

FIRST DIVISION

[G.R. No. 114286, April 19, 2001]

**THE CONSOLIDATED BANK AND TRUST CORPORATION
(SOLIDBANK), PETITIONER, VS. THE COURT OF APPEALS,
CONTINENTAL CEMENT CORPORATION, GREGORY T. LIM AND
SPOUSE, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

The instant petition for review seeks to partially set aside the July 26, 1993 Decision^[1] of respondent Court of Appeals in CA-G.R. CV No. 29950, insofar as it orders petitioner to reimburse respondent Continental Cement Corporation the amount of P490,228.90 with interest thereon at the legal rate from July 26, 1988 until fully paid. The petition also seeks to set aside the March 8, 1994 Resolution^[2] of respondent Court of Appeals denying its Motion for Reconsideration.

The facts are as follows:

On July 13, 1982, respondents Continental Cement Corporation (hereinafter, respondent Corporation) and Gregory T. Lim (hereinafter, respondent Lim) obtained from petitioner Consolidated Bank and Trust Corporation Letter of Credit No. DOM-23277 in the amount of P1,068,150.00. On the same date, respondent Corporation paid a marginal deposit of P320,445.00 to petitioner. The letter of credit was used to purchase around five hundred thousand liters of bunker fuel oil from Petrophil Corporation, which the latter delivered directly to respondent Corporation in its Bulacan plant. In relation to the same transaction, a trust receipt for the amount of P1,001,520.93 was executed by respondent Corporation, with respondent Lim as signatory.

Claiming that respondents failed to turn over the goods covered by the trust receipt or the proceeds thereof, petitioner filed a complaint for sum of money with application for preliminary attachment^[3] before the Regional Trial Court of Manila. In answer to the complaint, respondents averred that the transaction between them was a simple loan and not a trust receipt transaction, and that the amount claimed by petitioner did not take into account payments already made by them. Respondent Lim also denied any personal liability in the subject transactions. In a Supplemental Answer, respondents prayed for reimbursement of alleged overpayment to petitioner of the amount of P490,228.90.

At the pre-trial conference, the parties agreed on the following issues:

- 1) Whether or not the transaction involved is a loan transaction or a trust receipt transaction;

2) Whether or not the interest rates charged against the defendants by the plaintiff are proper under the letter of credit, trust receipt and under existing rules or regulations of the Central Bank;

3) Whether or not the plaintiff properly applied the previous payment of P300,456.27 by the defendant corporation on July 13, 1982 as payment for the latter's account; and

4) Whether or not the defendants are personally liable under the transaction sued for in this case.^[4] On September 17, 1990, the trial court rendered its Decision,^[5] dismissing the Complaint and ordering petitioner to pay respondents the following amounts under their counterclaim: P490,228.90 representing overpayment of respondent Corporation, with interest thereon at the legal rate from July 26, 1988 until fully paid; P10,000.00 as attorney's fees; and costs.

Both parties appealed to the Court of Appeals, which partially modified the Decision by deleting the award of attorney's fees in favor of respondents and, instead, ordering respondent Corporation to pay petitioner P37,469.22 as and for attorney's fees and litigation expenses.

Hence, the instant petition raising the following issues:

1. WHETHER OR NOT THE RESPONDENT APPELLATE COURT ACTED INCORRECTLY OR COMMITTED REVERSIBLE ERROR IN HOLDING THAT THERE WAS OVERPAYMENT BY PRIVATE RESPONDENTS TO THE PETITIONER IN THE AMOUNT OF P490,228.90 DESPITE THE ABSENCE OF ANY COMPUTATION MADE IN THE DECISION AND THE ERRONEOUS APPLICATION OF PAYMENTS WHICH IS IN VIOLATION OF THE NEW CIVIL CODE.

2. WHETHER OR NOT THE MANNER OF COMPUTATION OF THE MARGINAL DEPOSIT BY THE RESPONDENT APPELLATE COURT IS IN ACCORDANCE WITH BANKING PRACTICE.

3. WHETHER OR NOT THE AGREEMENT AMONG THE PARTIES AS TO THE FLOATING OF INTEREST RATE IS VALID UNDER APPLICABLE JURISPRUDENCE AND THE RULES AND REGULATIONS OF THE CENTRAL BANK.

4. WHETHER OR NOT THE RESPONDENT APPELLATE COURT GRIEVOUSLY ERRED IN NOT CONSIDERING THE TRANSACTION AT BAR AS A TRUST RECEIPT TRANSACTION ON THE BASIS OF THE JUDICIAL ADMISSIONS OF THE PRIVATE RESPONDENTS AND FOR WHICH RESPONDENTS ARE LIABLE THEREFOR.

5. WHETHER OR NOT THE RESPONDENT APPELLATE COURT GRIEVOUSLY ERRED IN NOT HOLDING PRIVATE RESPONDENT SPOUSES LIABLE UNDER THE TRUST RECEIPT TRANSACTION.^[6]

The petition must be denied.

On the first issue respecting the fact of overpayment found by both the lower court and respondent Court of Appeals, we stress the time-honored rule that findings of fact by the Court of Appeals especially if they affirm factual findings of the trial court will not be disturbed by this Court, unless these findings are not supported by evidence.^[7] Petitioner decries the lack of computation by the lower court as basis for its ruling that there was an overpayment made. While such a computation may not have appeared in the Decision itself, we note that the trial court's finding of overpayment is supported by evidence presented before it. At any rate, we painstakingly reviewed and computed the payments together with the interest and penalty charges due thereon and found that the amount of overpayment made by respondent Bank to petitioner, *i.e.*, P563,070.13, was more than what was ordered reimbursed by the lower court. However, since respondents did not file an appeal in this case, the amount ordered reimbursed by the lower court should stand.

Moreover, petitioner's contention that the marginal deposit made by respondent Corporation should not be deducted outright from the amount of the letter of credit is untenable. Petitioner argues that the marginal deposit should be considered only after computing the principal plus accrued interests and other charges. However, to sustain petitioner on this score would be to countenance a clear case of unjust enrichment, for while a marginal deposit earns no interest in favor of the debtor-depositor, the bank is not only able to use the same for its own purposes, interest-free, but is also able to earn interest on the money loaned to respondent Corporation. Indeed, it would be onerous to compute interest and other charges on the face value of the letter of credit which the petitioner issued, without first crediting or setting off the marginal deposit which the respondent Corporation paid to it. Compensation is proper and should take effect by operation of law because the requisites in Article 1279 of the Civil Code are present and should extinguish both debts to the concurrent amount.^[8] Hence, the interests and other charges on the subject letter of credit should be computed only on the balance of P681,075.93, which was the portion actually loaned by the bank to respondent Corporation.

Neither do we find error when the lower court and the Court of Appeals set aside as invalid the floating rate of interest exhorted by petitioner to be applicable. The pertinent provision in the trust receipt agreement of the parties fixing the interest rate states:

I, WE jointly and severally agree to any increase or decrease in the interest rate which may occur after July 1, 1981, when the Central Bank floated the interest rate, and to pay additionally the penalty of 1% per month until the amount/s or installment/s due and unpaid under the trust receipt on the reverse side hereof is/are fully paid.^[9] We agree with respondent Court of Appeals that the foregoing stipulation is invalid, there being no reference rate set either by it or by the Central Bank, leaving the determination thereof at the sole will and control of petitioner.

While it may be acceptable, for practical reasons given the fluctuating economic conditions, for banks to stipulate that interest rates on a loan not be fixed and instead be made dependent upon prevailing market conditions, there should always be a reference rate upon which to peg such variable interest rates. An example of

such a valid variable interest rate was found in *Polotan, Sr. v. Court of Appeals*.^[10] In that case, the contractual provision stating that "if there occurs any change in the prevailing market rates, the **new interest rate shall be the guiding rate** in computing the interest due on the outstanding obligation without need of serving notice to the Cardholder other than the required posting on the monthly statement served to the Cardholder"^[11] was considered valid. The aforementioned provision was upheld notwithstanding that it may partake of the nature of an escalation clause, because at the same time it provides for the decrease in the interest rate in case the prevailing market rates dictate its reduction. In other words, unlike the stipulation subject of the instant case, the interest rate involved in the *Polotan* case is designed to be based on the prevailing market rate. On the other hand, a stipulation ostensibly signifying an agreement to "any increase or decrease in the interest rate," without more, cannot be accepted by this Court as valid for it leaves solely to the creditor the determination of what interest rate to charge against an outstanding loan.

Petitioner has also failed to convince us that its transaction with respondent Corporation is really a trust receipt transaction instead of merely a simple loan, as found by the lower court and the Court of Appeals.

The recent case of *Colinares v. Court of Appeals*^[12] appears to be foursquare with the facts obtaining in the case at bar. There, we found that inasmuch as the debtor received the goods subject of the trust receipt before the trust receipt itself was entered into, the transaction in question was a simple loan and not a trust receipt agreement. Prior to the date of execution of the trust receipt, ownership over the goods was already transferred to the debtor. This situation is inconsistent with what normally obtains in a pure trust receipt transaction, wherein the goods belong in ownership to the bank and are only released to the importer in trust after the loan is granted.

In the case at bar, as in *Colinares*, the delivery to respondent Corporation of the goods subject of the trust receipt occurred long before the trust receipt itself was executed. More specifically, delivery of the bunker fuel oil to respondent Corporation's Bulacan plant commenced on July 7, 1982 and was completed by July 19, 1982.^[13] Further, the oil was used up by respondent Corporation in its normal operations by August, 1982.^[14] On the other hand, the subject trust receipt was only executed nearly two months after full delivery of the oil was made to respondent Corporation, or on September 2, 1982.

The danger in characterizing a simple loan as a trust receipt transaction was explained in *Colinares*, to wit:

The Trust Receipts Law does not seek to enforce payment of the loan, rather it punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner. Here, it is crystal clear that on the part of Petitioners there was neither dishonesty nor abuse of confidence in the handling of money to the prejudice of PBC. Petitioners continually endeavored to meet their obligations, as shown by several receipts issued by PBC acknowledging payment of the loan.