight charges from seller's point to the point of destination is on the buyer.)

The discrepancy was discovered by the auditors of the Central Bank and both the Feati Bank and U.S. Tobacco were asked to explain. Whereupon, in a letter to Feati Bank, U.S. Tobacco explained that a mistake was made when Swiss Credit Bank, on order of Tattran Corporation, issued Letter of Credit No. 20678 in that it appeared that the shipment of tobacco was made on "FOB, Manila" basis, instead of "C & F" basis.

The foregoing explanation did not satisfy the Central Bank which accordingly issued Monetary Board Resolution No. 1054, dated July 1, 1969, directing the Feati Bank to advise U.S. Tobacco to have the amount of \$110,000.00 remitted back to the Philippines under pain of having its foreign exchange privileges suspended.

In compliance with the resolution, U.S. Tobacco repatriated on April 7, 1971, the \$110,000.00 through Commercial Bank and Trust Co. which paid it P6.402 for every dollar.

On April 14, 1971, Quality Tobacco Corporation (successor to U.S. Tobacco) requested Feati Bank to pay back the amount of P30,312.29 corresponding to \$10,000.00 which was not remitted to Tattran. Feati Bank replied thus:

"This is to acknowledge receipt of your letter dated April 14, 1971, requesting that we refund to you the excess payment of P30,312.29.

"However, before we make any refund and/or reimbursement to you, we request that the dollar proceeds of our LC No. 67-511 in the amount of \$110,000.00 which was debited from our account when said LC was negotiated, be remitted to us in accordance with the Central Bank Monetary Board Resolution No. 1054 and not to the Commercial Bank and Trust Company. Please note that the P110,000.00 had been debited from Feati Bank and Trust Company's dollar account with the negotiating bank abroad and in compliance with the Monetary Board Resolution No. 1054, and the letter of the Director, Foreign Exchange Department dated December 6, 1968, the same should be remitted to Feati Bank and Trust Company.

"We, therefore, suggest that you request Commercial Bank and Trust Company to credit the account of Feati Bank and Trust Company for \$110,000.00 with Chase Manhattan and we shall in turn reimburse you for the full peso value of the aforementioned dollar amount (US \$110,000.00) computed at the rate of P3.93 together with the unutilized portion of LC No. 67-511, computed at the same rate." (Record on Appeal, pp. 20-21.)

Quality Tobacco rejected Feati Bank's suggestion and insisted on the payment of P30,312.29. Since the parties could not agree, Quality Tobacco filed suit on September 14, 1971, in the Court of First Instance of Manila against Feati Bank praying for the return of P30,312.29, with interest in addition to damages, attorney's fees and costs.

In its answer, Feati Bank denied any liability or obligation for the return of P30,312.29. As a counter-claim, it demanded the return of \$110,000.00 in the same foreign exchange for which it was willing to return the purchase price thereof in Philippine currency. It contended that the use of letter of credit No. 67-571 was nullified by the Central Bank without its fault; and that since the amount was debited from its account with National Bank of North America, it was deprived of the use of its dollar reserves. Feati Bank also asked for damages in the form of unrealized profits as a result of the denial of its use of \$110,000.00 from December 7, 1967.

Quality Tobacco Corporation replied that upon payment of the letter of credit, it became the owner of US \$120,000.00 and Feati Bank had, thereby, lost any right thereto.

Based on the parties' stipulations of facts, the Court of First Instance of Manila rendered the judgment above-quoted but which was reversed by the Court of Appeals as aforesaid without stating the law upon which it based its decision.

The resolution of the petition hinges on how We view the contract between Feati Bank and U.S. Tobacco. The petitioner invokes Articles 1409, 1411 and 1412 of the Civil Code and argues that since the ground on which the Central Bank nullified the purchase by private respondent from petitioner of the dollars in question was the illegal object or purpose behind the purchase, i.e., the illegal exportation of the dollars, the transaction was, therefore, inexistent and void from the beginning; consequently, no valid transmission of the ownership of the dollars from petitioner to private respondent ever took place; since the illegality is imputable alone to private respondent, petitioner as the innocent party is entitled to recover back the dollars. The petitioner prays that judgment be rendered setting aside that of the Court of Appeals and reinstating and affirming that of the trial court denying plaintiff's claim for the amount of P30,312.29 and ordering plaintiff to return \$110,000.00 to defendant upon the reimbursement of P471,600.00 paid by plaintiff to the defendant, with costs in this instance against private respondents. Upon the other hand, Quality Tobacco rejects these arguments and prays that the petitioner be ordered to pay the private respondent the amount of P30,312.29 with interest at the legal rate from December 7, 1967 until fully paid, and the costs.

Treating the contract between the parties in the most favorable light by ascribing the existence of good faith on both sides since the Central Bank took no action on the contract except simply to order the repatriation of the dollars, We hold that it is not illegal or void ab initio but merely voidable because of the statement of a false cause. (Art. 1353, Civil Code; *Concepcion vs. Sta. Ana*, 87 Phil. 787 [1950].) The result will be that the parties will have to be restored to their previous situations by making mutual restitution. (Art. 1398, Civil Code.)

WHEREFORE, the petition is granted; the judgment of the Court of Appeals is reversed; the petitioner shall return to the private respondent the cost of the US \$120,000.00 in the amount of P471,600.00 and reciprocally the private respondent shall restore the petitioner's U.S. dollar account with the National Bank of North America or any other bank which petitioner may designate in the amount of \$110,000.00. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and Fernandez, JJ., concur.
Aquino, J., concurring opinion.

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CONCURRING OPINION

AQUINO, J.:

I concur. The record gives the impression that U.S. Tobacco Corporation purchased \$120,000 from the Feati Bank and Trust Company for P471,600 (at the rate of P3.93 per dollar) on the pretext that such a substantial amount would be used to pay for the supposed freight charges on a shipment of Virginia leaf tobacco to Tatan Corporation, its procurement agent in Vaduz, Liechtenstein.

The Feati Bank itself must have surmised that not all that considerable amount would be used to defray the alleged freight charges because the bank remitted to Tatan Corporation only \$110,000. It retained \$10,000.

The Central Bank examiners concluded that the exportation or remittance of \$110,000 to Tattran Corporation was not a bona fide transaction but was an illegal device to salt dollars abroad. It turned out that the shipment of leaf tobacco to Vaduz did not require the pre-payment of freight charges in dollars.

The Monetary Board rescinded the remittance of the \$110,000. It ordered the Feati Bank to have the \$110,000 remitted back ("repatriate" is the technical term) to the Philippines.

Quality Tobacco in complying with the Monetary Board resolution dated July 1, 1969 did not return the \$110,000 to the original seller, Feati Bank, but sold the said dollars on April 2, 1971 to the Commercial Bank and Trust Company at the rate of P6.402 to the dollar. Quality Tobacco obtained a profit of P260,930 from that transaction.

As justifiably argued by the counsel of Feati Bank, Quality Tobacco should have returned the \$110,000 to the original seller, the Feati Bank, and not to the CBTC which had nothing to do with the original transaction and whose dollar account was never debited when the said \$110,000 were illegally remitted or exported to Tattran Corporation. The said amount was taken from the dollar account of the Feati Bank.

It was not right that Quality Tobacco should derive a profit from its violation of the Central Bank regulations prohibiting improper exportation of dollars.

Because the Central Bank rescinded the sale by the Feati Bank of the \$120,000 to U. S. Tobacco, there should be mutual restitution, as required in article 1385 of the Civil Code.

Consequently, it is just and proper, as the trial court ruled, that Quality Tobacco should restore the \$110,000 to the Feati Bank, which could retain the \$10,000, and that the Feati Bank should reimburse to Quality Tobacco the selling price of the dollars amounting to P471,600.

The theory of the Court of Appeals that because U. S. Tobacco became the owner of the \$120,000, it was entitled to the profit resulting from the increase of the rate of exchange would mean that U. S. Tobacco, or its successor, Quality Tobacco, could take advantage of its wrongful act in illegally exporting dollars. That theory is untenable.

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