

BANK OF AMERICA NT&SA, PETITIONER, VS. THE HON. FIRST CIVIL CASES DIVISION, INTERMEDIATE APPELLATE COURT AND AIR CARGO AND TRAVEL CORPORATION, RESPONDENTS.

G.R. No. 74521. November 11, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

As the Petition and the Comment submitted by private respondent Air Cargo and Travel Corporation (ACTC) have sufficiently argued the legal question involved in this case, the Court has resolved to give due course to the Petition, with private respondent's Comment being its Answer, and to consider this case submitted for decision.

The basic relevant facts have been stated by respondent Appellate Court as follows:

"Shorn of non-essentials, the facts are: Plaintiff Air Cargo and Travel Corporation is the owner of Account Number 19842-01-2 with defendant Bank of America. Defendant Toshiyuki Minami, President of plaintiff corporation in Japan, is the owner of Account Number 24506-01-7 with defendant Bank.

On March 10, 1981, the Bank received a tested telex advise from Kyowa Bank of Japan stating:

'ADVISE PAY USDLS 23,595. - TO YOUR A/C NBR 24506-01-7 OF A. C. TRAVEL CORPORATION MR. TOSHIYUKO MINAMI.'

"and the Bank Credited the amount of US\$23,595.00 to Account Number 24506-07-1 (should be 24506-01-7) owned, as aforesaid, by Minami.

On March 12, 1981, Minami withdrew the sum of P180,000.00 the equivalent in Philippine Pesos of the sum of US\$23,595.00 from the Bank on his Account Number 24506-07-1 (should be 24506-01-7)."

It may be explained that the "tested" telex advice is a message signed in "code". Evidently, there was a previous contractual agreement between Kyowa Bank of Japan (KYOWA) and Petitioner (BANKAMERICA) that, from time to time, KYOWA can ask BANKAMERICA to pay amounts to a third party (beneficiary) with BANKAMERICA afterwards billing KYOWA the indicated amount given to the beneficiary. To assure itself that an Order received from KYOWA really comes from KYOWA, it is usually agreed that KYOWA's signature will be in accordance with a confidential code.

According to ACTC in its Comment, in the early part of 1981, it was Tokyo Tourist Corporation in Japan which applied with Kyowa Bank, Ltd. also based in Tokyo, Japan, for telegraphic transfer of the sum of US\$23,595.00 payable to ACTC's account with BANKAMERICA, Manila.

When the tested telex was received on May 10, 1981, employees of BANKAMERICA noted its patent ambiguity. Notwithstanding, on the following day, BANKAMERICA credited the amount of US\$23,595.00 to the account of Minami. ACTC claimed that the amount should have been credited to its account and demanded restitution, but BANKAMERICA refused.

On February 18, 1982, ACTC filed suit for damages against BANKAMERICA and Minami before the Trial Court in Pasig for the failure of BANKAMERICA to reimburse. Minami was declared in default. Thereafter, judgment was rendered with the following dispositive part:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court upon a judicious and fair assessment of the testimonial and documentary evidences submitted by the parties is of the opinion and so holds that defendant Bank and defendant Minami must pay plaintiff, jointly and severally the following:

- The sum of US\$23,595.00 or in Philippine Currency at the current guiding rate of exchange which is P14.00 to the dollar, as and by way of actual damages with interest at the rate of twelve (12%) per cent per annum from the filing of the complaint until fully paid;
- The sum of P50,000.00 as temperate and exemplary damages;
- The sum of P10,000.00 as attorney's fees;
- The costs of this suit.

SO ORDERED."

Upon appeal taken by BANKAMERICA, Respondent Court "affirmed in toto", except that the dollar-peso rate of exchange would be that "at the time of payment". Said respondent Court:

"We must say that the Bank personnel were in fact confused or in doubts as to the real payee.

The Senior Clerk who initially received the tested telex had called up Mr. Colegado, Mr. Ichiban, Miss Mayagana and Atty. Villanueva, all of plaintiff-appellee, but he received 'no answer'. (Exh. 3; pp: 9-10, t.s.n., Dec. 2, 1982).

Thereupon, the processor checked the alphabetical listings and he saw that the payee, Account Number 24506-01-7, matched the name appearing in the tested telex advise (p. 10, t.s.n., Dec. 2, 1981).

The gross negligence then of appellant Bank may be sum (sic) up as follows: The words 'A.C. TRAVEL CORPORATION MR. TOSHIYUKO MINAMI' engendered or cast doubt

on the part of the Senior Clerk as to the real payee

despite the 'A.C. NBR 24506-01-7' and

should have consulted higher officials of plaintiff before giving the advise to the processor who sent the same to the computer center for ultimate processing (p. 11, Appellant's Brief).

The processor verified that Account Number 24506-01-7 belonged to TOSHIYUKO MINAMI' only and not to 'A.C. TRAVEL CORPORATION MR. TOSHIYUKO MINAMI' and this circumstance should have moved the processor to be more prudent and to consult higher officials instead of sending the advise to the computer center for processing or crediting the remittance to the account of Toshiyuko Minami." (Additional paragraphings supplied)

We are constrained to reverse.

It is our considered opinion that, in the tested telex, considered either as a patent ambiguity or as a latent ambiguity, the beneficiary is Minami. The mention of Account No. 24506-01-7, as well as the name of Minami, has to be given more weight than the mention of the name of ACTC. BANKAMERICA could not have very well disregarded that account number. It could also be that the mention of ACTC's name was a further identification of Minami, to prevent payment to a possible another "Toshiyuko Minami" who may not be connected with ACTC. On the other hand, it should be difficult to concede that, in the tested telex, Account No. 24506-01-7 was

erroneously written and should be substituted by Account No. 19842-01-2 in the name of ACTC.

In *Vargas Plow Factory, Inc. vs. Central Bank*, it was held that "the opening of a letter of credit in favor of the exporter becomes ultimately but the result of a stipulation pour autrui" (27 SCRA 84 [1969]). Similarly, when KYOWA asked BANKAMERICA to pay an amount to a beneficiary (either ACTC or Minami), the contract was between KYOWA and BANK-AMERICA and it had a stipulation pour autrui.

It should be recalled that the tested telex originated from KYOWA at the behest of Tokyo Tourist Corporation with whom ACTC had business dealings. Minami, on the other hand, was the liaison officer of ACTC in Japan. As the entity responsible for the tested telex was Tokyo Tourist Corporation, it can reasonably be concluded that if it had intended that the US\$23,595.00 should be credited to ACTC, upon learning that the amount was credited to Minami, it should have gone, together with the representatives of ACTC, in protest to KYOWA and lodged a protest. Since that was not done, it could well be that Tokyo Tourist Corporation had really intended its remittance to be credited to Minami. The identity of the beneficiary should be in accordance with the identification made by KYOWA, and ACTC cannot question that identification as it is not a party to the arrangement between KYOWA and BANKAMERICA (see *Manila Railroad Co. vs. Compania Tras-atlantica*, 38 Phil. 875 [1918]).

WHEREFORE, the Decision of Respondent Court, in its case AC-G.R. CV No. 03985, is hereby reversed in so far as Bank of America, NT&SA is concerned.

Without pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Paras, JJ., concur.

Feliciano, J., on leave.

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