

BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF-APPELLEE, VS. DE RENY FABRIC INDUSTRIES, INC., AURORA T. TUYO AND AURORA CARCERENY ALIAS AURORA C. GONZALES, DEFENDANTS-APPELLANTS.

G.R. No. L-24821. October 16, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the decision of the Court of First Instance of Manila dated October 24, 1963 in civil case 52434, ordering the defendants-appellants to pay to the Bank of the Philippine Islands (hereinafter referred to as the Bank), jointly and severally, the value of the credit it extended to them in several letters of credit which the Bank opened at the behest of the defendants-appellants to finance their importation of dyestuffs from the United States, which however turned out to be mere colored chalk upon arrival and inspection thereof at the port of Manila.

The record shows that on four (4) different occasions in 1961, the De Reny Fabric Industries, Inc., a Philippine corporation, through its co-defendants-appellants, Aurora Carcereny, alias Aurora C. Gonzales, and Aurora T. Tuyo, president and secretary, respectively of the corporation, applied to the Bank for four (4) irrevocable commercial letters of credit to cover the purchase by the corporation of goods described in the covering L/C applications as "dyestuffs of various colors" from its American supplier, the J.B. Distributing Company. All the applications of the corporation were approved, and the corresponding Commercial L/C agreements were executed pursuant to banking procedures. Under these agreements, the aforementioned officers of the corporation bound themselves personally as joint and solidary debtors with the corporation. Pursuant to banking regulations then in force, the corporation delivered to the Bank peso marginal deposits as each letter of credit was opened.

The dates and amounts of the L/Cs applied for and approved as well as the peso marginal deposits made were, respectively, as follows:

Date

Application & L/C No.

Amount

Marginal Deposit

Oct. 10, 1961

61/1413

\$57,658.38

P43,407.33

Oct. 23, 1961

61/1483

\$25,867.34

19,473.64

Oct. 30, 1961

61/1495

\$19, 408.39

14,610.88

Nov. 10, 1961

61/1564

\$26,687.64

20,090.90

TOTAL.....

\$129,621.75

P97,582.75

By virtue of the foregoing transactions, the Bank issued irrevocable commercial letters of credit addressed to its correspondent banks in the United States, with uniform instructions for them to notify the beneficiary thereof, the J.B. Distributing Company, that they have been authorized to negotiate the latter's sight drafts up to the amounts mentioned therein, respectively, if accompanied, upon presentation, by a full set of negotiable clean "on board" ocean bills of lading, covering the merchandise appearing in the L/Cs, that is, dyestuffs of various colors. Consequently, the J.B. Distributing Company drew upon, presented to and negotiated with these banks, its sight drafts covering the amounts of the merchandise ostensibly being exported by it, together with clean bills of lading, and collected the full value of the drafts up to the amounts appearing in the L/Cs as above indicated. These correspondent banks then debited the account of the Bank of the Philippine Islands with them up to the full value of the drafts presented by the J.B. Distributing Company, plus commission there-on, and, thereafter, endorsed and forwarded all documents to the Bank of the Philippine Islands.

In the meantime, as each shipment (covered by the above-mentioned letters of credit) arrived in the Philippines, the De Reny Fabric Industries, Inc. made partial payments to the Bank amounting, in the aggregate, to P90,000. Further payments were, however, subsequently discontinued by the corporation when it became established, as a result of a chemical test conducted by the National Science Development Board, that the goods that arrived in Manila were colored chalks instead of dyestuffs.

The corporation also refused to take possession of these goods, and for this reason, the Bank caused them to be deposited with a bonded warehouse paying therefor the amount of P12,609.64 up to the filing of its complaint

with the court below on December 10, 1962.

On October 24, 1963 the lower court rendered its decision ordering the corporation and its co-defendants (the herein appellants) to pay to the plaintiff-appellee the amount of P291,807.46, with interest thereon, as provided for in the L/C Agreements, at the rate of 7% per annum from October 31, 1962 Until fully paid, plus costs.

It is the submission of the defendants-appellants that it was the duty of the foreign correspondent banks of the Bank of the Philippine Islands to take the necessary precautions to insure that the goods shipped under the covering L/Cs conformed with the item appearing therein, and, that the foreign banks having failed to perform this duty, no claim for recoupment against the defendants-appellants, arising from the losses incurred for the non-delivery or defective delivery of the articles ordered, could accrue.

We can appreciate the sweep of the appellants, argument, but we also find that it is nestled hopelessly inside a salient where the valid contract between the parties and the internationally accepted customs of the banking trade must prevail.[1]

Under the terms of their Commercial Letter of Credit Agreements with the Bank, the appellants agreed that the Bank shall not be responsible for the "existence, character, quality, quantity, conditions, packing, value, or delivery of the property purporting to be represented by documents; for any difference in character, quality, quantity, condition, or value of the property from that expressed in documents," or for "partial or incomplete shipment, or failure or omission to ship any or all of the property referred to in the Credit," as well as "for any deviation from instructions, delay, default or fraud by the shipper or anyone else in connection with the property or the shipping thereof, " and "for any breach of contract between the shippers or vendors and ourselves, [purchasers] or any of us." Having agreed to these terms, the appellants have, therefore, no recourse but to comply with their covenant.[2]

But even without the stipulation recited above, the appellants cannot shift the burden of loss to the Bank on account of the violation by their vendor of its prestation.

It was incontrovertibly proven by the Bank during the trial below that banks, in providing financing in international business transactions such as those entered into by the appellants, do not deal with the property to be exported or shipped to the importer, but deal only with documents. The Bank introduced in evidence a provision contained in the "Uniform Customs and Practices for Commercial Documentary Credits Fixed for the Thirteenth Congress of International Chamber of Commerce," to which the Philippines is a signatory nation. Article 10 thereof provides:

"In documentary credit operations, all parties concerned deal in documents and not in goods. Payment, negotiation or acceptance against documents in accordance with the terms and conditions of a credit by a Bank authorized to do so binds the party given the authorization to take up the documents and reimburse the Bank making the payment, negotiation or acceptance."

The existence of a custom in international banking and financing circles negating any duty on the Part of a bank to verify whether what has been described in letters of credits or drafts or shipping documents actually tallies with what was loaded aboard ship, having been positively proven as a fact, the appellants are bound by this established usage. They were, after all, the ones who tapped the facilities afforded by the Bank in order to engage in international business.

ACCORDINGLY, the judgment a quo is affirmed, at defendants-appellants' cost. This is without prejudice to the Bank, in proper proceedings in the court below in this same case, proving and being reimbursed additional expenses, if any, it has incurred by virtue of the continued storage of the goods in question up to the time this

decision becomes final and executory.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Concepcion, C.J., on official leave.

[1] The power of our courts to accept in evidence, international custom as evidence of a general practice accepted as law, may be said to be derived from both Constitutional as well as statutory sources. Section 3, Article II of the Constitution provides that "The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as a part of the law of the Nation." Art. 9 of the New Civil Code provides that "No court or judge shall decline to render judgment by reason of the silence, obscurity or insufficiency of the law," and Art. 12 of the same Code provides that "A custom must be proved as a fact, according to the rules of evidence." The Code of Commerce, in its Article 2, likewise provides that "Acts of commerce, whether those who execute them be merchants or not, and whether specified in this Code or not, should be governed by the provisions contained in it, in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of the civil law." "Those acts contained in this Code and all others of analogous character, shall be deemed acts of commerce." It must be noted that certain principles governing the issuance, acceptance and payment of letters of credit are specifically provided for in the Code of Commerce.

[2] Article 12 of the Commercial Letter of Credit Agreement provides, inter alia: "The users of the Credit shall be deemed our agents and we assume all risks of their acts or omissions. Neither you nor your correspondents shall be responsible: for the existence, character, quality, quantity, condition, packing value, or delivery of the property purporting to be represented by documents; for any difference in character, quality, quantity, condition, or value of the property from that expressed in documents; ... for partial or incomplete shipment, or failure or omission to ship any or all of the property referred to in the Credit; ... for any deviation from instructions, delay, default or fraud by the shipper or anyone else in connection with the property or the shipping thereof; ... for any breach of contract between the shipper or vendors and ourselves or any of us; ... We are responsible to you for all obligations imposed upon you with respect to the Credit or the relative drafts, documents or property. In furtherance and extension and not in limitation of the specific provisions hereinbefore set forth, we agree that any action taken by you or by any correspondent of yours under or in connection with the Credit or the relative drafts, documents or property, if taken in good faith, shall be binding on us and shall not put you or your correspondent under any resulting liability to us; and we make like agreement as to any inaction or omission, unless in breach of good faith."

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