

FEATI BANK & TRUST COMPANY (NOW CITYTRUST BANKING CORPORATION), PETITIONER, VS. THE COURT OF APPEALS, AND BERNARDO E. VILLALUZ, RESPONDENTS.

G.R. No. 94209. April 30, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review seeking the reversal of the decision of the Court of Appeals dated June 29, 1990 which affirmed the decision of the Regional Trial Court of Rizal dated October 20, 1986 ordering the defendants Christiansen and the petitioner, to pay various sums to respondent Villaluz, jointly and severally.

The facts of the case are as follows:

On June 3, 1971, Bernardo E. Villaluz agreed to sell to the then defendant Axel Christiansen 2,000 cubic meters of lauan logs at \$27.00 per cubic meter FOB.

After inspecting the logs, Christiansen issued purchase order No. 76171.

On the arrangements made and upon the instructions of the consignee, Hanmi Trade Development, Ltd., de Santa Ana, California, the Security Pacific National Bank of Los Angeles, California issued Irrevocable Letter of Credit No. IC-46268 available at sight in favor of Villaluz for the sum of \$54,000.00, the total purchase price of the lauan logs.

The letter of credit was mailed to the Feati Bank and Trust Company (now Citytrust) with the instruction to the latter that it "forward the enclosed letter of credit to the beneficiary." (Records, Vol. I, p. 11)

The letter of credit further provided that the draft to be drawn is on Security Pacific National Bank and that it be accompanied by the following documents:

- "1. Signed Commercial Invoice in four copies showing the number of the purchase order and certifying that —
 - a. All terms and conditions of the purchase order have been complied with and that all logs are fresh cut and quality equal to or better than that described in H.A. Christiansen's telex #201 of May 1, 1970, and that all logs have been marked "BEV-EX".
 - b. One complete set of documents, including 1/3 original bills of lading was airmailed to Consignee and Parties to be advised by Hans-Axel Christiansen, Ship and Merchandise Broker.
 - c. One set of non-negotiable documents was airmailed to Han Mi Trade Development Company and one set to Consignee and Parties to be advised by Hans-Axel Christiansen, Ship and Merchandise Broker.
2. Tally sheets in quadruplicate.
3. 2/3 Original Clean on Board Ocean Bills of Lading with Consignee and Parties to be advised by Hans Axel Christiansen, showing Freight Prepaid and marked Notify:

Han Mi Trade Development Company, Ltd., Santa Ana, California

Letter of Credit No. 46268 dated June 7, 1971

Han Mi Trade Development Company, Ltd., P.O. Box 10480, Santa Ana, California 92711 and Han Mi Trade Development Company, Ltd., Seoul, Korea.

4. Certification from Han-Axel Christiansen, Ship and Merchandise Broker, stating that logs have been approved prior to shipment in accordance with terms and conditions of corresponding purchase Order. (Record, Vol. 1 pp. 11-12)

Also incorporated by reference in the letter of credit is the Uniform Customs and Practice for Documentary Credits (1962 Revision).

The logs were thereafter loaded on the vessel "Zenlin Glory" which was chartered by Christiansen. Before its loading, the logs were inspected by custom inspectors Nelo Laurente, Alejandro Cabiao, Estanislao Edera from the Bureau of Customs (Records, Vol. I, p. 124) and representatives Rogelio Cantuba and Jesus Tadena of the Bureau of Forestry (Records, Vol. I, pp. 16-17) all of whom certified to the good condition and exportability of the logs.

After the loading of the logs was completed, the Chief Mate, Shao Shu Wang issued a mate receipt of the cargo which stated the same are in good condition (Records, Vol. I, p. 363). However, Christiansen refused to issue the certification as required in paragraph 4 of the letter of credit, despite several requests made by the private respondent.

Because of the absence of the certification by Christiansen, the Feati Bank and Trust Company refused to advance the payment on the letter of credit.

The letter of credit lapsed on June 30, 1971, (extended, however up to July 31, 1971) without the private respondent receiving any certification from Christiansen.

The persistent refusal of Christiansen to issue the certification prompted the private respondent to bring the matter before the Central Bank. In a memorandum dated August 16, 1971, the Central Bank ruled that:

"x x x pursuant to the Monetary Board Resolution No. 1230 dated August 3, 1971, in all log exports, the certification of the lumber inspectors of the Bureau of Forestry x x x shall be considered final for purposes of negotiating documents. Any provision in any letter of credit covering log exports requiring certification of buyer's agent or representative that said logs have been approved for shipment as a condition precedent to negotiation of shipping documents shall not be allowed." (Records, Vol. I, p. 367)

Meanwhile, the logs arrived at Incheon, Korea and were received by the consignee, Hanmi Trade Development Company, to whom Christiansen sold the logs for the amount of \$37.50 per cubic meter, for a net profit of \$10 per cubic meter. Hanmi Trade Development Company, on the other hand sold the logs to Taisung Lumber Company at Incheon, Korea. (Rollo, p. 39)

Since the demands by the private respondent for Christiansen to execute the certification proved futile, Villaluz, on September 1, 1971, instituted an action for mandamus and specific performance against Christiansen and the Feati Bank and Trust Company (now Cityrust) before the then Court of First Instance of Rizal. The petitioner was impleaded as defendant before the lower court only to afford complete relief should the court a quo order Christiansen to execute the required certification.

The complaint prayed for the following:

1. Christiansen be ordered to issue the certification required of him under the Letter of Credit;
2. Upon issuance of such certification, or, if the court should find it unnecessary, FEATI BANK be ordered to accept negotiation of the Letter of Credit and make payment thereon to Villaluz;
3. Order Christiansen to pay damages to the plaintiff. (Rollo, p. 39)

On or about 1979, while the case was still pending trial, Christiansen left the Philippines without informing the Court and his counsel. Hence, Villaluz, filed an amended complaint to make the petitioner solidarily liable with Christiansen.

The trial court, in its order dated August 29, 1979, admitted the amended complaint.

After trial, the lower court found:

"The liability of the defendant CHRISTIANSEN is beyond dispute, and the plaintiff's right to demand payment is absolute. Defendant CHRISTIANSEN having accepted delivery of the logs by having them loaded in his chartered vessel the 'Zenlin Glory' and shipping them to the consignee, his buyer Han Mi Trade in Inchon, South Korea (Art. 1585, Civil Code), his obligation to pay the purchase order had clearly arisen and the plaintiff may sue and recover the price of the goods (Art. 1595, id).

"The Court believes that the defendant CHRISTIANSEN acted in bad faith and deceit and with intent to defraud the plaintiff, reflected in and aggravated by, not only his refusal to issue the certification that would have enabled without question the plaintiff to negotiate the letter of credit, but his accusing the plaintiff in his answer of fraud, intimidation, violence and deceit. These accusations said defendant did not attempt to prove, as in fact he left the country without even notifying his own lawyer. It was to the Court's mind a pure swindle.

"The defendant Feati Bank and Trust Company, on the other hand, must be held liable together with his (sic) co-defendant for having, by its wrongful act, i.e., its refusal to negotiate the letter of credit in the absence of CHRISTIANSEN's certification (in spite of the Central Bank's ruling that the requirement was illegal), prevented payment to the plaintiff. The said letter of credit, as may be seen on its face, is irrevocable, and the issuing bank, the Security Pacific National Bank in Los Angeles, California, undertook by its terms that the same shall be honored upon its presentment. On the other hand, the notifying bank, the defendant Feati Bank and Trust Company, by accepting the instructions from the issuing bank, itself assumed the very same undertaking as the issuing bank under the terms of the letter of credit.

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"The Court likewise agrees with the plaintiff that the defendant BANK may also be held liable under the principles and laws on both trust and estoppel. When the defendant BANK accepted its role as the notifying and negotiating bank for and in behalf of the issuing bank, it in effect accepted a trust reposed on it, and became a trustee in relation to plaintiff as the beneficiary of the letter of credit. As trustee, it was then duty bound to protect the interests of the plaintiff under the terms of the letter of credit, and must be held liable for damages and loss resulting to the plaintiff from its failure to perform that obligation.

"Furthermore, when the defendant BANK assumed the role of a notifying and negotiating BANK it in effect represented to the plaintiff that, if the plaintiff complied with the terms and conditions of the letter of credit and presents the same to the BANK together with the documents mentioned therein the said BANK will pay the plaintiff the amount of the letter of credit. The Court is convinced that it was upon the strength of this letter of credit and this implied representation of the defendant BANK that the plaintiff delivered the logs to defendant CHRISTIANSEN, considering that the issuing bank is a foreign bank with whom plaintiff had no business connections and CHRISTIANSEN had not offered any other Security for the payment of the logs. Defendant BANK cannot now be allowed to deny its commitment and liability under the letter of credit:

'A holder of a promissory note given because of gambling who indorses the same to an innocent holder for

value and who assures said party that the note has no legal defect, is in estoppel from asserting that there had been an illegal consideration for the note, and so, he has to pay its value. (Rodriguez v. Martinez, 5 Phil. 67).'

"The defendant BANK, in insisting upon the certification of defendant CHRISTIANSEN as a condition precedent to negotiating the letter of credit, likewise in the Court's opinion acted in bad faith, not only because of the clear declaration of the Central Bank that such a requirement was illegal, but because the BANK, with all the legal counsel available to it, must have known that the condition was void since it depended on the sole will of the debtor, the defendant CHRISTIANSEN. (Art. 1182, Civil Code)" (Rollo, pp. 29-31)

On the basis of the foregoing the trial court on October 20, 1986, ruled in favor of the private respondent. The dispositive portion of its decision reads:

"WHEREFORE, judgment is hereby rendered for the plaintiff, ordering the defendants to pay the plaintiff, jointly and severally, the following sums:

"a) \$54,000.00 (US), or its peso equivalent at the prevailing rate as of the time payment is actually made, representing the purchase price of the logs;

"b) P17,340.00, representing government fees and charges paid by plaintiff in connection with the logs shipment in question;

"c) P10,000.00 as temperate damages (for trips made to Bacolod and Korea).

"All three foregoing sums shall be with interest thereon at 12% per annum from September 1, 1971, when the complaint was filed, until fully paid:

"d) P70,000.00, as moral damages;

"e) P30,000.00, as exemplary damages; and

"f) P30,000.00, as attorney's fees and litigation expense." (Rollo, p. 28)

The petitioner received a copy of the decision on November 3, 1986. Two days thereafter, or on November 5, 1986, it filed a notice of appeal.

On November 10, 1986, the private respondent filed a motion for the immediate execution of the judgment on the ground that the appeal of the petitioner was frivolous and dilatory.

The trial court ordered the immediate execution of its judgment upon the private respondent's filing of a bond.

The petitioner then filed a motion for reconsideration and a motion to suspend the implementation of the writ of execution. Both motions were, however, denied. Thus, petitioner filed before the Court of Appeals a petition for certiorari and prohibition with preliminary injunction to enjoin the immediate execution of the judgment.

The Court of Appeals in a decision dated April 9, 1987 granted the petition and nullified the order of execution, the dispositive portion of the decision states:

"WHEREFORE, the petition for certiorari is granted. Respondent Judge's order of execution dated December 29, 1986, as well as his order dated January 14, 1987 denying the petitioner's urgent motion to suspend the writ of execution against its properties are hereby annulled and set aside insofar as they are sought to be enforced and implemented against the petitioner Feati Bank & Trust Company, now Citytrust Banking Corporation, during the pendency of its appeal from the adverse decision in Civil Case No. 15121. However, the execution of the same decision against defendant Axel Christiansen who did not appeal said decision may proceed unimpeded. The Sheriff's levy on the petitioner's properties, and the notice of sale dated January 13, 1987 (Annex M), are hereby annulled and set aside. (Rollo, p. 44)

A motion for reconsideration was thereafter filed by the private respondent. The Court of Appeals, in a resolution dated June 29, 1987 denied the motion for reconsideration.

In the meantime, the appeal filed by the petitioner before the Court of Appeals was given due course. In its decision dated June 29, 1990, the Court of Appeals affirmed the decision of the lower court dated October 20, 1986 and ruled that:

1. Feati Bank admitted in the "special and negative defenses" section of its answer that it was the bank to negotiate the letter of credit issued by the Security Pacific National Bank of Los Angeles, California. (Record, pp. 156, 157). Feati Bank did notify Villaluz of such letter of credit. In fact, as such negotiating bank, even before the letter of credit was presented for payment, Feati Bank had already made an advance payment of P75,000.00 to Villaluz in anticipation of such presentment. As the negotiating bank, Feati Bank, by notifying Villaluz of the letter of credit in behalf of the issuing bank (Security Pacific), confirmed such letter of credit and made the same also its own obligation. This ruling finds support in the authority cited by Villaluz:

"A confirmed letter of credit is one in which the notifying bank gives its assurance also that the opening bank's obligation will be performed. In such a case, the notifying bank will not simply transmit but will confirm the opening bank's obligation by making it also its own undertaking, or commitment, or guaranty or obligation." (Ward & Harfield, 28--29, cited in Agbayani, Commercial Laws, 1978 edition, p. 77).

Feati Bank argues further that it would be considered as the negotiating bank only upon negotiation of the letter of credit. This stance is untenable. Assurance, commitments or guaranties supposed to be made by notifying banks to the beneficiary of a letter of credit, as defined above, can be relevant or meaningful only with respect to a future transaction, that is, negotiation. Hence, even before actual negotiation, the notifying bank, by the mere act of notifying the beneficiary of the letter of credit, assumes as of that moment the obligation of the issuing bank.

2. Since Feati Bank acted as guarantor of the issuing bank, and in effect also of the latter's principal or client, i.e. Hans Axel- Christiansen. (sic) Such being the case, when Christiansen refused to issue the certification, it was as though refusal was made by Feati Bank itself. Feati Bank should have taken steps to secure the certification from Christiansen; and, if the latter should still refuse to comply, to hale him to court. In short, Feati Bank should have honored Villaluz's demand for payment of his logs by virtue of the irrevocable letter of credit issued in Villaluz's favor and guaranteed by Feati Bank.

3. The decision promulgated by this Court in CA-G.R. Sp No. 11051, which contained the statement "Since Villaluz' draft was not drawn strictly in compliance with the terms of the letter of credit, Feati Bank's refusal to negotiate it was justified," did not dispose of this question on the merits. In that case, the question involved was jurisdiction or discretion, and not judgment. The quoted pronouncement should not be taken as a preemptive judgment on the merits of the present case on appeal.

4. The original action was for "mandamus and/or specific performance." Feati Bank may not be a party to the transaction between Christiansen and Security Pacific National Bank on the one hand, and Villaluz on the other hand; still, being guarantor or agent of Christiansen and/or Security Pacific National Bank which had directly dealt with Villaluz, Feati Bank may be sued properly on specific performance as a procedural means by which the relief sought by Villaluz may be entertained. (Rollo, pp. 32-33)

The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the decision appealed from is affirmed; and accordingly, the appeal is hereby dismissed. Costs against the petitioner. (Rollo, p. 33)

Hence, this petition for review.

The petitioner interposes the following reasons for the allowance of the petition.

First Reason

THE RESPONDENT COURT ERRONEOUSLY CONCLUDED FROM THE ESTABLISHED FACTS AND INDEED, WENT AGAINST THE EVIDENCE AND DECISION OF THIS HONORABLE COURT, THAT PETITIONER BANK IS LIABLE ON THE LETTER OF CREDIT DESPITE PRIVATE RESPONDENT'S NON-COMPLIANCE WITH THE TERMS THEREOF.

Second Reason

THE RESPONDENT COURT COMMITTED AN ERROR OF LAW WHEN IT HELD THAT PETITIONER BANK, BY NOTIFYING PRIVATE RESPONDENT OF THE LETTER OF CREDIT, CONFIRMED SUCH CREDIT AND MADE THE SAME ALSO ITS OBLIGATION AS GUARANTOR OF THE ISSUING BANK.

Third Reason

THE RESPONDENT COURT LIKEWISE COMMITTED AN ERROR OF LAW WHEN IT AFFIRMED THE TRIAL COURT'S DECISION. (Rollo, p. 12)

The principal issue in this case is whether or not a correspondent bank is to be held liable under the letter of credit despite non-compliance by the beneficiary with the terms thereof?

The petition is impressed with merit.

It is a settled rule in commercial transactions involving letters of credit that the documents tendered must strictly conform to the terms of the letter of credit. The tender of documents by the beneficiary (seller) must include all documents required by the letter. A correspondent bank which departs from what has been stipulated under the letter of credit, as when it accepts a faulty tender, acts on its own risks and it may not thereafter be able to recover from the buyer or the issuing bank, as the case may be, the money thus paid to the beneficiary. Thus the rule of strict compliance.

In the United States, commercial transactions involving letters of credit are governed by the rule of strict compliance. In the Philippines, the same holds true. The same rule must also be followed.

The case of *Anglo-South American Trust Co. v. Uhe et al.* (184 N.E. 741 [1933]) expounded clearly on the rule of strict compliance.

"We have heretofore held that these letters of credit are to be strictly complied with, which documents, and shipping documents must be followed as stated in the letter. There is no discretion in the bank or trust company to waive any requirements. The terms of the letter constitutes an agreement between the purchaser and the bank." (p. 743)

Although in some American decisions, banks are granted a little discretion to accept a faulty tender as when the other documents may be considered immaterial or superfluous, this theory could lead to dangerous precedents. Since a bank deals only with documents, it is not in a position to determine whether or not the documents required by the letter of credit are material or superfluous. The mere fact that the document was specified therein readily means that the document is of vital importance to the buyer.

Moreover, the incorporation of the Uniform Customs and Practice for Documentary Credit (U.C.P. for short) in the letter of credit resulted in the applicability of the said rules in the governance of the relations between the parties.

And even if the U.C.P. was not incorporated in the letter of credit, we have already ruled in the affirmative as to the applicability of the U.C.P. in cases before us.

In *Bank of P.I. v. De Nery* (35 SCRA 256 [1970]), we pronounced that the observance of the U.C.P. in this jurisdiction is justified by Article 2 of the Code of Commerce. Article 2 of the Code of Commerce enunciates that in the absence of any particular provision in the Code of Commerce, commercial transactions shall be governed by the usages and customs generally observed.

There being no specific provision which governs the legal complexities arising from transactions involving letters of credit not only between the banks themselves but also between banks and seller and/or buyer, the applicability of the U.C.P. is undeniable.

The pertinent provisions of the U.C.P. (1962 Revision) are:

Article 3.

"An irrevocable credit is a definite undertaking on the part of the issuing bank and constitutes the engagement of that bank to the beneficiary and bona fide holders of drafts drawn and/or documents presented thereunder, that the provisions for payment, acceptance or negotiation contained in the credit will be duly fulfilled, provided that all the terms and conditions of the credit are complied with.

"An irrevocable credit may be advised to a beneficiary through another bank (the advising bank) without engagement on the part of that bank, but when an issuing bank authorises or requests another bank to confirm its irrevocable credit and the latter does so, such confirmation constitutes a definite undertaking of the confirming bank...."

Article 7.

"Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit"

Article 8.

"Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of a credit by a bank authorized to do so, binds the party giving the authorization to take up documents and reimburse the bank which has effected the payment, acceptance or negotiation."
(Emphasis Supplied)

Under the foregoing provisions of the U.C.P., the bank may only negotiate, accept or pay, if the documents tendered to it are on their face in accordance with the terms and conditions of the documentary credit. And since a correspondent bank, like the petitioner, principally deals only with documents, the absence of any document required in the documentary credit justifies the refusal by the correspondent bank to negotiate, accept or pay the beneficiary, as it is not its obligation to look beyond the documents. It merely has to rely on the completeness of the documents tendered by the beneficiary.

In regard to the ruling of the lower court and affirmed by the Court of Appeals that the petitioner is not a notifying bank but a confirming bank, we find the same erroneous.

The trial court wrongly mixed up the meaning of an irrevocable credit with that of a confirmed credit. In its decision, the trial court ruled that the petitioner, in accepting the obligation to notify the respondent that the irrevocable credit has been transmitted to the petitioner on behalf of the private respondent, has confirmed the letter.

The trial court appears to have overlooked the fact that an irrevocable credit is not synonymous with a confirmed credit. These types of letters have different meanings and the legal relations arising from there varies. A credit may be an irrevocable credit and at the same time a confirmed credit or vice-versa.

An irrevocable credit refers to the duration of the letter of credit. What it simply means is that the issuing bank may not without the consent of the beneficiary (seller) and the applicant (buyer) revoke his undertaking under the letter. The issuing bank does not reserve the right to revoke the credit. On the other hand, a confirmed letter of credit pertains to the kind of obligation assumed by the correspondent bank. In this case, the correspondent bank gives an absolute assurance to the beneficiary that it will undertake the issuing bank's obligation as its own according to the terms and conditions of the credit. (Agbayani, Commercial Laws of the Philippines, Vol. 1, pp. 81-83)

Hence, the mere fact that a letter of credit is irrevocable does not necessarily imply that the correspondent bank in accepting the instructions of the issuing bank has also confirmed the letter of credit. Another error which the lower court and the Court of Appeals made was to confuse the obligation assumed by the petitioner.

In commercial transactions involving letters of credit, the functions assumed by a correspondent bank are classified according to the obligations taken up by it. The correspondent bank may be called a notifying bank, a negotiating bank, or a confirming bank.

In case of a notifying bank, the correspondent bank assumes no liability except to notify and/or transmit to the beneficiary the existence of the letter of credit. (Kronman and Co., Inc. v. Public National Bank of New York, 218 N.Y.S. 616 [1926]; Shaterian, Export-Import Banking, p. 292, cited in Agbayani, Commercial Laws of the Philippines, Vol. 1, p. 76) A negotiating bank, on the other hand, is a correspondent bank which buys or discounts a draft under the letter of credit. Its liability is dependent upon the stage of the negotiation. If before negotiation, it has no liability with respect to the seller but after negotiation, a contractual relationship will then prevail between the negotiating bank and the seller. (Scanlon v. First National Bank of Mexico, 162 N.E. 567 [1928]; Shaterian, Export-Import Banking, p. 293, cited in Agbayani, Commercial Laws of the Philippines, Vol. 1, p. 76))

In the case of a confirming bank, the correspondent bank assumes a direct obligation to the seller and its liability is a primary one as if the correspondent bank itself had issued the letter of credit. (Shaterian, Export-Import Banking, p. 294, cited in Agbayani Commercial Laws of the Philippines, Vol. 1, p. 77)

In this case, the letter merely provided that the petitioner "forward the enclosed original credit to the beneficiary." (Records, Vol. I, p. 11) Considering the aforesaid instruction to the petitioner by the issuing bank, the Security Pacific National Bank, it is indubitable that the petitioner is only a notifying bank and not a confirming bank as ruled by the courts below.

If the petitioner was a confirming bank, then a categorical declaration should have been stated in the letter of credit that the petitioner is to honor all drafts drawn in conformity with the letter of credit. What was simply stated therein was the instruction that the petitioner forward the original letter of credit to the beneficiary.

Since the petitioner was only a notifying bank, its responsibility was solely to notify and/or transmit the documentary of credit to the private respondent and its obligation ends there.

The notifying bank may suggest to the seller its willingness to negotiate, but this fact alone does not imply that the notifying bank promises to accept the draft drawn under the documentary credit.

A notifying bank is not a privy to the contract of sale between the buyer and the seller, its relationship is only with that of the issuing bank and not with the beneficiary to whom he assumes no liability. It follows therefore that when the petitioner refused to negotiate with the private respondent, the latter has no cause of action against the petitioner for the enforcement of his rights under the letter. (See Kronman and Co., Inc. V. Public National bank of New York, *supra*)

In order that the petitioner may be held liable under the letter, there should be proof that the petitioner confirmed the letter of credit.

The records are, however, bereft of any evidence which will disclose that the petitioner has confirmed the letter of credit. The only evidence in this case, and upon which the private respondent premised his argument, is the P75,000.00 loan extended by the petitioner to him.

The private respondent relies on this loan to advance his contention that the letter of credit was confirmed by the petitioner. He claims that the loan was granted by the petitioner to him, "in anticipation of the presentment of the letter of credit."

The proposition advanced by the private respondent has no basis in fact or law. That the loan agreement between them be construed as an act of confirmation is rather far-fetched, for it depends principally on speculative reasoning.

As earlier stated, there must have been an absolute assurance on the part of the petitioner that it will undertake the issuing bank's obligation as its own. Verily, the loan agreement it entered into cannot be categorized as an emphatic assurance that it will carry out the issuing banks's obligation as its own.

The loan agreement is more reasonably classified as an isolated transaction independent of the documentary credit.

Of course, it may be presumed that the petitioner loaned the money to the private respondent in anticipation that it would later be paid by the latter upon the receipt of the letter. Yet, we would have no basis to rule definitively that such "act" should be construed as an act of confirmation.

The private respondent no doubt was in need of money in loading the logs on the ship "Zenlin Glory" and the only way to satisfy this need was to borrow money from the petitioner which the latter granted. From these circumstances, a logical conclusion that can be gathered is that the letter of credit was merely to serve as a collateral.

At the most, when the petitioner extended the loan to the private respondent, it assumed the character of a negotiating bank. Even then, the petitioner will still not be liable, for a negotiating bank before negotiation has no contractual relationship with the seller.

The case of *Scanlon v. First National bank* (supra) perspicuously explained the relationship between the seller and the negotiating bank, viz:

"It may buy or refuse to buy as it chooses. Equally, it must be true that it owes no contractual duty toward the person for whose benefit the letter is written to discount or purchase any draft drawn against the credit. No relationship of agent and principal, or of trustee and cestui, between the receiving bank and the beneficiary of the letter is established." (P. 568)

Whether therefore the petitioner is a notifying bank or a negotiating bank, it cannot be held liable. Absent any definitive proof that it has confirmed the letter of credit or has actually negotiated with the private respondent, the refusal by the petitioner to accept the tender of the private respondent is justified.

In regard to the finding that the petitioner became a "trustee in relation to the plaintiff (private respondent) as the beneficiary of the letter of credit," the same has no legal basis.

A trust has been defined as the "right, enforceable solely in equity, to the beneficial enjoyment of property the legal title to which is vested to another." (89 C.J.S. 712)

The concept of a trust presupposes the existence of a specific property which has been conferred upon the person for the benefit of another. In order therefore for the trust theory of the private respondent to be sustained, the petitioner should have had in its possession a sum of money as specific fund advanced to it by the issuing bank and to be held in trust by it in favor of the private respondent. This does not obtain in this case.

The mere opening of a letter of credit, it is to be noted, does not involve a specific appropriation of a sum of money in favor of the beneficiary. It only signifies that the beneficiary may be able to draw funds upon the letter of credit up to the designated amount specified in the letter. It does not convey the notion that a particular sum of money has been specifically reserved or has been held in trust.

What actually transpires in an irrevocable credit is that the correspondent bank does not receive in advance the sum of money from the buyer or the issuing bank. On the contrary, when the correspondent bank accepts the tender and pays the amount stated in the letter, the money that it doles out comes not from any particular fund that has been advanced by the issuing bank, rather it gets the money from its own funds and then later seeks reimbursement from the issuing bank.

Granting that a trust has been created, still, the petitioner may not be considered a trustee. As the petitioner is only a notifying bank, its acceptance of the instructions of the issuing bank will not create estoppel on its part resulting in the acceptance of the trust. Precisely, as a notifying bank, its only obligation is to notify the private respondent of the existence of the letter of credit. How then can such create estoppel when that is its only duty under the law?

We also find erroneous the statement of the Court of Appeals that the petitioner "acted as a guarantor of the issuing bank and in effect also of the latter's principal or client, i.e. Hans Axel Christiansen."

It is a fundamental rule that an irrevocable credit is independent not only of the contract between the buyer and the seller but also of the credit agreement between the issuing bank and the buyer. (See *Kingdom of Sweden v. New York Trust Co.*, 96 N.Y.S. 2d 779 [1949]) The relationship between the buyer (Christiansen) and the issuing bank (Security Pacific National Bank) is entirely independent from the letter of credit issued by the latter.

The contract between the two has no bearing as to the non-compliance by the buyer with the agreement between the latter and the seller. Their contract is similar to that of a contract of services (to open the letter of credit) and not that of agency as was intimated by the Court of Appeals. The unjustified refusal therefore by Christiansen to issue the certification under the letter of credit should not likewise be charged to the issuing bank.

As a mere notifying bank, not only does the petitioner not have any contractual relationship with the buyer, it has also nothing to do with the contract between the issuing bank and the buyer regarding the issuance of the letter of credit.

The theory of guarantee relied upon by the Court of Appeals has to necessarily fail. The concept of guarantee vis-a-vis the concept of an irrevocable credit are inconsistent with each other.

In the first place, the guarantee theory destroys the independence of the bank's responsibility from the contract upon which it was opened. In the second place, the nature of both contracts is mutually in conflict with each other. In contracts of guarantee, the guarantor's obligation is merely collateral and it arises only upon the default of the person primarily liable. On the other hand, in an irrevocable credit the bank undertakes a primary obligation. (See *National Bank of Eagle Pass, Tex. v. American National Bank of San Francisco*, 282 F.73 [1922])

The relationship between the issuing bank and the notifying bank, on the contrary, is more similar to that of an agency and not that of a guarantee. It may be observed that the notifying bank is merely to follow the instructions of the issuing bank which is to notify or to transmit the letter of credit to the beneficiary. (See *Kronman v. Public*

National Bank of New York, *supra*). Its commitment is only to notify the beneficiary. It does not undertake any assurance that the issuing bank will perform what has been mandated to or expected of it. As an agent of the issuing bank, it has only to follow the instructions of the issuing bank and to it alone is it obligated and not to the buyer with whom it has no contractual relationship.

In fact the notifying bank, even if the seller tenders all the documents required under the letter of credit, may refuse to negotiate or accept the drafts drawn thereunder and it will still not be held liable for its only engagement is to notify and/or transmit to the seller the letter of credit.

Finally, even if we assume that the petitioner is a confirming bank, the petitioner cannot be forced to pay the amount under the letter. As we have previously explained, there was a failure on the part of the private respondent to comply with the terms of the letter of credit.

The failure by him to submit the certification was fatal to his case. The U.C.P. which is incorporated in the letter of credit ordains that the bank may only pay the amount specified under the letter if all the documents tendered are on their face in compliance with the credit. It is not tasked with the duty of ascertaining the reason or reasons why certain documents have not been submitted, as it is only concerned with the documents. Thus, whether or not the buyer has performed his responsibility towards the seller is not the bank's problem.

We are aware of the injustice committed by Christiansen on the private respondent but we are deciding the controversy on the basis of what the law is, for the law is not meant to favor only those who have been oppressed, the law is to govern future relations among people as well. Its commitment is to all and not to a single individual. The faith of the people in our justice system may be eroded if we are to decide not what the law states but what we believe it should declare. *Dura lex sed lex*.

Considering the foregoing, the materiality of ruling upon the validity of the certificate of approval required of the private respondent to submit under the letter of credit, has become insignificant.

In any event, we affirm the earlier ruling of the Court of Appeals dated April 9, 1987 in regard to the petition before it for certiorari and prohibition with preliminary injunction, to wit:

"There is no merit in the respondent's contention that the certification required in condition No. 4 of the letter of credit was "patently illegal." At the time the letter of credit was issued there was no Central Bank regulation prohibiting such a condition in the letter of credit. The letter of credit (Exh. C) was issued on June 7, 1971, more than two months before the issuance of the Central Bank Memorandum on August 16, 1971 disallowing such a condition in a letter of credit. In fact the letter of credit had already expired on July 30, 1971 when the Central Bank memorandum was issued. In any event, it is difficult to see how such a condition could be categorized as illegal or unreasonable since all that plaintiff Villaluz, as seller of the logs, could and should have done was to refuse to load the logs on the vessel "Zenlin Glory", unless Christiansen first issued the required certification that the logs had been approved by him to be in accordance with the terms and conditions of his purchase order. Apparently, Villaluz was in too much haste to ship his logs without taking all due precautions to assure that all the terms and conditions of the letter of credit had been strictly complied with, so that there would be no hitch in its negotiation." (Rollo, p. 8)

WHEREFORE, the COURT RESOLVED to GRANT the petition and hereby NULLIFIES and SETS ASIDE the decision of the Court of Appeals dated June 29, 1990. The amended complaint in Civil Case No. 15121 is DISMISSED.

SO ORDERED.

Feliciano, Bidin, and Davide, Jr., JJ., concur.

Fernan, C.J., (Chairman), No part, related to counsel for petitioner.

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