

BANK OF AMERICA, NT & SA, PETITIONERS, VS. COURT OF APPEALS, INTER-RESIN INDUSTRIAL CORPORATION, FRANCISCO TRAJANO, JOHN DOE AND JANE DOE, RESPONDENTS.

G.R. No. 105395. December 10, 1993

Ponente: VITUG, J.

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VITUG, J.:

A "fiasco," involving an irrevocable letter of credit, has found the distressed parties coming to court as adversaries in seeking a definition of their respective rights or liabilities thereunder.

On 05 March 1981, petitioner Bank of America, NT & SA, Manila, received by registered mail an Irrevocable Letter of Credit No. 20272/81 purportedly issued by Bank of Ayudhya, Samyaek Branch, for the account of General Chemicals, Ltd., of Thailand in the amount of US\$2,782,000.00 to cover the sale of plastic ropes and "agricultural files," with the petitioner as advising bank and private respondent Inter-Resin Industrial Corporation as beneficiary.

On 11 March 1981, Bank of America wrote Inter-Resin informing the latter of the foregoing and transmitting, along with the bank's communication, the letter of credit. Upon receipt of the letter-advice with the letter of credit, Inter-Resin sent Atty. Emiliano Tanay to Bank of America to have the letter of credit confirmed. The bank did not. Reynaldo Dueñas, bank employee in charge of letters of credit, however, explained to Atty. Tanay that there was no need for confirmation because the letter of credit would not have been transmitted if it were not genuine.

Between 26 March to 10 April 1981, Inter-Resin sought to make a partial availment under the letter of credit by submitting to Bank of America invoices, covering the shipment of 24,000 bales of polyethylene rope to General Chemicals valued at US\$1,320,600.00, the corresponding packing list, export declaration and bill of lading. Finally, after being satisfied that Inter-Resin's documents conformed with the conditions expressed in the letter of credit, Bank of America issued in favor of Inter-Resin a Cashier's Check for P10,219,093.20, "the Peso equivalent of the draft (for) US\$1,320,600.00 drawn by Inter-Resin, after deducting the costs for documentary stamps, postage and mail insurance." [1] The check was picked up by Inter-Resin's Executive Vice-President Barcelina Tio. On 10 April 1981, Bank of America wrote Bank of Ayudhya advising the latter of the availment under the letter of credit and sought the corresponding reimbursement therefor.

Meanwhile, Inter-Resin, through Ms. Tio, presented to Bank of America the documents for the second availment under the same letter of credit consisting of a packing list, bill of lading, invoices, export declaration and bills in set, evidencing the second shipment of goods. Immediately upon receipt of a telex from Bank of Ayudhya declaring the letter of credit fraudulent, [2] Bank of America stopped the processing of Inter-Resin's documents and sent a telex to its branch office in Bangkok, Thailand, requesting assistance in determining the authenticity of the letter of credit. [3] Bank of America kept Interresin informed of the developments. Sensing a fraud, Bank of America sought the assistance of the National Bureau of Investigation (NBI). With the help of the staff of the Philippine Embassy at Bangkok, as well as the police and customs personnel of Thailand, the NBI agents, who

were sent to Thailand, discovered that the vans exported by Inter-Resin did not contain ropes but plastic strips, wrappers, rags and waste materials. Here at home, the NBI also investigated Inter-Resin's President Francisco Trajano and Executive Vice President Barcelina Tio, who, thereafter, were criminally charged for estafa through falsification of commercial documents. The case, however, was eventually dismissed by the Rizal Provincial Fiscal who found no prima facie evidence to warrant prosecution.

Bank of America sued Inter-Resin for the recovery of P10,219,093.20, the peso equivalent of the draft for US\$1,320,600.00 on the partial availment of the now disowned letter of credit. On the other hand, Inter-Resin claimed that not only was it entitled to retain P10,219,093.20 on its first shipment but also to the balance US\$1,461,400.00 covering the second shipment.

On 28 June 1989, the trial court ruled for Inter-Resin,[4] holding that: (a) Bank of America made assurances that enticed Inter-Resin to send the merchandise to Thailand; (b) the telex declaring the letter of credit fraudulent was unverified and self-serving, hence hearsay, but even assuming that the letter of credit was fake, "the fault should be borne by the BA which was careless and negligent"[5] for failing to utilize its modern means of communication to verify with Bank of Ayudhya in Thailand the authenticity of the letter of credit before sending the same to Inter-Resin; (c) the loading of plastic products into the vans were under strict supervision, inspection and verification of government officers who have in their favor the presumption of regularity in the performance of official functions; and (d) Bank of America failed to prove the participation of Inter-Resin or its employees in the alleged fraud as, in fact, the complaint for estafa through falsification of documents was dismissed by the Provincial Fiscal of Rizal.[6]

On appeal, the Court of Appeals[7] sustained the trial court; hence, this present recourse by petitioner Bank of America.

The following issues are raised by Bank of America: (a) whether it has warranted the genuineness and authenticity of the letter of credit and, corollarily, whether it has acted merely as an advising bank or as a confirming bank; (b) whether Inter-Resin has actually shipped the ropes specified by the letter of credit; and, (c) following the dishonor of the letter of credit by Bank of Ayudhya, whether Bank of America may recover against Inter-Resin under the draft executed in its partial availment of the letter of credit.[8]

In rebuttal, Inter-Resin holds that: (a) Bank of America cannot, on appeal, belatedly raise the issue of being only an advising bank; (b) the findings of the trial court that the ropes have actually been shipped is binding on the Court; and, (c) Bank of America cannot recover from Inter-Resin because the drawer of the letter of credit is the Bank of Ayudhya and not Inter-Resin.

If only to understand how the parties, in the first place, got themselves into the mess, it may be well to start by recalling how, in its modern use, a letter of credit is employed in trade transactions.

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying.[9] To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the letter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit.[10] The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required

shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank.

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller once the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.[11]

There would at least be three (3) parties: (a) the buyer,[12] who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipt of the documents of title; (b) the bank issuing the letter of credit,[13] which undertakes to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to the buyer upon reimbursement; and, (c) the seller,[14] who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

The number of the parties, not infrequently and almost invariably in international trade practice, may be increased. Thus, the services of an advising (notifying) bank[15] may be utilized to convey to the seller the existence of the credit; or, of a confirming bank[16] which will lend credence to the letter of credit issued by a lesser known issuing bank; or, of a paying bank[17] which undertakes to encash the drafts drawn by the exporter. Further, instead of going to the place of the issuing bank to claim payment, the buyer may approach another bank, termed the negotiating bank,[18] to have the draft discounted.

Being a product of international commerce, the impact of this commercial instrument transcends national boundaries, and it is thus not uncommon to find a dearth of national law that can adequately provide for its governance. This country is no exception. Our own Code of Commerce basically introduces only its concept under Articles 567-572, inclusive, thereof. It is no wonder then why great reliance has been placed on commercial usage and practice, which, in any case, can be justified by the universal acceptance of the autonomy of contracts rule. The rules were later developed into what is now known as the Uniform Customs and Practice for Documentary Credits ("U.C.P.") issued by the International Chamber of Commerce. It is by no means a complete text by itself, for, to be sure, there are other principles, which, although part of *lex mercatoria*, are not dealt with in the U.C.P.

In *FEATI Bank and Trust Company v. Court of Appeals*,[19] we have accepted, to the extent of their pertinency, the application in our jurisdiction of this international commercial credit regulatory set of rules.[20] In *Bank of Phil. Islands v. De Nery*,[21] we have said that the observance of the U.C.P. is justified by Article 2 of the Code of Commerce which expresses that, in the absence of any particular provision in the Code of Commerce, commercial transactions shall be governed by usages and customs generally observed. We have further observed that there being no specific provisions which govern the legal complexities arising from transactions involving letters of credit not only between or among banks themselves but also between banks and the seller or the buyer, as the case may be, the applicability of the U.C.P. is undeniable.

The first issue raised by the petitioner, i.e., that it has in this instance merely been an advising bank, is outrightly

rejected by Inter-Resin and is thus sought to be discarded for having been raised only on appeal. We cannot agree. The crucial point of dispute in this case is whether under the "letter of credit," Bank of America has incurred any liability to the "beneficiary" thereof, an issue that largely is dependent on the bank's participation in that transaction; as a mere advising or notifying bank, it would not be liable, but as a confirming bank, had this been the case, it could be considered as having incurred that liability.[22]

In *Insular Life Assurance Co. Ltd. Employees Association-- Natsu vs. Insular Life Assurance Co., Ltd.*, [23] the Court said: Where the issues already raised also rest on other issues not specifically presented, as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the court has the authority to include them in its discussion of the controversy and to pass upon them just as well. In brief, in those cases where questions not particularly raised by the parties surface as necessary for the complete adjudication of the rights and obligations of the parties, and such questions fall within the issues already framed by the parties, the interests of justice dictate that the court should consider and resolve them. The rule that only issues or theories raised in the initial proceedings may be taken up by a party thereto on appeal should only refer to independent, not concomitant matters, to support or oppose the cause of action or defense. The evil that is sought to be avoided, i.e., surprise to the adverse party, is in reality not existent on matters that are properly litigated in the lower court and appear on record.

It cannot seriously be disputed, looking at this case, that Bank of America has, in fact, only been an advising, not confirming, bank, and this much is clearly evident, among other things, by the provisions of the letter of credit itself, the petitioner bank's letter of advice, its request for payment of advising fee, and the admission of Inter-Resin that it has paid the same. That Bank of America has asked Inter-Resin to submit documents required by the letter of credit and eventually has paid the proceeds thereof, did not obviously make it a confirming bank. The fact, too, that the draft required by the letter of credit is to be drawn under the account of General Chemicals (buyer) only means that the same had to be presented to Bank of Ayudhya (issuing bank) for payment. It may be significant to recall that the letter of credit is an engagement of the issuing bank, not the advising bank, to pay the draft.

No less important is that Bank of America's letter of 11 March 1981 has expressly stated that "[t]he enclosure is solely an advise of credit opened by the abovementioned correspondent and conveys no engagement by us." [24] This written reservation by Bank of America in limiting its obligation only to being an advising bank is in consonance with the provisions of U.C.P.

As an advising or notifying bank, Bank of America did not incur any obligation more than just notifying Inter-Resin of the letter of credit issued in its favor, let alone to confirm the letter of credit.[25] The bare statement of the bank employee, aforementioned, in responding to the inquiry made by Atty. Tanay, Inter-Resin's representative, on the authenticity of the letter of credit certainly did not have the effect of novating the letter of credit and Bank of America's letter of advice,[26] nor can it justify the conclusion that the bank must now assume total liability on the letter of credit. Indeed, Inter-Resin itself cannot claim to have been all that free from fault. As the seller, the issuance of the letter of credit should have obviously been a great concern to it.[27] It would have, in fact, been strange if it did not, prior to the letter of credit, enter into a contract, or negotiated at the very least, with General Chemicals.[28] In the ordinary course of business, the perfection of contract precedes the issuance of a letter of credit.

Bringing the letter of credit to the attention of the seller is the primordial obligation of an advising bank. The view that Bank of America should have first checked the authenticity of the letter of credit with Bank of Ayudhya, by using advanced mode of business communications, before dispatching the same to Inter-Resin finds no real support in U.C.P. Article 18 of the U.C.P. states that: "Banks assume no liability or responsibility for the

consequences arising out of the delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of any telecommunication x x x" As advising bank, Bank of America is bound only to check the "apparent authenticity" of the letter of credit, which it did.[29] Clarifying its meaning, Webster's Ninth New Collegiate Dictionary[30] explains that the word "APPARENT suggests appearance to unaided senses that is not or may not be borne out by more rigorous examination or greater knowledge."

May Bank of America then recover what it has paid under the letter of credit when the corresponding draft for partial availment thereunder and the required documents therefor were later negotiated with it by Inter-Resin? The answer is yes. This kind of transaction is what is commonly referred to as a discounting arrangement. This time, Bank of America, has acted independently as a negotiating bank, thus saving Inter-Resin from the hardship of presenting the documents directly to Bank of Ayudhya to recover payment. (Inter-Resin, of course, could have chosen other banks with which to negotiate the draft and the documents.) As a negotiating bank, Bank of America has a right of recourse against the issuer bank and until reimbursement is obtained, Inter-Resin, as the drawer of the draft, continues to assume a contingent liability thereon.[31]

While Bank of America has indeed failed to allege material facts in its complaint that might have likewise warranted the application of the Negotiable Instruments Law and possibly then allowed it to even go after the indorsers of the draft, this failure,[32] nonetheless, does not preclude petitioner bank's right (as a negotiating bank) of recovery from Inter-Resin itself. Inter-Resin admits having received P10,219,093.20 from Bank of America on the letter of credit transaction and in having executed the corresponding draft. That payment to Inter-Resin has given, as aforesaid, Bank of America the right of reimbursement from the issuing bank, Bank of Ayudhya which, in turn, could then seek indemnification from the buyer (the General Chemicals of Thailand). Since Bank of Ayudhya disowned the letter of credit, however, Bank of America may now turn to Inter-Resin for restitution.

"Between the seller and the negotiating bank there is the usual relationship existing between a drawer and purchaser of drafts. Unless drafts drawn in pursuance of the credit are indicated to be without recourse therefore, the negotiating bank has the ordinary right of recourse against the seller in the event of dishonor by the issuing bank x x x The fact that the correspondent and the negotiating bank may be one and the same does not affect its rights and obligations in either capacity, although a special agreement is always a possibility x x x"[33]

The additional ground raised by the petitioner, i.e., that Inter-Resin sent waste instead of its products, is really of no consequence. In the operation of a letter of credit, the involved banks deal only with documents and not on goods described in those documents.[34]

The other issues raised in the instant petition, for instance, whether or not Bank of Ayudhya did issue the letter of credit and whether or not the main contract of sale that has given rise to the letter of credit has been breached, are not relevant to this controversy. They are matters, instead, that can only be of concern to the herein parties in an appropriate recourse against those who, unfortunately, are not impleaded in these proceedings.

In fine, we hold that -

First, given the factual findings of the courts below, we conclude that petitioner Bank of America has acted merely as a notifying bank and did not assume the responsibility of a confirming bank; and

Second, petitioner bank, as a negotiating bank, is entitled to recover on Inter-Resin's partial availment as beneficiary of the letter of credit which has been disowned by the alleged issuer bank.

No judgment of civil liability against the other defendants, Francisco Trajano and other unidentified parties, can be made, in this instance, there being no sufficient evidence to warrant any such finding.

WHEREFORE, the assailed decision is SET ASIDE, and respondent Inter-Resin Industrial Corporation is ordered to refund to petitioner Bank of American NT & SA the amount of P10,219,093.20 with legal interest the filing of the complaint until fully paid.

No costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Decision in Civil Case No. 41021 of Regional Trial Court, Branch 134, Makati, p. 15.

[2] The Bank of Ayudhya expressed impossibility of availment against the above-mentioned letter of credit because the same had been issued, for the account of Siam Union Metal L.P. (not General Chemicals of Thailand), for a different amount covering "zinc highgrade," and in favor of Electrolytic Zinc Co. of Australasia Ltd. (not Inter Resin) (Exh. "Q," Record p. 27).

[3] The Bank of America, Bangkok, in an answer to the inquiry of the Bank of America, Manila, stated that General Chemicals of Thailand received the bill of lading but denied having ordered them. However, Bank of America, Bangkok, doubted that it could hold the merchandise in favor of Bank of America, Manila, as it did not have the documents (Exhs. "R" and "R-1," Record, pp. 28-29).

[4] The dispositive portion reads: "WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows: 1. ordering the dismissal of the complaint for lack of merit; 2. defendants' counterclaim with the Court found to be tenable and meritorious; 3. plaintiff BA is hereby ordered to pay the defendants the Peso equivalent of US\$1,461,400.00 with interests counted from April 21, 1981, until fully paid; 4. plaintiff is hereby ordered to pay the defendants attorney's fees in the amount of P30,000.00; 5. ordering the dissolution and lifting of the attachment issued by the Court against defendants' properties' and 6. with costs against plaintiff" (Decision in Civil Case No. 41021, p. 209).

[5] Decision in Civil Case No. 41021, p. 21.

[6] Decision in Civil Case No. 41021, pp. 23-24.

[7] CA-G.R. CV No. 24236, prom. 28 January 1992; Lapeña, Jr., ponente, Guingona and Santiago, concurring.

[8] Petition, pp. 13-14.

[9] See extensive discussions in William S. Shaterian, *Export-Import Banking: The Instruments and Operations Utilized by American Exporters and Importers and their Banks in Financing Foreign Trade* (The Ronald Press Company: New York, 1947, pp. 284-374), James J. White and Robert S. Summers (eds) *Uniform Commercial Code* (West Publishing Co.: St. Paul, 1988) pp. 806-883, and John H. Jackson and William J. Davey *Legal Problems of International Economic Relations: Cases, Materials and Text on the National and International Economic Relations*, 2nd Ed. (West Publishing Co., St. Paul, pp. 52-63).

[10] Article 10 of the U.C.P. defines an irrevocable letter of credit as one that "constitutes a definite undertaking of the issuing bank, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with: i. if the credit provides for sight payment - to pay, or that payment will be made; ii. if the

credit provides for deferred payment - to pay, or that payment will be made, on the date(s) determinable in accordance with the stipulations of the credit; iii. if the credit provides for acceptance - to accept drafts drawn by the beneficiary if the credit stipulates that they are to be drawn on the issuing bank, or to be responsible for their acceptance and payment at maturity if the credit stipulates that they are to be drawn on the applicant for the credit or any other drawee stipulated in the credit; iv. if the credit provides for negotiation - to pay without recourse to drawers and/or bona fide holders, draft(s) drawn by the beneficiary, at sight or at a tenor, on the applicant for the credit or on any other drawee stipulated in the credit other than the issuing bank itself, or to provide for negotiation by another bank and to pay, as above, if such negotiation is not effected."

[11] Article 17 of the U.C.P. states: "Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods, or any other person whomsoever."

According to White and Summers, op. cit.: "x x x Bankers x x x (describe) the transaction between the bank and the beneficiary as a 'paper transaction.' By that they mean the bank issuer's agent should be able to sit with a necktie and a white shirt at a desk in a bank and by looking at papers that are presented to him determine whether the bank is obliged to make payment or not. He is not obligated and, indeed, is foreclosed from donning his overalls and going into the field to determine whether the underlying contract has been performed. This is the principal reason why careful courts and lawyers state that the letter of credit is not a guarantee. In a typical guarantee the guarantor will agree to make payments if, and only if, the customer has failed to fulfill his obligation on the underlying contract. If his obligation has been avoided because of the acts of the beneficiary, typically there would be no obligation to guarantee and thus no duty on the guarantor to pay. Letters of credit are different, and they are explicitly and consciously designed to be different in this respect. In effect, the beneficiary under a letter of credit has bargained for the right to be paid and thus often to be the defendant instead of the plaintiff in the ensuing litigation on the underlying contract, to be sued at home instead of being a plaintiff abroad x x x x."

[12] "The buyer of the merchandise, who is also the buyer of the credit instrument, is the party who initiates the operation. His contract is with the bank which is to issue the instrument and is represented by the Commercial Credit of Agreement form which he signs, supported by the mutually made promises contained in the Agreement" (Shaterian, op. cit. pp. 291-292).

[13] "The Opening Bank, usually the buyer's bank, is the bank which actually issues the instrument. It is also known as the Issuing Bank. The selection of the opening bank is important. It should be a strong bank, well known and well regarded in international trading circles. This is the reason x x x smaller banks do not attempt to issue their own commercial credit instruments but take advantage of the facilities of x x x much larger, stronger, and better known correspondent banks x x x The purposes of commercial credit may not be readily accomplished unless the opening bank is well known and well regarded" (Shaterian, op. cit., p. 292).

[14] "The seller of the merchandise is called the Beneficiary of the credit instrument. The instrument is addressed to him and is in his favor. It is the written contract of the bank which has created the instrument. While the bank cannot compel the beneficiary to ship and avail himself of the benefits of the instrument, the seller may recover from the bank the value of his shipment if made within the terms of the instrument, even though he has not given the bank any direct consideration for the bank's promises contained in the instrument. By a stretch of imagination, and in order to support the instrument as a two-sided contract, supported by mutually given considerations, the

courts seem to hold that the commission paid or to be paid by the buyer to the bank is also the consideration flowing from the seller to the bank" (Shaterian, op. cit., p. 292).

[15] "Whenever the instrument is not delivered to the buyer and by him mailed to the beneficiary, the opening bank will advise the existence of the credit to the beneficiary through its correspondent bank operating in the same locality as the seller. Such correspondent bank becomes the Notifying Bank. The services of a notifying bank must always be utilized if the credit is to be advised to the beneficiary by cable x x x" (Shaterian, op. cit., p. 292).

[16] "Whenever the beneficiary stipulates that the obligation of the opening bank shall also be made the obligation of a bank to himself, we have what is known as a confirmed commercial credit and the bank local to the beneficiary becomes the Confirming Bank. In view of the fact that commercial credits issued by American banks in favor of foreign sellers are invariably issued only by x x x larger well known banks, no seller requests that they be confirmed by another bank. The standing of the x x x opening bank is good enough. But many foreign banks are not particularly strong or well known, compared with x x x banks issuing these credit instruments. Indeed, many banks operating abroad are only known through the Banker's Almanac. They serve a useful purpose in their own small communities and perhaps maintain dollars account with the larger x x x banks. But their names are quite meaningless to the x x x exporter, and when the foreign buyer offers to his x x x seller a credit instrument issued by such a bank, the seller may not receive the protection and other facilities which an instrument issued by a large, strong, and well known bank will give him. To overcome this, he requests that the credit as issued by the local bank of the foreign buyer be confirmed by a well known x x x bank, which will turn out to be (a) x x x bank with which the local bank of the buyer carries a dollar account. The liability of the confirming bank is a primary one and is not contingent in any sense of the word. It is as if the credit were issued by the opening and confirming banks jointly, thus giving the beneficiary or a holder for value of drafts drawn under the credit, the right to proceed against either or both banks, the moment the credit instrument has been breached. The confirming bank receives a commission for its confirmation from the opening bank which the opening bank, in turn, passes on to the buyer of the merchandise" (Shaterian, op. cit., pp. 294-295).

[17] "The Paying Bank is the bank on which the drafts are to be drawn. It may be the opening bank, it may be a bank other than the opening bank and not in the city of the beneficiary, or it may be a bank in the city of the beneficiary, usually the advising bank. If the beneficiary is to draw and receive payment in his own currency, the notifying bank will be indicated as the paying bank also. When the draft is to be paid in this manner, the paying bank assumes no responsibility but merely pays the beneficiary and debits the payment immediately to the account which the opening bank has with it. If the opening bank maintains no account with the paying bank, the paying bank reimburses itself by drawing a bill of exchange on the opening bank, in dollars, for the equivalent of the local currency paid to the beneficiary, at its buying rate for dollar exchange. The beneficiary is entirely out of the transaction because his draft is completely discharged by payment, and the credit arrangement between the paying bank and the opening bank does, not concern him" (Shaterian, op. cit., pp. 293-294).

[18] "If the draft contemplated by the credit instrument is to be drawn on the opening bank or on another designated bank not in the city of the seller, any bank in the city of the seller which buys or discounts the draft of the beneficiary becomes a Negotiating Bank. As a rule, whenever the facilities of a notifying bank are used, the beneficiary is apt to offer his drafts to the notifying bank for negotiation, thus giving the notifying bank the character of a negotiating bank also. By negotiating the beneficiary's drafts, the negotiating bank becomes "an endorser and bona fide holder" of the drafts and within the protection of the credit instrument. It is also protected by the drawer's signature, as the drawer's contingent liability, as drawer, continues until discharged by the actual payment of the bills of exchange" (Shaterian, op. cit., p. 293).

[19] G.R. No. 94209, prom. 30 April 1991; 196 SCRA 576.

[20] "The Uniform Customs and Practices for documentary credits were first published in 1933. The current version was adopted by the International Chamber of Commerce Council in 1983 and published as Publication No. 400 in July of that year. This current version has the blessing of the United Nations Commission on International Trade Law (UNCITRAL). The Uniform Customs and Practices are not 'law' because of the act of any legislature or court, but because they have been explicitly and implicitly made part of the contract of letters of credit, x x x [M]any of the letters of credit in the United States are governed by the Uniform Customs and Practices and not by the UCC (Uniform Commercial Code) x x x

"In general, the UCP is much more detailed than the UCC. It clearly shows the tracks of many bankers and bank lawyers walking back and forth across its surface x x x

"Every lawyer who deals at any time with a letter of credit should have read the UCP at least once. The lawyer who deals routinely with such letters or who advises a bank or beneficiary in a circumstance where litigation is threatened or commenced should look more closely at the UCP." (White and Summers, op. cit., pp. 881-883).

[21] No. L-24821, 16 October 1970; 35 SCRA 256.

[22] See Feati Bank vs. Court of Appeals, 196 SCRA 576.

[23] 76 SCRA 61; see also Roman Catholic Archbishop vs. Court of Appeals, 198 SCRA 300; Macenas vs. Court of Appeals, 180 SCRA 83; Sociedad Europea de Financiacion vs. Court of Appeals, 193 SCRA 105; Lianga Lumber Co. vs. Lianga Timber Co., Inc. 76 SCRA 223.

[24] Exh. "C," Records, p. 17.

[25] "The banks involved charge a modest commission for their various services. The higher the risk that the bank assumes, the higher the commission (e.g., to confirm an L/C is riskier than merely transmitting an advice of credit) (Jackson and Davey, op. cit, p. 53).

[26] See Art. 1878 (9) and (11) of the Civil Code, respectively, provides that a special power of attorney is required "[T]o bind the principal to render some service without compensation" and "[T]o obligate the principal as a guarantor or surety". Art. 1887 states that "the agent shall act in accordance with the instructions of the principal". Moreover, Art. 1888 enjoins the agent from carrying out "an agency if its execution would manifestly result in loss or damage to the principal."

[27] In fact, Inter-Resin's pro forma invoice (Exh. "A") sent to General Chemicals, on the basis of which the letter of credit was apparently issued, demanded for a confirmed and irrevocable letter of credit.

[28] The suspicion that no contract of sale was perfected between Inter-Resin and General Chemicals may find support in the absence of a written memorandum of the sale or any other document showing that General Chemicals ordered the goods, and the Comment of Inter-Resin detailing the material events of this case but, surprisingly, failed to categorically state or show that such contract was consented to by the parties.

[29] Article 8 of U.C.P. states: "A credit may be advised to a beneficiary through another bank (the advising bank) without engagement on the part of the advising bank, but that bank shall take reasonable care to check the apparent authenticity of the credit which it advises. (Revised 1983, ICC No. 400; reproduced in Jackson and Davey, op. cit., p. 54); TSN, 13 May 1982, Darley on Wijiesekara cross-examination.

[30] 1983 ed., p. 96.

[31] See Shaterian, op. cit., p. 293.

[32] In this respect, its belated theory before us and in its motion for reconsideration of the assailed decision

should be rejected for being iniquitous under the circumstances. In fact, Bank of America has failed to present the draft and, more substantially, Inter-Resin has not been afforded full opportunity to refute by evidence this new argument of Bank of America. In short, we find the records insufficient to arrive at a just determination on this fact that can allow us to apply the Negotiable Instruments Law thereon.

[33] Philip W. Thayer, "Irrevocable Credits in International Commerce: Their Legal Effects," *Columbia Law Review* (1937), vol. 37, pp. 1357--1358.

[34] "Both in the application form for import credits and in the regulations governing our export credits, it is definitely provided that the banks involved shall not be responsible for the genuineness of the documents submitted under commercial credits. If the buyer of merchandise has sufficient confidence in the integrity of the seller to provide payment to the seller against shipping documents to be tendered to the bank by the seller, as provided by the credit instruments, it follows that the same confidence should extend to the tendering of genuine documents. If the seller is dishonest, he need not attempt to defraud the buyer by the tender of forged documents. He can obtain the desired evil end with less opportunity for prompt detection by shipping inferior goods or no goods at all. The carrier does not pry into the cases and packages to make sure that the merchandise is, in fact, as described in the bill of lading and invoices which are prepared by the shipper. The tender of forged documents for the purpose of obtaining money is a crime and the seller who commits such crime is prosecuted and jailed.

"x x x Neither can the interested banks assume responsibility for the character or quality of the goods shipped nor for the terms of the sale contract not incorporated and made part of the credit instrument. How could they? While the parties to the sale contract may be experts as to the involved merchandise the banks are not, generally speaking, sufficiently versed in the fine points of each and every class of merchandise which they finance. Even assuming the bank has men in its employ who can qualify as experts in certain lines of merchandising, it would not wish to extend this sort of service without adequate compensation but such service is not a banking function.

"x x x Because of this the credit should describe the goods in general terms only and the buyer should trust that the seller will ship the exact merchandise ordered. If the buyer is not satisfied with the moral standing of the seller, he should not open the credit but buy on open account basis, or subject the draft terms with the additional requirement that the draft need not be paid until after the buyer has had an opportunity to examine the goods to make sure that he has received exactly what he ordered" (Shaterian, *op. cit.*, pp. 352-354).

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