

PRUDENTIAL BANK AND TRUST CO., VS. SAURA IMPORT & EXPORT CO., INC., DEFENDANT AND APPELLEE.*G.R. No. L-19001. April 30, 1964*

Ponente: PAREDES, J.

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On July 2, 1953, defendant Saura Import & Export Co. Inc., thru its President Ramon E. Saura, opened with plaintiff Prudential Bank & Trust Co., an irrevocable letter of credit, in the amount of \$157,514.00. The Letter of Credit authorized the Bank of East Asia, Ltd. of Hongkong, thru the Chemical Bank & Trust Co. of New York, to purchase for defendant's account, drafts drawn by the Reiss, Bradley & Co., Ltd. of Hongkong, to cover the importation of jute mill machineries from Hongkong to Davao City, Philippines. In due time, the machineries were shipped to Davao City, and the shipping documents were endorsed by appellant Bank to appellee. Reiss, Bradley & Co. Ltd., pursuant to the terms of the Letter of Credit, drew a draft for \$157,244.00 (U.S.), the Bank of East Asia, which endorsed the same to the order of the Chemical Bank & Trust Company of New York. The latter Bank in turn endorsed the draft to appellant Prudential Bank & Trust Co. and charged the amount to its account. The draft was later presented to appellee who accepted the same, payable on October 5, 1953. In order to have the machineries released to appellee, its President executed a Trust Receipt, dated August 6, 1953, in the amount of P317,165.51, wherein, it was agreed, among others, that the appellee will hold the machineries in trust for the Bank as the latter's property, but with liberty to sell the same for the account of said Bank.

On May 13, 1955, plaintiff Bank filed the present complaint, claiming that defendant had not paid the full amount of the draft there remaining a balance of P275,624.62, as of May 12, 1955, which defendant failed and refused to pay, notwithstanding repeated demands, and praying for judgment against the defendant for said amount with 12% interest until fully paid; return of the machineries, subject matter of the trust receipt, together with the expenses in bringing them to Manila, and P30,000.00 by way of attorney's fees and the costs.

The answer of defendant Saura Import & Export Co. inc., beside containing the usual Admissions and Denials, asserted that a novation had taken place, with the execution of the Trust Receipt; that from a debtor, defendant had become merely an agent of plaintiff, whose duty was to sell the machineries subject of the trust receipt and the proceeds thereof to be paid to plaintiff Bank; that at the same time of the presentation of the Answer, the machineries were not yet sold; that defendant was ready, willing and able to surrender to plaintiff Bank the machineries originally imported by it, with the expenses for the delivery thereof (transportation from Davao to Manila) chargeable against defendant's marginal deposit on the letter of credit, and that notwithstanding these circumstances, which plaintiff knew all the time, it did not cancel the Trust Receipt. As counter-claim, defendant asked for P10,000.00 by way of moral damages and P5,000.00 as attorney's fees.

Trial was held, the record showing that plaintiff adduced testimonial evidence on September 6, 1955, and the defendant on December 8, 1960, or an interval of about more than five (5) years. During the presentation of testimonial evidence for the defendant, it was shown that in the intervening period (after the hearing on September 6, 1955 to December 8, 1960), the parties had entered into negotiations affecting the machineries, foremost of

which was the authority given to defendant by the plaintiff bank to find a buyer for the machineries and an extension on the part of the buyer to pay until 1961. The written acknowledgment of the plaintiff that they were willing to accept P250,000.00 from Frank Halling of the Filipinas Auto Sales Corporation, in liquidation of the principal and interest, confirmed the fact of such negotiation. The letter containing: such acknowledgment was dated July 6, 1960, about five (5) months before the defendant presented its oral evidence. The matter of the previous negotiations was duly brought to the attention of the trial court, and on April 19, 1961, judgment was rendered, the pertinent portions of which read:

"Substantially the defendant admits the transactions that lead to the shipment of the eighty-five cases of Jute Mill Machinery, but in its special defense however, by virtue of the negotiations that took place between the President of the Prudential Bank and Trust Company, on one hand and one Mr. Frank Hailing and Ramon Saura representing the defendant on the other hand. The testimony of Saura on the subsequent negotiations is as follows:

'Atty. Magno:

Q—Will you please explain why the machinery, inspite of the provisions of the trust receipt, have not been delivered to the plaintiff?

A—Yes, sir, because first, I found out only when we examined the records, that the lawyers of the Prudential Bank and Trust Co. wrote us a letter demanding, among other things, the return of the machinery, and the fellow who received it, according to the records was Daniel Mauguly, who left for the United States and was there for the last five years, who perhaps due to excitement, failed to inform me about this. Upon receipt of their complaint which says that they demanded the machinery, we stated in our answer that we are willing and able to return the machinery and for the cost of the Prudential Bank in taking over the machinery we have a marginal deposit of over P93,000.00 as admitted in the complaint of the Philippine Bank and Trust Co. as received by them, which could be applied for the cost of transportation in bringing the machinery from Davao to Manila, but evidently the Prudential Bank and Trust Co. notwithstanding such demand, preferred that we pay cash should we be able to find a buyer pursuant to the trust receipt. Therefore, negotiations were being made with Mr. Frank Halling of the Pilipinas Auto Sales Corporation, and with the consent of the Prudential Bank and Trust Co., we were to pay the whole machinery in the trust receipt for P250,000.00 and the Prudential Bank and Trust Co., wrote me a letter to the effect that they are willing to accept the P250,000.00 in full payment of the interest, the capital and even attorney's fees Mr. Hailing was given time within which to pay the same which will expire about July 1961. So, I was surprised why they are still prosecuting the case when Mr. Halling is still raising the money. Mr. Halling will raise over a million pesos because in addition to the P250,000.00 which he will pay the Prudential Bank and Trust Co. he has to pay us also the amount of P200,000.00 for interest and cost of operation. But in view of the existing condition of the market now, it was thoughtless to give him a period until 1961, and in this ease they are still continuing to harrass us notwithstanding the fact that we were willing to give the machinery to them.'

The above quoted testimony is supported by Exh. 1, letter of the Hon. Pio Pedrosa, President, Prudential Bank and Trust Co. and addressed to defendant Saura Import and Export Co., Inc. Analyzing the evidence on record, the Court believes and so holds that plaintiff is bound to abide by the subsequent negotiation as testified to by Ramon Saura to the effect that Frank Halling was given time within which to make payment of the P250,000.00 for eighty-five cases of Jute Mill Machinery. The testimony quoted above given by Saura was not contradicted by plaintiff hence the Court has no other alternative but to accept it.

In view of the foregoing, the court believes and so holds that the action taken by plaintiff is premature. The instant case is hereby dismissed without costs."

After the denial of the motion for reconsideration, plaintiff appealed directly to this Court claiming that the lower

court erred:

- In holding the present action is premature, in dismissing the case and in denying the motion for reconsideration;
- In not holding appellee liable to appellant for P275,264.62, as of May 12, 1955 plus interest, attorney's fees and costs; and
- In not ordering appellee to return to appellant the machineries covered by the trust receipt.

We believe that the trial court was correct in dismissing the case. It is true that at the time the complaint was presented, there was due from the defendant the amount described therein. However, novation had already taken place, not only with the execution of the Trust Receipt, but also with the subsequent negotiations entered into by the parties, such as granting the defendant-appellee the authority to find for a buyer of the goods and the extension given by appellant to Frank Halling, the buyer, within which to pay the P250,000.00. The above circumstances appeared after the plaintiff had adduced its evidence, but before defendant took his turn to do so. At the time the case was submitted for decision (April 19, 1961), there was no real controversy, so to say, the period of extension which was the whole year 1961, not having expired, and no proof was adduced by plaintiff that Frank Halling could not pay within the period agreed upon. For it is a fact, found by the lower court, that before the case was submitted for decision, there was a standing agreement that the liability of defendant-appellant would be paid by said Frank Halling. Before the termination of the year 1961, the cause of action alleged in the complaint had lost its force and effect, and there was then no justifiable issue. The other questions posed by appellant, in view of the above conclusion reached, need no longer be discussed.

IN VIEW OF THE FOREGOING, the decision appealed from should be, as it is hereby affirmed, reserving upon the plaintiff-appellee, the right to file the action justified by the facts and circumstances now obtaining in, and the law on the case. Costs against plaintiff-appellant.

Bengzon, C.J., Bautista Angelo, Labrador, Dizon, and Makalintal, JJ., concur.

Concepcion and Barrera, JJ., concur in the result.

Reyes, J.B.L., J., agrees except as to the novatory effect of the trust receipt.

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