

THIRD DIVISION

[G.R. No. 183486, February 24, 2016]

**THE HONGKONG & SHANGHAI BANKING CORPORATION,
LIMITED, PETITIONER, VS. NATIONAL STEEL CORPORATION
AND CITYTRUST BANKING CORPORATION (NOW BANK OF THE
PHILIPPINE ISLANDS), RESPONDENTS.**

DECISION

JARDELEZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner The Hongkong & Shanghai Banking Corporation, Limited (HSBC) filed this petition to assail the Decision of the Court of Appeals (CA) dated November 19, 2007 (Assailed Decision) which reversed the ruling of the Regional Trial Court, Branch 62 of Makati City (RTC Makati) and its Resolution denying HSBC's Motion for Reconsideration dated June 23, 2008 (Assailed Resolution).

The Facts

Respondent National Steel Corporation (NSC) entered into an Export Sales Contract (the Contract) with Klockner East Asia Limited (Klockner) on October 12, 1993.^[1] NSC sold 1,200 metric tons of prime cold rolled coils to Klockner under FOB ST Iligan terms. In accordance with the requirements in the Contract, Klockner applied for an irrevocable letter of credit with HSBC in favor of NSC as the beneficiary in the amount of US\$468,000. On October 22, 1993, HSBC issued an irrevocable and on sight letter of credit no. HKH 239409 (the Letter of Credit) in favor of NSC.^[2] The Letter of Credit stated that it is governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, Publication No. 400 (UCP 400). Under UCP 400, HSBC as the issuing bank, has the obligation to immediately pay NSC upon presentment of the documents listed in the Letter of Credit.^[3] These documents are: (1) one original commercial invoice; (2) one packing list; (3) one non-negotiable copy of clean on board ocean bill of lading made out to order, blank endorsed marked 'freight collect and notify applicant;' (4) copy of Mill Test Certificate made out 'to whom it may concern;' (5) copy of beneficiary's telex to applicant (Telex No. 86660 Klock HX) advising shipment details including D/C No., shipping marks, name of vessel, port of shipment, port of destination, bill of lading date, sailing and ETA dates, description of goods, size, weight, number of packages and value of goods latest two days after shipment date; and (6) beneficiary's certificate certifying that (a) one set of non-negotiable copies of documents (being those listed above) have been faxed to applicant (FAX No. 5294987) latest two days after shipment date; and (b) one set of documents including one copy each of invoice and packing list, 3/3 original bills of lading plus one non-negotiable copy and three original Mill Test Certificates have been sent to

applicant by air courier service latest two days after shipment date.^[4]

The Letter of Credit was amended twice to reflect changes in the terms of delivery. On November 2, 1993, the Letter of Credit was first amended to change the delivery terms from FOB ST Iligan to FOB ST Manila and to increase the amount to US\$488,400.^[5] It was subsequently amended on November 18, 1993 to extend the expiry and shipment date to December 8, 1993.^[6] On November 21, 1993, NSC, through Emerald Forwarding Corporation, loaded and shipped the cargo of prime cold rolled coils on board MV Sea Dragon under China Ocean Shipping Company Bill of Lading No. HKG 266001. The cargo arrived in Hongkong on November 25, 1993.^[7]

NSC coursed the collection of its payment from Klockner through City Trust Banking Corporation (City Trust). NSC had earlier obtained a loan from City Trust secured by the proceeds of the Letter of Credit issued by HSBC.^[8]

On November 29, 1993, City Trust sent a collection order (Collection Order) to HSBC respecting the collection of payment from Klockner. The Collection Order instructed as follows: (1) deliver documents against payment; (2) cable advice of non-payment with reason; (3) cable advice payment; and (4) remit proceeds via TELEX.^[9] The Collection Order also contained the following statement: "Subject to Uniform Rules for the Collection of Commercial Paper Publication No. 322."^[10] Further, the Collection Order stated that proceeds should be remitted to Standard Chartered Bank of Australia, Ltd., Offshore Branch Manila (SCB-M) which was, in turn, in charge of remitting the amount to City Trust.^[11] On the same date, City Trust also presented to HSBC the following documents: (1) Letter of Credit; (2) Bill of Lading; (3) Commercial Invoice; (4) Packing List; (5) Mill Test Certificate; (6) NSC's TELEX to Klockner on shipping details; (7) Beneficiary's Certificate of facsimile transmittal of documents; (8) Beneficiary's Certificate of air courier transmittal of documents; and (9) DHL Receipt No. 669988911 and Certificate of Origin.^[12]

On December 2, 1993, LISBC sent a cablegram to City Trust acknowledging receipt of the Collection Order. It also stated that the documents will be presented to "the drawee against payment subject to UCP 322 [Uniform Rules for Collection (URC) 322] as instructed..."^[13] SCB-M then sent a cablegram to ITSBC requesting the latter to urgently remit the proceeds to its account. It further asked that LISBC inform it "if unable to pay"^[14] and of the "reasons thereof."^[15] Neither CityTrust nor SCB-M objected to LISBC's statement that the collection will be handled under the Uniform Rules for Collection (URC 322).

On December 7, 1993, HSBC responded to SCB-M and sent a cablegram where it repeated that "this bill is being handled subject to [URC] 322 as instructed by [the] collecting bank."^[16] It also informed SCB-M that it has referred the matter to Klockner for payment and that it will revert upon the receipt of the amount.^[17] On December 8, 1993, the Letter of Credit expired.^[18]

On December 10, 1993, HSBC sent another cablegram to SCB-M advising it that Klockner had refused payment. It then informed SCB-M that it intends to return the documents to NSC with all the banking charges for its account.^[19] In a cablegram

dated December 14, 1993, CityTrust requested HSBC to inform it of Klockner's reason for refusing payment so that it may refer the matter to NSC.^[20] HSBC did not respond and City Trust thus sent a follow-up cablegram to HSBC on December 17, 1993. In this cablegram, City Trust insisted that a demand for payment must be made from Klockner since the documents "were found in compliance with LC terms and conditions."^[21] HSBC replied on the same day stating that in accordance with CityTrust's instruction in its Collection Order, HSBC treated the transaction as a matter under URC 322. Thus, it demanded payment from Klockner which unfortunately refused payment for unspecified reasons. It then noted that under URC 322, Klockner has no duty to provide a reason for the refusal. Hence, HSBC requested for further instructions as to whether it should continue to press for payment or return the documents.^[22] City Trust responded that as advised by its client, HSBC should continue to press for payment.^[23]

Klockner continued to refuse payment and HSBC notified City Trust in a cablegram dated January 7, 1994, that should Klockner still refuse to accept the bill by January 12, 1994, it will return the full set of documents to City Trust with all the charges for the account of the drawer.^[24]

Meanwhile, on January 12, 1994, City Trust sent a letter to NSC stating that it executed NSC's instructions "to send, ON COLLECTION BASIS, the export documents..."^[25] City Trust also explained that its act of sending the export documents on collection basis has been its usual practice in response to NSC's instructions in its transactions.^[26]

NSC responded to this in a letter dated January 18, 1994.^[27] NSC expressed its disagreement with CityTrust's contention that it sent the export documents to HSBC on collection basis. It highlighted that it "negotiated with City Trust the export documents pertaining to LC No. HKH 239409 of HSBC and it was City Trust, which wrongfully treated the negotiation, as 'on collection basis.'"^[28] NSC further claimed that City Trust used its own mistake as an excuse against payment under the Letter of Credit. Thus, NSC argued that City Trust remains liable under the Letter of Credit. It also stated that it presumes that City Trust has preserved whatever right of reimbursement it may have against HSBC.^[29]

On January 13, 1994, CityTrust notified HSBC that it should continue to press for payment and to hold on to the document until further notice.^[30]

However, Klockner persisted in its refusal to pay. Thus, on February 17, 1994, HSBC returned the documents to CityTrust.^[31] In a letter accompanying the returned documents, HSBC stated that it considered itself discharged of its duty under the transaction. It also asked for payment of handling charges.^[32] In response, CityTrust sent a cablegram to HSBC dated February 21, 1994 stating that it is "no longer possible for beneficiary to wait for you to get paid by applicant."^[33] It explained that since the documents required under the Letter of Credit have been properly sent to HSBC, Citytrust demanded payment from it. CityTrust also stated, for the first time in all of its correspondence with HSBC, that "re your previous telexes, ICC Publication No. 322 is not applicable."^[34] HSBC responded in cablegram dated February 28, 1994.^[35] It insisted that CityTrust sent documents

which clearly stated that the collection was being made under URC 322. Thus, in accordance with its instructions, HSBC, in the next three months, demanded payment from Klockner which the latter eventually refused. Fience, FISBC stated that it opted to return the documents. It then informed CityTrust that it considered the transaction closed save for the latter's obligation to pay the handling charges.^[36]

Disagreeing with HSBC's position, CityTrust sent a cablegram dated March 9, 1994.^[37] It insisted that HSBC should pay it in accordance with the terms of the Letter of Credit which it issued on October 22, 1993. Under the Letter of Credit, FISBC undertook to reimburse the presenting bank under "ICC 400 upon the presentment of all necessary documents."^[38] CityTrust also stated that the reference to URC 322 in its Collection Order was merely in fine print. The Collection Order itself was only pro-forma. CityTrust emphasized that the reference to URC 322 has been "obviously superseded by our specific instructions to 'deliver documents against payment/cable advice non-payment with reason/cable advice payment/remit proceeds via telex' which was typed in on said form."^[39] CityTrust also claimed that the controlling document is the Letter of Credit and not the mere fine print on the Collection Order.^[40] FISBC replied on March 10, 1994.^[41] It argued that CityTrust clearly instructed it to collect payment under URC 322, thus, CityTrust can no longer claim a contrary position three months after it made its request. FISBC repeated that the transaction is closed except for City Trust's obligation to pay for the expenses which HSBC incurred.^[42]

Meanwhile, on March 3, 1994, NSC sent a letter to HSBC where it, for the first time, demanded payment under the Letter of Credit.^[43] On March 11, 1994, the NSC sent another letter to LISBC through the Office of the Corporate Counsel which served as its final demand. These demands were made after approximately four months from the expiration of the Letter of Credit.

Unable to collect from HSBC, NSC filed a complaint against it for collection of sum of money (Complaint)^[44] docketed as Civil Case No. 94-2122 (Collection Case) of the RTC Makati. In its Complaint, NSC alleged that it coursed the collection of the Letter of Credit through CityTrust. However, notwithstanding CityTrust's complete presentation of the documents in accordance with the requirements in the Letter of Credit, HSBC unreasonably refused to pay its obligation in the amount of US\$485,767.93.^[45]

HSBC filed its Answer^[46] on January 6, 1995. HSBC denied any liability under the Letter of Credit. It argued in its Answer that CityTrust modified the obligation when it stated in its Collection Order that the transaction is subject to URC 322 and not under UCP 400.^[47] It also filed a Motion to Admit Attached Third-Party Complaint^[48] against CityTrust on November 21, 1995.^[49] It claimed that CityTrust instructed it to collect payment under URC 322 and never raised that it intended to collect under the Letter of Credit.^[50] HSBC prayed that in the event that the court finds it liable to NSC, CityTrust should be subrogated in its place and be made directly liable to NSC.^[51] The RTC Makati granted the motion and admitted the third party complaint. CityTrust filed its Answer^[52] on January 8, 1996. CityTrust denied that it modified the obligation. It argued that as a mere agent, it cannot modify the

terms of the Letter of Credit without the consent of all the parties.^[53] Further, it explained that the supposed instruction that the transaction is subject to URC 322 was merely in fine print in a pro forma document and was superimposed and pasted over by a large pink sticker with different remittance instructions.^[54]

After a full-blown trial,^[55] the RTC Makati rendered a decision (RTC Decision) dated February 23, 2000.^[56] It found that IiSBC is not liable to pay NSC the amount stated in the Letter of Credit. It ruled that the applicable law is URC 322 as it was the law which CityTrust intended to apply to the transaction. Under URC 322, HSBC has no liability to pay when Klockner refused payment. The dispositive portion states -

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Plaintiffs Complaint against HSBC is **DISMISSED**; and, HSBC's Counterclaims against NSC are **DENIED**.

2. Ordering Third-Party Defendant CityTrust to pay Third-Party Plaintiff HSBC the following:

- 2.1 US\$771.21 as actual and consequential damages; and
- 2.2 P100,000 as attorney's fees.

3. No pronouncement as to costs.

SO ORDERED.^[57]

NSC and CityTrust appealed the RTC Decision before the CA. In its Assailed Decision dated November 19, 2007,^[58] the CA reversed the RTC Makati. The CA found that it is UCP 400 and not URC 322 which governs the transaction. According to the CA, the terms of the Letter of Credit clearly stated that UCP 400 shall apply. Further, the CA explained that even if the Letter of Credit did not state that UCP 400 governs, it nevertheless finds application as this Court has consistently recognized it under Philippine jurisdiction. Thus, applying UCP 400 and principles concerning letters of credit, the CA explained that the obligation of the issuing bank is to pay the seller or beneficiary of the credit once the draft and the required documents are properly presented. Under the independence principle, the issuing bank's obligation to pay under the letter of credit is separate from the compliance of the parties in the main contract. The dispositive portion held -

WHEREFORE, in view of the foregoing, the assailed decision is hereby **REVERSED and SET ASIDE**. HSBC is ordered to pay its obligation under the irrevocable letter of credit in the amount of US\$485,767.93 to NSC with legal interest of six percent (6%) per annum from the filing of the complaint until the amount is fully paid, plus attorney's fees equivalent to 10% of the principal. Costs against appellee HSBC.

SO ORDERED.^[59]