

**FILIPINO PIPE & FOUNDRY CORPORATION,
PLAINTIFF-APPELLEE, VS. CENTRAL BANK OF THE PHILIPPINES,
DEFENDANT-APPELLANT.**

G.R. No. L-24429. June 22, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Manila ordering the appellant to pay the appellee P40,837.59 as refund of the margin fees paid by the latter to the former and P8,000.00 as attorney's fees and costs.

In the Court below the parties filed a partial stipulation of facts, as follows:

"1. That the plaintiff Filipino Pipe & Foundry Corporation is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines;

"2. That the defendant Central Bank of the Philippines is a body corporate created under Republic Act No. 265 and charged with the duties of maintaining monetary stability, preserving the international value of the Philippine peso and promoting a high level of production, employment and real income in the country;

"3. That on January 5, 1959, the Philippine National Bank, Manila, established "L/C No. 590051" for the account of the plaintiff in the amount of \$115,203.19 in favor of the United Export Clothing Co., Inc. for the importation of Pig Iron, Foundry Coke, Firebricks, Cupola Blocks and Fireclay to be shipped from any USA or European Ports to C & F Manila, which credit was to expire originally in New York on June 23, 1959 (Annex "1", Motion to Dismiss);

"4. That on January 27, 1959, L/C No. 590051 was amended to include shipment of Centrifugal Cast Iron Pipe Machine or their Accessories and to add "and/or assignees" after beneficiary's name (Annex "2", Motion to Dismiss);

"5. That on May 27, 1959, L/C No. 590051 was amended to 'extend expiry date to December 23' (Annex "3", Motion to Dismiss);

"6. That on July 16, 1959, Republic Act No. 2609 (AN ACT TO AUTHORIZE THE CENTRAL BANK OF THE PHILIPPINES TO ESTABLISH A MARGIN OVER BANKS' SELLING RATES OF FOREIGN EXCHANGE) was approved and became effective;

"7. That on July 17, 1959, in accordance with Section 7 of Republic Act No. 2609 which authorizes the Monetary Board of the Central Bank to prescribe rules and regulations, necessary to carry out the provisions of this Act, said Monetary Board also fixed the margin at 25% on the value in Philippine pesos of foreign exchange sold by Authorized Agent Banks (Annex "17", Motion to Dismiss);

"8. That on August 20, 1959, L/C No. 590051 was amended such that 'payment on shipment of centrifugal cast

iron pipe machine or their accessories should be against surrender of certificates in triplicate issued by P.M. Silva representing the buyer approving the good working condition of the machine and other component parts' (Annex "4", Motion to Dismiss);

"9. That on August 24, 1959, L/C No. 590051 was amended to include 'foundry equipments' in the shipment (Annex "5", Motion to Dismiss);

"10. That on December 18, 1959, L/C No. 590051 was amended to 'extend expiry date to December thirty first for nego-tiation purposes provided shipment made on or before December twenty-third' (Annex "10", Motion to Dismiss);

"11. That on the dates indicated below, the defendant through the Philippine National Bank, Manila, collected from the plaintiff over his protest the following amounts in the total sum of P40,837.59 representing the 25% margin fee on costs of the shipments authorized under L/C No. 590051, as amended, to wit:

Amount of

Date of Margin Fee

Payment Collected Shipment

October 15, 1959 P3,827.91 Foundry equipment,

pig iron, fireclay, firebricks and cupola blocks

December 1, 1959 12,527.93 Foundry Coke

January 29, 1960 24,481.75 Centrifugal cast iron

pipe machine

Total - P40,837.59

"12. That plaintiff filed thru the Philippine National Bank its 'Application for Exemption of Payment for Imports from the Foreign Exchange Margin Under Republic Act No. 2609' on the purchases of foreign exchange subject matter of this case; that the Exemption Committee of defendant Central Bank of the Philippines informed plaintiff that its application for exemption from the payment of the 25% margin on the sale of foreign exchange was denied; that plaintiff requested for a reconsideration of the denial of its application for exemption and that Atty. Andres T. Velarde (Plain-tiff's counsel in the instant case), in his letter to defendant dated September 19, 1962, demanded, in behalf of the plaintiff, the refund of the margin fees subject hereof;

"13. That on September 26, 1962, Mr. Jesus C. Razon, the Acting Exe-cutive Officer of the Exemption Committee advised Atty. Velarde that plaintiff's request for reconsidera-tion has been submitted to the Exemp-tion Committee (Annex '15', Motion to Dismiss);

"14. That on October 17, 1962, the Exemption Committee informed the Velarde Law Offices that after due deliberation, the Committee denied plaintiff's claim for lack of suf-ficient basis (Annex '16', Motion to Dismiss)."

Besides the amendments mentioned in the foregoing partial stipulation of facts, the following incidents, as they appear textually in the corresponding exhibits, took place with respect to L/C No. 590051:

(a) Amendment of August 28, 1959 - CREDIT 590051 UNITED EXPORT AND/OR ASSIGNEES PLEASE ASSIGN AND REQUEST CONFIRMATION TO SOCIETE GENERALE DE CENTRIFUGATION 8 PLACE D' LENA PARIS FRANCE \$48,500 COVERING SHIPMENT CENTRIFUGAL CAST IRON PIPE MACHINE OR THEIR ACCESSORIES (Ex-hibit 1-E)

(b) Amendment of September 25, 1959 - CREDIT 590051 UNITED EXPORT AMEND TO ALLOW SHIPMENT FROM ANY AUSTRALIAN PORT (EXHIBIT 1-F)

(c) Amendment of November 5, 1959 ? CREDIT 590051 SOCIETE GENERALE AMEND TO INCREASE AMOUNT BY \$150 TO COVER ADDITIONAL FREIGHT CHARGES (Exhibit 1-G).

(d) Amendment of November 12, 1959 - CREDIT 590051 UNITED EXPORT PLEASE DISREGARD OUR AMENDMENT SEPTEMBER TWENTYFIFTH (Exhibit 1-H)

On February 4, 1964 the trial court (Judge Arsenio Solidum presiding) rendered its decision in favor of the plaintiff and against the defendant. It found that the amendments effected on L/C No. 590051 did not materially change its terms and conditions, and consequently held that the plaintiff's remittance of foreign exchange under said letter of credit is exempt from the payment of margin fee under Republic Act No. 2609 by virtue of the provision of its Section 3, which states:

SEC. 3. The provision of this Act shall not apply to liquidation of drafts drawn under letter of credit nor of contractual obligations calling for the payment of foreign exchange issued, approved and outstanding as of the date of this Act takes effect and the extension thereof, with the same terms and conditions as the original contractual obligations; x x x"

Not satisfied with the decision of the lower court, the defendant brought this appeal.

In its brief appellant avers that the said Court erred:

1. In holding that plaintiff-appellee's remittance of foreign exchange under L/C No. 590051 is exempt from the payment of the margin fee under Section 3 of Republic Act No. 2609, although the extension provided for in said letter of credit after the date of the effectivity of the Margin Law was not with the same terms and conditions as the original letter of credit;
2. In holding that defendant-appellant's construction or interpretation of the exemption from the payment of the margin fee under Section 3 of Republic Act No. 2609 are (sic) narrow which is not justified by the purpose and objective sought to be accomplished by law;
3. In ordering the defendant-appellant the payment (sic) to plaintiff-appellee the sum of P8,000.00 as attorney's fees and the costs of this suit.

Regarding the first assignment of error, appellant's contention, among others, is that the amendment of August 20, 1959 materially changed the terms and conditions of the original letter of credit because it gave new right to appellee, namely, the right to approve the good working condition of the centrifugal cast iron pipe machine before payment was made, which right was not included in the original terms and conditions of the letter of credit; that the amendment of August 24, 1959 likewise materially changed such terms and conditions because the "foundry equipment" referred to therein was entirely distinct and separate from the "complete set of centrifugal cast iron pipe machine" imported under L/C No. 590051; that said "foundry equipment" was not included in the amendment of January 27, 1959, such that without the amendment of August 24, 1959, the United Export Clothing Co., Inc., was not bound to ship the same to appellee: that the amendment of August 28, 1959 changed the terms and conditions of the original letter of credit because without the amendment the Societe Generale de Centrifugation of Paris could not have shipped the centrifugal machine to the appellee, said firm being entirely different from the United Export Clothing Co., Inc., of New York, U.S.A.; that there was therefore a change of parties to the letter of credit insofar as the centrifugal machine was concerned; that the amendment of September 25, 1959 to allow shipment from any Australian port also changed the terms and conditions of the original letter of credit and the cancellation of said amendment on November 12, 1959 did not operate to exempt appellee's

remittance from the pay-ment of the margin fee; that the amendment of November 5, 1959 increased the amount of the letter of credit by \$150.00 and, therefore, there was a change in its terms and conditions; and that although the letter of credit never exceeded its original amount of \$115,253.19 the \$150.00 was also remitted to cover freight charges and thus increased the disbursement.

Appellant's contention is without basis on all counts. The trial court correctly analyzed the amendments to L/C No. 590051 after July 16, 1959, the date of approval of Republic Act No. 2609, in this wise:

"It appears that the first amendment to plaintiff's original letter of credit, L/C 590051 was made on August 20, 1959 (Exhibit '1-D'), the pertinent portions of which read as follows:

'CREDIT 590051 UNITED EXPORT PAYMENT ON SHIPMENT OF CENTRI-FUGAL CAST IRON PIPE MACHINE OR THEIR ACCESSORIES SHOULD BE AGAINST SURRENDER OF CERTIFICATE IN TRIPLICATE ISSUED BY P.M. SILVA REPRESENTING THE BUYER AP-PROVING THE GOOD CONDITION OF THE MACHINE AND OTHER COMPONENT PARTS.'

X X X X X X X X

" x x x the court finds itself in favor of the contention of the plaintiff that said first amendment dated August 20, 1959 (Exhibit '1-D'), to its original letter of credit did not in any way materially change its terms and conditions but that, on the contrary, it strengthened the impossibility of salting dollars abroad because under said amendment no remittances of dollar could be made to plaintiff's shipper abroad without previous assurance that the machineries imported by the plaintiff were in 'good working condition: and not secondhand machineries which are useless. The court likewise finds that said amendment is in conformity with the objective sought to be attained by the enactment of said Republic Act No. 2609, as clearly expressed in its Sec-tion 1, that –

"The Monetary Board shall fix the margin at such rate as it may deem necessary to effectively curtail any excessive demand upon the international reserve."

(Moreover, whenever a buyer purchases merchandise of any kind the implied warranty is that the same should be in good condition and it would be absurd to say that a sub-sequent inclusion of such warranty in express terms constitutes a material deviation from the terms of the original purchase order) Parenthesis ours.

"x x x. The pertinent portion of said amendment of August 24, 1959, reads as follows:

'PLEASE AMEND THE SHIPMENT OF THE ABOVE CREDIT TO INCLUDE FOUNDRY EQUIPMENTS'.

X X X X X X X X

"Consequently, the conclusion of the Court is that the importation of said foundry equipments, which are merely accessories of the centrifugal cast iron pipe machine, was already covered by the prior amendment of January 27, 1959, or before the effectivity of Republic Act No. 2609, and it did not materially alter the terms and conditions of plaintiff's original letter of credit, aside from the fact that again said amendment did not in any way increase the dollar allocation of the plaintiff as specified in the same letter of credit."

Specifically, the foundry equipment mentioned in the amendment of August 24, 1959 consisted of a centrifugal blower, forty feet of foundry roller chain, and foundry scale spare parts. Although these items were not integral parts of the centrifugal cast iron pipe machine they were certainly ac-cessories thereto. As explained by appellee's plant operation manager, the blower is used to accelerate the process of cool-ing the manufactured pipes; the roller chain is part of the "pipe extracting device" of the machine; and the scale spare parts are for the purpose of weighing the finished pipes to determine that they conform strictly to standard specifications. Said items are therefore in the nature of "accessories", authorized in the amendment of January 27, 1957, before the Margin Law

became effective.

We continue with the findings of the trial Court:

"It is likewise alleged by the defend-ant that the amendment of August 28, 1959, also changed the terms and conditions of plaintiff's original letter of credit. Said amendment reads as follows:

'CREDIT 590051 UNITED EXPORT AND/OR ASSIGNEES PLEASE ASSIGN AND REQUEST CON-FIRMATION TO SOCIETE GENERALE DE CENTRIFUGATION 8 PLACE D'LENA PARIS FRANCE \$48,500 COVERING SHIPMENT CENTRIFUGAL CAST IRON PIPE MACHINE OR THEIR ACCESSORIES'.

It appears from the partial stipulation of facts that as early as January 27, 1959, that is prior to the passage of Republic Act No. 2609, the original letter of credit of plaintiff, L/C 590051, was already assignable because of the first amendment (Exhibit '1-B'), by add-ing the phrase 'AND/OR ASSIGNEES' after beneficiary's name. Consequently, that portion of the amendment referring to the assignment of the sum of \$48,500.00 out of plaintiff's original letter of credit to the Societe Generale de Cen-trifugation does not subject said amount to any payment of margin fee for the simple reason that said assignment was duly authorized long before the effectiv-ity of Republic Act No. 2609. Further-more, at no time was the total amount of said letter of credit ever increased and the confirmation requested in the amend-ment was necessary for the liquidation of the draft payable to Societe Generale de Centrifugation, under Section 3 of Republic Act No. 2609.

"As regards the other amendment which was made on September 25, 1959, to the effect that 'CREDIT 590051 UNITED EXPORT AMEND TO ALLOW SHIPMENT FROM ANY AUSTRALIAN PORT' (Exhibit '1-F'), it is admitted that said amendment was dis-regarded because it was cancelled by the amendment of November 12, 1959. Hence, the contention of the defendant that such fact did not exempt the remittances un-der the letter of credit of the plaintiff from payment of margin fee has absolutely no merit.

"Finally, it is argued by the defendant that the amendment of November 5, 1959, which reads 'CREDIT 590051 SOCIETE GENERALE AMEND TO INCREASE AMOUNT BY \$150 TO COVER ADDITIONAL FREIGHT CHARGES (Exhibit '1-G'), has materially changed plaintiff's original letter of credit because its amount was increased by \$150.00. This contention is not borne out by the record for it is very clear that at no time was the amount of plaintiff's original letter of credit ever changed and much less increased. Rather, on the contrary, it appears that the total amount disbursed or utilized by the plaintiff under the said letter of credit never exceeded its original amount of \$115,203.19. Moreover, it is shown by the evidence of the plaintiff that when it requested said sum of \$150.00 from the Philippine National Bank, as per plaintiff's letter (Exhibit 'C-1'), plaintiff categorically requested said bank not to amend its letter of credit but that it be granted a non-recurring dollar quota allocation for the sum of \$150.00. However, the defendant, thru its agent, the Philippine National Bank, informed the plaintiff that said amount of \$150.00, was purchased by the plaintiff in Manila and sent to Societe Generale de Centrifugation under Mail Transfer, as shown by Exhibit 'C-2'. Hence, the amendment of November 5, 1959 (Exhibit '1-G'), was made not only against plaintiff's express instruction but through the mistake and inadvertence of the Philippine National Bank."

It need only be added in connection with this amount of \$150 to cover additional freight charges, that appellee paid in 25% margin fee thereon, but not as part of the letter of credit.

Under the second assignment of error appellant submits that exemption provisions in a statute are construed strictly against the party claiming then; that the "terms and conditions" in section 3 of Republic Act No. 2609 refer to all the terms and conditions off the letter of credit and not only to the amount thereof; that the amendments to L/C No. 590051 changed the terms and conditions of the original letter of credit although the amount involved was never increased: and that to construe Section 3 liberally would defeat the purpose of the Margin Law because it would give importers who had out-standing contractual obligations as of the passage of

the law the liberty to change the terms and conditions thereof as long as their amounts were not increased, thereby evading payment of the margin fee and creating an excessive demand upon the country's international reserve.

It is true, as a general proposition, that exceptions from the coverage of a statute are strictly construed. But such construction nevertheless must be at all times reason-able, sensible and fair. We have sustained the findings of the lower court that the amendments to the letter of credit, L/C No. 590051, did not materially affect its original terms and conditions. If anything, the amendment of August 20, 1959 in particular" strengthened the impossibility of salting dollars abroad" and thus promoted the objective of the law. Under the circumstances obtaining in this case, to construe Section 3 of the Margin Law in the sense advocated by appellant, which would rule out from the exemption therein pro-vided the amendments hereinbefore set forth, although they did not materially change the terms and conditions of the original letter of credit, would be unreasonable and unjust, and not in accord with the declared purpose of the Margin Law, namely, to prevent "an excessive demand upon the inter national reserve."

However, appellant's third assignment of error, regarding the award of attorney's fees, must be upheld. There is no finding by the lower court that appellant acted in gross and evident bad faith in denying appellee's claim for refund. In the case of *Jimenez vs. Bucoy*, No. L-10221, February 28, 1958, we said:

"Under the new Civil Code, attorney's fees and expenses of litigation may be awarded in this case if 'defendant acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim' or 'where the court deemed it just and equitable that attorney's fees be recovered' (Art. 2208, Civil Code). These are - if applicable - some of the exceptions to the general rule that in the absence of stipulation no attorney's fees shall be awarded.

"The trial court did not explain why it ordered payment of counsel fees. Needless to say, it is desirable that the decision should state the reason why such award is made, bearing in mind that it must necessarily rest on an exceptional situation unless of course the text of the decision plainly shows the case to fall into one of the ex-ceptions, for instance 'in actions for legal support', 'when exemplary damages are awarded', etc. In the case at bar, defendant could not ob-viously be held to have acted in gross and evident bad faith. x x x"

In the case of *George Edward Koster, Inc., vs. Zulueta* (G.R. No. L-92305, Sept. 25, 1956, 53 O.G. 1076), we held:

"To sentence litigant to pay his adversary's lawyer's fees would be imposing a penalty on his right to litigate. Even under the new Civil Code (Art. 2208, par. 5) a litigant would not be entitled to recover the fees paid to his attorney as damages where no bad faith on the part of his adversary was shown."

Wherefore, modified only by eliminating the award of attorney's fees, the decision appealed from is affirmed, with costs against defendant-appellant.

Concepcion, C.J., Reyes, Dizon, Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.
Fernando, J., took no part.

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