



Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY
Wynne L. Lapid
 WYNNE L. LAPID
 Division Clerk of Court
 Third Division
 MAR 10 2016

THIRD DIVISION

THE HONGKONG & SHANGHAI
 BANKING CORPORATION,
 LIMITED,

G.R. No. 183486

Petitioner,

Present:

VELASCO, JR., J., *Chairperson*
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

NATIONAL STEEL
 CORPORATION and CITYTRUST
 BANKING CORPORATION (NOW
 BANK OF THE PHILIPPINE
 ISLANDS),

Respondents.

Promulgated:

February 24, 2016

x-----*Wynne L. Lapid*-----x

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

¹ Rollo, p. 362.

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 CityTrust Banking Corporation (CityTrust). NSC had earlier obtained a loan from CityTrust secured by the proceeds of the Letter of Credit issued by HSBC.⁸

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Id.

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Rollo, p. 133.

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Id. at 132-133.

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Id. at 362, 525.

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Id. at 362.

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Id.

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Id.



On November 29, 1993, CityTrust 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 CityTrust.¹¹ On the same date, CityTrust 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, HSBC sent a cablegram to CityTrust 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 HSBC requesting the latter to urgently remit the proceeds to its account. It further asked that HSBC inform it "if unable to pay"¹⁴ and of the "reasons thereof."¹⁵ Neither CityTrust nor SCB-M objected to HSBC'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

⁹ *Rollo*, p. 231.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Rollo*, pp. 125-126.

¹³ *Id.* at 232.

¹⁴ *Id.* at 233.

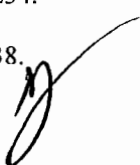
¹⁵ *Id.*

¹⁶ *Rollo*, p. 234.

¹⁷ *Id.*

¹⁸ *Rollo*, p. 38.

¹⁹ *Id.* at 236.



refer the matter to NSC.²⁰ HSBC did not respond and CityTrust thus sent a follow-up cablegram to HSBC on December 17, 1993. In this cablegram, CityTrust 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 CityTrust responded that as advised by its client, HSBC should continue to press for payment.²³

Klockner continued to refuse payment and HSBC notified CityTrust 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 CityTrust with all the charges for the account of the drawer.²⁴

Meanwhile, on January 12, 1994, CityTrust sent a letter to NSC stating that it executed NSC’s instructions “to send, ON COLLECTION BASIS, the export documents...”²⁵ CityTrust 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 CityTrust the export documents pertaining to LC No. HKH 239409 of HSBC and it was CityTrust, which wrongfully treated the negotiation, as ‘on collection basis.’”²⁸ NSC further claimed that CityTrust used its own mistake as an excuse against payment under the Letter of Credit. Thus, NSC argued that CityTrust remains liable under the Letter of Credit. It also stated that it presumes that CityTrust 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

²⁰ *Id.* at 237.

²¹ *Id.* at 238.

²² *Id.* at 239.

²³ *Id.* at 240.

²⁴ *Id.* at 241.

²⁵ *Id.* at 568.

²⁶ *Id.*

²⁷ *Rollo*, p. 223.

²⁸ *Id.* at 569.

²⁹ *Id.*

³⁰ *Rollo*, p. 242.



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. Hence, HSBC 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, HSBC 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 HSBC 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. HSBC repeated that the transaction is closed except for CityTrust’s obligation to pay for the expenses which HSBC incurred.⁴²

³¹ *Id.* at 243.

³² *Id.*

³³ *Rollo*, p. 244.

³⁴ *Id.*

³⁵ *Rollo*, p. 245.

³⁶ *Id.*

³⁷ *Rollo*, p. 246.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Rollo*, p. 248.

⁴² *Id.*



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 HSBC 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 Answer⁴⁶ 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 Complaint⁴⁸ 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 Answer⁵² 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 HSBC is not liable to pay

⁴³ *Rollo*, p. 42.

⁴⁴ *Id.* at 123; the complaint was filed on July 8, 1994 but was later amended, *id.* at 44.

⁴⁵ *Id.* at 126.

⁴⁶ *Id.* at 163-171.

⁴⁷ *Id.* at 165-169.

⁴⁸ *Id.* at 173-180.

⁴⁹ *Id.* at 45.

⁵⁰ *Id.* at 175-177.

⁵¹ *Id.* at 179.


⁵² *Id.* at 186-198.

⁵³ *Id.* at 188.

⁵⁴ *Id.* at 189.

⁵⁵ On April 17, 1998, HSBC filed a motion to implead the Bank of the Philippine Islands ("BPI") as third party defendant because of its merger with CityTrust. The RTC Makati granted this motion in an Order dated July 23, 1998, *rollo*, p.46.

⁵⁶ *Rollo*, pp. 361-369.



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. Plaintiff's 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

HSBC filed a Motion for Reconsideration of the Assailed Decision which the CA denied in its Assailed Resolution dated June 23, 2008.⁶⁰

⁵⁷ *Id.* at 369.

⁵⁸ *Id.* at 9-26. Penned by Associate Justice Lucenito N. Tagle with Associate Justices Amelita G. Tolentino and Agustin S. Dizon concurring.

⁵⁹ *Rollo*, p. 25.

⁶⁰ *Id.* at 28-29.



Hence, HSBC filed this Petition for Review on Certiorari⁶¹ before this Court, seeking a reversal of the CA's Assailed Decision and Resolution. In its petition, HSBC contends that CityTrust's order to collect under URC 322 did not modify nor contradict the Letter of Credit. In fact, it is customary practice in commercial transactions for entities to collect under URC 322 even if there is an underlying letter of credit. Further, CityTrust acted as an agent of NSC in collecting payment and as such, it had the authority to instruct HSBC to proceed under URC 322 and not under UCP 400. Having clearly and expressly instructed HSBC to collect under URC 322 and having fully intended the transaction to proceed under such rule as shown by the series of correspondence between CityTrust and HSBC, CityTrust is estopped from now claiming that the collection was made under UCP 400 in accordance with the Letter of Credit.

NSC, on the other hand, claims that HSBC's obligation to pay is clear from the terms of the Letter of Credit and under UCP 400. It asserts that the applicable rule is UCP 400 and HSBC has no basis to argue that CityTrust's presentment of the documents allowed HSBC to vary the terms of their agreement.⁶²

The Issues

The central question in this case is who among the parties bears the liability to pay the amount stated in the Letter of Credit. This requires a determination of which between UCP 400 and URC 322 governs the transaction. The obligations of the parties under the proper applicable rule will, in turn, determine their liability.

The Ruling of the Court

We uphold the CA.

The nature of a letter of credit

A letter of credit is a commercial instrument developed to address the unique needs of certain commercial transactions. It is recognized in our jurisdiction and is sanctioned under Article 567⁶³ of the Code of Commerce and in numerous jurisprudence defining a letter of credit, the principles relating to it, and the obligations of parties arising from it.

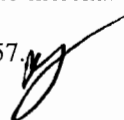
In *Bank of America, NT & SA v. Court of Appeals*,⁶⁴ this Court defined a letter of credit as "...a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part

⁶¹ *Id.* at 32-90.

⁶² *Id.* at 529-530.

⁶³ Article 567. Letters of credit are those issued by one merchant to another, or for the purpose of attending to a commercial transaction.

⁶⁴ G.R. No. 105395, December 10, 1993, 228 SCRA 357.



with his goods before he is paid, and a buyer, who wants to have control of the goods before paying.”⁶⁵ Through a letter of credit, a buyer obtains the credit of a third party, usually a bank, to provide assurance of payment.⁶⁶ This, in turn, convinces a seller to part with his or her goods even before he or she is paid, as he or she is insured by the third party that he or she will be paid as soon as he or she presents the documents agreed upon.⁶⁷

A letter of credit generally arises out of a separate contract requiring the assurance of payment of a third party. In a transaction involving a letter of credit, there are usually three transactions and three parties. The first transaction, which constitutes the underlying transaction in a letter of credit, is a contract of sale between the buyer and the seller. The contract may require that the buyer obtain a letter of credit from a third party acceptable to the seller. The obligations of the parties under this contract are governed by our law on sales.

The second transaction is the issuance of a letter of credit between the buyer and the issuing bank. The buyer requests the issuing bank to issue a letter of credit naming the seller as the beneficiary. In this transaction, the issuing bank undertakes to pay the seller upon presentation of the documents identified in the letter of credit. The buyer, on the other hand, obliges himself or herself to reimburse the issuing bank for the payment made. In addition, this transaction may also include a fee for the issuing bank’s services.⁶⁸ This transaction constitutes an obligation on the part of the issuing bank to perform a service in consideration of the buyer’s payment. The obligations of the parties and their remedies in cases of breach are governed by the letter of credit itself and by our general law on obligations, as our civil law finds supplementary application in commercial documents.⁶⁹

The third transaction takes place between the seller and the issuing bank. The issuing bank issues the letter of credit for the benefit of the seller. The seller may agree to ship the goods to the buyer even before actual payment provided that the issuing bank informs him or her that a letter of credit has been issued for his or her benefit. This means that the seller can draw drafts from the issuing bank upon presentation of certain documents identified in the letter of credit. The relationship between the issuing bank and the seller is not strictly contractual since there is no privity of contract nor meeting of the minds between them.⁷⁰ It also does not constitute a stipulation *pour autrui* in favor of the seller since the issuing bank must honor the drafts drawn against the letter of credit regardless of any defect in

⁶⁵ *Id.* at 365.

⁶⁶ Christopher Leon, *Letters of Credit: A Primer*, 45 Md. L. Rev. 432 (1986).

⁶⁷ *Id.*

⁶⁸ G. Hamp Uzzelle III, *Letters of Credit*, 10 Tul. Mar. L. J. 47 (1985).

⁶⁹ CODE OF COMMERCE, Art. 50. Commercial contracts in all that relates to their requisites, modifications, exceptions, interpretations, and extinction and to the capacity of the contracting parties shall be governed in all that is not expressly established in this Code or in special laws, by the general rules of civil law.

⁷⁰ *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, G.R. No. 146717, November 22, 2004, 443 SCRA 307, 325.

the underlying contract.⁷¹ Neither can it be considered as an assignment by the buyer to the seller-beneficiary as the buyer himself cannot draw on the letter.⁷² From its inception, only the seller can demand payment under the letter of credit. It is also not a contract of suretyship or guaranty since it involves primary liability in the event of default.⁷³ Nevertheless, while the relationship between the seller-beneficiary and the issuing bank is not strictly contractual, strict payment under the terms of a letter of credit is an enforceable right.⁷⁴ This enforceable right finds two legal underpinnings. First, letters of credit, as will be further explained, are governed by recognized international norms which dictate strict compliance with its terms. Second, the issuing bank has an existing agreement with the buyer to pay the seller upon proper presentation of documents. Thus, as the law on obligations applies even in commercial documents,⁷⁵ the issuing bank has a duty to the buyer to honor in good faith its obligation under their agreement. As will be seen in the succeeding discussion, this transaction is also governed by international customs which this Court has recognized in this jurisdiction.⁷⁶

In simpler terms, the various transactions that give rise to a letter of credit proceed as follows: Once the seller ships the goods, he or she obtains the documents required under the letter of credit. He or she shall then present these documents to the issuing bank which must then pay the amount identified under the letter of credit after it ascertains that the documents are complete. The issuing bank then holds on to these documents which the buyer needs in order to claim the goods shipped. The buyer reimburses the issuing bank for its payment at which point the issuing bank releases the documents to the buyer. The buyer is then able to present these documents in order to claim the goods. At this point, all the transactions are completed. The seller received payment for his or her performance of his obligation to deliver the goods. The issuing bank is reimbursed for the payment it made to the seller. The buyer received the goods purchased.

Owing to the complexity of these contracts, there may be a correspondent bank which facilitates the ease of completing the transactions. A correspondent bank may be a notifying bank, a negotiating bank or a confirming bank depending on the nature of the obligations assumed.⁷⁷ A notifying bank undertakes to inform the seller-beneficiary that a letter of credit exists. It may also have the duty of transmitting the letter of credit. As its obligation is limited to this duty, it assumes no liability to pay under the letter of credit.⁷⁸ A negotiating bank, on the other hand, purchases drafts at a

⁷¹ *Id.* at 325-326.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ CODE OF COMMERCE, Art. 50.

⁷⁶ *Bank of the Philippine Islands v. De Reny Fabric Industries, Inc.*, G.R. No. L-24821, October 16, 1970, 35 SCRA 256.

⁷⁷ *Feati Bank & Trust Company v. Court of Appeals*, G.R. No. 94209, April 30, 1991, 196 SCRA 576.

⁷⁸ *Id.* at 589.



discount from the seller-beneficiary and presents them to the issuing bank for payment.⁷⁹ Prior to negotiation, a negotiating bank has no obligation. A contractual relationship between the negotiating bank and the seller-beneficiary arises only after the negotiating bank purchases or discounts the drafts.⁸⁰ Meanwhile, a confirming bank may honor the letter of credit issued by another bank or confirms that the letter of credit will be honored by the issuing bank.⁸¹ A confirming bank essentially insures that the credit will be paid in accordance with the terms of the letter of credit.⁸² It therefore assumes a direct obligation to the seller-beneficiary.⁸³

Parenthetically, when banks are involved in letters of credit transactions, the standard of care imposed on banks engaged in business imbued with public interest applies to them. Banks have the duty to act with the highest degree of diligence in dealing with clients.⁸⁴ Thus, in dealing with the parties in a letter of credit, banks must also observe this degree of care.

The value of letters of credit in commerce hinges on an important aspect of such a commercial transaction. Through a letter of credit, a seller-beneficiary is assured of payment regardless of the status of the underlying transaction. International contracts of sales are perfected and consummated because of the certainty that the seller will be paid thus making him or her willing to part with the goods even prior to actual receipt of the amount agreed upon. The legally demandable obligation of an issuing bank to pay under the letter of credit, and the enforceable right of the seller-beneficiary to demand payment, are indispensable essentials for the system of letters of credit, if it is to serve its purpose of facilitating commerce. Thus, a touchstone of any law or custom governing letters of credit is an emphasis on the imperative that issuing banks respect their obligation to pay, and that seller-beneficiaries may reasonably expect payment, in accordance with the terms of a letter of credit.

Rules applicable to letters of credit

Letters of credit are defined and their incidences regulated by Articles 567 to 572⁸⁵ of the Code of Commerce. These provisions must be read with

⁷⁹ Christopher Leon, *Letters of Credit: A Primer*, 45 Md. L. Rev. 432 (1986).

⁸⁰ *Feati Bank & Trust Company v. Court of Appeals, supra*.

⁸¹ Christopher Leon, *Letters of Credit: A Primer*, 45 Md. L. Rev. 432 (1986).

⁸² Dong-heon Chae, *Letters of Credit and the Uniform Customs and Practice for Documentary Credits: The Negotiating Bank and the Fraud Rule in Korea Supreme Court*, Case 96 DA 43713, 12 Fla. J. Int'l L. 23 (1986).

⁸³ *Feati Bank & Trust Company v. Court of Appeals, supra* at 589.

⁸⁴ *Far East Bank and Trust Company v. Tentmakers Group, Inc.*, G.R. No. 171050, July 4, 2012, 675 SCRA 546.

⁸⁵ Art. 567. Letters of credit are those issued by one merchant to another, or for the purpose of attending to a commercial transaction.

Art. 568. The essential conditions of letters of credit shall be:

1. To be issued in favor of a determined person and not to order.

Article 2⁸⁶ of the same code which states that acts of commerce are governed by their provisions, by the usages and customs generally observed in the particular place and, in the absence of both rules, by civil law. In addition, Article 50⁸⁷ also states that commercial contracts shall be governed by the Code of Commerce and special laws and in their absence, by general civil law.

The International Chamber of Commerce (ICC)⁸⁸ drafted a set of rules to govern transactions involving letters of credit. This set of rules is known as the Uniform Customs and Practice for Documentary Credits (UCP). Since its first issuance in 1933, the UCP has seen several revisions, the latest of which was in 2007, known as the UCP 600. However, for the period relevant to this case, the prevailing version is the 1993 revision called the UCP 400. Throughout the years, the UCP has grown to become the worldwide standard in transactions involving letters of credit.⁸⁹ It has enjoyed near universal application with an estimated 95% of worldwide letters of credit issued subject to the UCP.⁹⁰

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2. To be limited to a fixed and specified amount, or to one or more indeterminate amounts, but all within a maximum sum the limit of which must be exactly stated.

Letters of credit which do not have one of these conditions shall be considered simply as letters of recommendation.

Art. 569. One who issues a letter of credit shall be liable to the person on whom it was issued for the amount paid by virtue of the same within the maximum fixed therein.

Letters of credit cannot be protested, even when not paid, nor can the holder thereof acquire any right of action for said non-payment against the person who issued it.

The payor shall have a right to demand the proof of the identity of the person in whose favor the letter of credit was issued.

Art. 570. The drawer of a letter of credit may annul it, informing the bearer and the person to whom it is addressed of said revocation.

Art. 571. The holder of a letter of credit shall pay the drawer the amount received without delay.

Should he not do so, an action including attachment may be brought to recover said amount with the legal interest and the current exchange in the place where the payment was made, on the place where it was repaid.

Art. 572. If the holder of a letter of credit does not make use thereof within the period agreed upon with the drawer of the same, or, in the absence of a fixed period, within six months from its date in any point of the Philippines, and within twelve months outside thereof, it shall be void in fact and in law.

⁸⁶ CODE OF COMMERCE, Art. 2. Commercial transactions, whether performed by merchants or not, and whether or not specified in this Code, shall be governed by provisions contained herein; in default of such provisions, by the commercial usages generally observed in each place and in the absence of both, by rules of the civil law.

⁸⁷ CODE OF COMMERCE, Art. 50. Commercial contracts in all that relates to their requisites, modifications, exceptions, interpretations, and extinction and to the capacity of the contracting parties shall be governed in all that is not expressly established in this Code or in special laws, by the general rules of civil law.

⁸⁸ The International Chamber of Commerce is a private international organization composed of companies and business organizations worldwide. Throughout the years, it has been recognized as a representative of private business in international trade. It has also been awarded the highest level consultative status by the United Nations in 1946 and has continued to be influential in international commerce. The ICC drafts rules that governs conduct of business across borders. This rules are voluntary but have been consistently observed by businesses all over the world. See <www.iccwbo.org/about-icc> (last accessed on January 26, 2016).

⁸⁹ Ross P. Buckley, *The 1993 Revision of the Uniform Customs and Practice for Documentary Credits*, 28 GW J. Int'l L. & Econ. 265 (1995).

⁹⁰ *Id.*



In *Bank of the Philippine Islands v. De Reny Fabric Industries, Inc.*,⁹¹ this Court applied a provision from the UCP in resolving a case pertaining to a letter of credit transaction. This Court explained that the use of international custom in our jurisdiction is justified by Article 2 of the Code of Commerce which provides that acts of commerce are governed by, among others, usages and customs generally observed. Further, in *Feati Bank & Trust Company v. Court of Appeals*,⁹² this Court ruled that the UCP should be applied in cases where the letter of credit expressly states that it is the governing rule.⁹³ This Court also held in *Feati* that the UCP applies even if it is not incorporated into the letter of the credit.⁹⁴ The application of the UCP in *Bank of Philippine Islands* and in *Feati* was further affirmed in *Metropolitan Waterworks and Sewerage System v. Daway*⁹⁵ where this Court held that “[l]etters of credit have long been and are still governed by the provisions of the Uniform Customs and Practice for Documentary Credit[s] of the International Chamber of Commerce.”⁹⁶ These precedents highlight the binding nature of the UCP in our jurisdiction.

Thus, for the purpose of clarity, letters of credit are governed primarily by their own provisions,⁹⁷ by laws specifically applicable to them,⁹⁸ and by usage and custom.⁹⁹ Consistent with our rulings in several cases,¹⁰⁰ usage and custom refers to UCP 400. When the particular issues are not covered by the provisions of the letter of credit, by laws specifically applicable to them and by UCP 400, our general civil law finds suppletory application.¹⁰¹

Applying this set of laws and rules, this Court rules that HSBC is liable under the provisions of the Letter of Credit, in accordance with usage

⁹¹ *Supra* note 76 at 259-261.

⁹² G.R. No. 94209, April 30, 1991, 196 SCRA 576.

⁹³ *Id.* at 586.

⁹⁴ *Id.* at 587.

⁹⁵ G.R. No. 160732, June 21, 2004, 432 SCRA 559.

⁹⁶ *Id.* at 569-570. The pertinent portion of the decision reads:

We have accepted, in *Feati Bank and Trust Company v. Court of Appeals* and *Bank of America NT & SA v. Court of Appeals*, to the extent that they are pertinent, the application in our jurisdiction of the international credit regulatory set of rules known as the Uniform Customs and Practice for Documentary Credits (U.C.P) issued by the International Chamber of Commerce, which we said in *Bank of the Philippines Islands v. Nery (sic)* was justified under Art. 2 of the Code of Commerce, which states:

“Acts of commerce, whether those who execute them to be merchants or not, and whether specified in this Code or not should be governed by the provisions contained in it; in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of the civil law.”

⁹⁷ CODE OF COMMERCE, Art. 2.

⁹⁸ CODE OF COMMERCE, Art. 50; *Feati Bank & Trust Company v. Court of Appeals*, *supra* at 587.

⁹⁹ CODE OF COMMERCE, Art. 2.

¹⁰⁰ *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, G.R. No. 146717, November 22, 2004, 443 SCRA 307; *Metropolitan Waterworks Sewerage Systems v. Daway*, G.R. No. 160732, June 21, 2004, 432 SCRA 559; *Lee v. Court of Appeals*, G.R. No. 117913, February 1, 2002, 375 SCRA 579; *Bank of America, NT & SA v. Court of Appeals*, G.R. No. 105395, December 10, 1993, 228 SCRA 357; *Feati Bank & Trust Company v. Court of Appeals*, *supra*.

¹⁰¹ CODE OF COMMERCE, Arts. 2 & 50.

and custom as embodied in UCP 400, and under the provisions of general civil law.

HSBC's Liability

The Letter of Credit categorically stated that it is subject to UCP 400, to wit:

Except so far as otherwise expressly stated, this documentary credit is subject to uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400.¹⁰²

From the moment that HSBC agreed to the terms of the Letter of Credit – which states that UCP 400 applies – its actions in connection with the transaction automatically became bound by the rules set in UCP 400. Even assuming that URC 322 is an international custom that has been recognized in commerce, this does not change the fact that HSBC, as the issuing bank of a letter of credit, undertook certain obligations dictated by the terms of the Letter of Credit itself and by UCP 400. In *Feati*, this Court applied UCP 400 even when there is no express stipulation in the letter of credit that it governs the transaction.¹⁰³ On the strength of our ruling in *Feati*, we have the legal duty to apply UCP 400 in this case independent of the parties' agreement to be bound by it.

UCP 400 states that an irrevocable credit payable on sight, such as the Letter of Credit in this case, constitutes a definite undertaking of the issuing bank to pay, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with.¹⁰⁴ Further, UCP 400 provides that an issuing bank has the obligation to examine the documents with reasonable care.¹⁰⁵ Thus, when CityTrust forwarded the Letter of Credit with the attached documents to HSBC, it had the duty to make a determination of whether its obligation to pay arose by properly examining the documents.

In its petition, HSBC argues that it is not UCP 400 but URC 322 that should govern the transaction.¹⁰⁶ URC 322 is a set of norms compiled by the

¹⁰² *Rollo*, p. 133.


¹⁰³ *Supra* note 77 at 587.

¹⁰⁴ Uniform Customs and Practice For Documentary Credits 400, Art. 10 (a). An irrevocable credit 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; xxx.

¹⁰⁵ Uniform Customs and Practice For Documentary Credits 400, Art. 15. 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. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

¹⁰⁶ *Rollo*, pp. 54-71.



ICC.¹⁰⁷ It was drafted by international experts and has been adopted by the ICC members. Owing to the status of the ICC and the international representation of its membership, these rules have been widely observed by businesses throughout the world. It prescribes the collection procedures, technology, and standards for handling collection transactions for banks.¹⁰⁸ Under the facts of this case, a bank acting in accordance with the terms of URC 322 merely facilitates collection. Its duty is to forward the letter of credit and the required documents from the entity seeking payment to another entity which has the duty to pay. The bank incurs no obligation other than as a collecting agent. This is different in the case of an issuing bank acting in accordance with UCP 400. In this case, the issuing bank has the duty to pay the amount stated in the letter of credit upon due presentment. HSBC claims that while UCP 400 applies to letters of credit, it is also common for beneficiaries of such letters to seek collection under URC 322. HSBC further claims that URC 322 is an accepted custom in commerce.¹⁰⁹

HSBC's argument is without merit. We note that HSBC failed to present evidence to prove that URC 322 constitutes custom and usage recognized in commerce. Neither was there sufficient evidence to prove that beneficiaries under a letter of credit commonly resort to collection under URC 322 as a matter of industry practice. HSBC claims that the testimony of its witness Mr. Lincoln MacMahon (Mr. MacMahon) suffices for this purpose.¹¹⁰ However, Mr. MacMahon was not presented as an expert witness capable of establishing the existing banking and commercial practice relating to URC 322 and letters of credit. Thus, this Court cannot hold that URC 322 and resort to it by beneficiaries of letters of credit are customs that demand application in this case.¹¹¹

HSBC's position that URC 322 applies, thus allowing it, the issuing bank, to disregard the Letter of Credit, and merely demand collection from Klockner cannot be countenanced. Such an argument effectively asks this Court to give imprimatur to a practice that undermines the value and reliability of letters of credit in trade and commerce. The entire system of letters of credit rely on the assurance that upon presentment of the proper documents, the beneficiary has an enforceable right and the issuing bank a demandable obligation, to pay the amount agreed upon. Were a party to the transaction allowed to simply set this aside by the mere invocation of another set of norms related to commerce – one that is not established as a custom that is entitled to recognition by this Court – the sanctity of letters of credit will be jeopardized. To repeat, any law or custom governing letters of credit should have, at its core, an emphasis on the imperative that issuing banks respect their obligation to pay and that seller-beneficiaries may


¹⁰⁷ ICC Uniform Rules for Collections, available at <store.iccwbo.org/Content/uploaded/pdf/ICC-Uniform-Rules-for-Collections.pdf> (last accessed on January 18, 2016).

¹⁰⁸ *Id.*

¹⁰⁹ *Rollo*, pp. 60-61

¹¹⁰ *Id.* at 57-59.

¹¹¹ *Bank of the Philippine Islands v. De Reny Fabric Industries, Inc.*, *supra* note 76 at 261.



reasonably expect payment in accordance with the terms of a letter of credit. Thus, the CA correctly ruled, to wit:

At this juncture, it is significant to stress that an irrevocable letter of credit cannot, during its lifetime, be cancelled or modified without the express permission of the beneficiary. Not even partial payment of the obligation by the applicant-buyer would amend or modify the obligation of the issuing bank. The subsequent correspondences of [CityTrust] to HSBC, thus, could not in any way affect or amend the letter of credit, as it was not a party thereto. As a notifying bank, it has nothing to do with the contract between the issuing bank and the buyer regarding the issuance of the letter of credit.¹¹² (Citations omitted)

The provisions in the Civil Code and our jurisprudence apply suppletorily in this case.¹¹³ When a party knowingly and freely binds himself or herself to perform an act, a juridical tie is created and he or she becomes bound to fulfill his or her obligation. In this case, HSBC's obligation arose from two sources. First, it has a contractual duty to Klockner whereby it agreed to pay NSC upon due presentment of the Letter of Credit and the attached documents. Second, it has an obligation to NSC to honor the Letter of Credit. In complying with its obligation, HSBC had the duty to perform all acts necessary. This includes a proper examination of the documents presented to it and making a judicious inquiry of whether CityTrust, in behalf of NSC, made a due presentment of the Letter of Credit.

Further, as a bank, HSBC has the duty to observe the highest degree of diligence. In all of its transactions, it must exercise the highest standard of care and must fulfill its obligations with utmost fidelity to its clients. Thus, upon receipt of CityTrust's Collection Order with the Letter of Credit, HSBC had the obligation to carefully examine the documents it received. Had it observed the standard of care expected of it, HSBC would have discovered that the Letter of Credit is the very same document which it issued upon the request of Klockner, its client. Had HSBC taken the time to perform its duty with the highest degree of diligence, it would have been alerted by the fact that the documents presented to it corresponded with the documents stated in the Letter of Credit, to which HSBC freely and knowingly agreed. HSBC ought to have noticed the discrepancy between CityTrust's request for collection under URC 322 and the terms of the Letter of Credit. Notwithstanding any statements by CityTrust in the Collection Order as to the applicable rules, HSBC had the independent duty of ascertaining whether the presentment of the Letter of Credit and the attached documents gave rise to an obligation which it had to Klockner (its client) and NSC (the beneficiary). Regardless of any error that CityTrust may have committed, the standard of care expected of HSBC dictates that it should have made a separate determination of the significance of the presentment of

¹¹²*Rollo*, p. 18.¹¹³

CODE OF COMMERCE, Art. 50.

the Letter of Credit and the attached documents. A bank exercising the appropriate degree of diligence would have, at the very least, inquired if NSC was seeking payment under the Letter of Credit or merely seeking collection under URC 322. In failing to do so, HSBC fell below the standard of care imposed upon it.

This Court therefore rules that CityTrust's presentment of the Letter of Credit with the attached documents in behalf of NSC, constitutes due presentment. Under the terms of the Letter of Credit, HSBC undertook to pay the amount of US\$485,767.93 upon presentment of the Letter of Credit and the required documents.¹¹⁴ In accordance with this agreement, NSC, through CityTrust, presented the Letter of Credit and 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.¹¹⁵

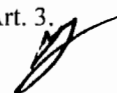
In transactions where the letter of credit is payable on sight, as in this case, the issuer must pay upon due presentment. This obligation is imbued with the character of definiteness in that not even the defect or breach in the underlying transaction will affect the issuing bank's liability.¹¹⁶ This is the Independence Principle in the law on letters of credit. Article 17 of UCP 400 explains that under this principle, an issuing bank assumes 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..." Thus, as long as the proper documents are presented, the issuing bank has an obligation to pay even if the buyer should later on refuse payment. Hence, Klockner's refusal to pay carries no effect whatsoever on HSBC's obligation to pay under the Letter of Credit. To allow HSBC to refuse to honor the Letter of Credit simply because it could not collect first from Klockner is to countenance a breach of the Independence Principle.

HSBC's persistent refusal to comply with its obligation notwithstanding due presentment constitutes delay contemplated in Article

¹¹⁴ The following are the required documents as provided in the Letter of Credit: (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, *rollo*, pp. 132-133.

¹¹⁵ *Rollo*, pp. 125-126.

¹¹⁶ Uniform Customs and Practice For Documentary Credits 400, Art. 3.



1169 of the Civil Code.¹¹⁷ This provision states that a party to an obligation incurs in delay from the time the other party makes a judicial or extrajudicial demand for the fulfillment of the obligation. We rule that the due presentment of the Letter of Credit and the attached documents is tantamount to a demand. HSBC incurred in delay when it failed to fulfill its obligation despite such a demand.

Under Article 1170 of the Civil Code,¹¹⁸ a party in delay is liable for damages. The extent of these damages pertains to the pecuniary loss duly proven.¹¹⁹ In this case, such damage refers to the losses which NSC incurred in the amount of US\$485,767.93 as stated in the Letter of Credit. We also award interest as indemnity for the damages incurred in the amount of six percent (6%) from the date of NSC's extrajudicial demand.¹²⁰ An interest in the amount of six percent (6%) is also awarded from the time of the finality of this decision until full payment.¹²¹

Having been remiss in its obligations under the applicable law, rules and jurisprudence, HSBC only has itself to blame for its consequent liability to NSC.

However, this Court finds that there is no basis for the CA's grant of attorney's fees in favor of NSC. Article 2208 of the Civil Code¹²²

¹¹⁷ Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

- (1) When the obligation or the law expressly so declare; or
- (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
- (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

¹¹⁸ Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

¹¹⁹ CIVIL CODE, Art. 2199.

¹²⁰ CIVIL CODE, Art. 2209; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

¹²¹ *Nacar v. Gallery Frames*, *supra*.

¹²² Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;

enumerates the grounds for the award of attorney's fees. This Court has explained that the award of attorney's fees is an exception rather than the rule.¹²³ The winning party is not automatically entitled to attorney's fees as there should be no premium on the right to litigate.¹²⁴ While courts may exercise discretion in granting attorney's fees, this Court has stressed that the grounds used as basis for its award must approximate as closely as possible the enumeration in Article 2208.¹²⁵ Its award must have sufficient factual and legal justifications.¹²⁶ This Court rules that none of the grounds stated in Article 2208 are present in this case. NSC has not cited any specific ground nor presented any particular fact to warrant the award of attorney's fees.

CityTrust's Liability

When NSC obtained the services of CityTrust in collecting under the Letter of Credit, it constituted CityTrust as its agent. Article 1868 of the Civil Code states that a contract of agency exists when a person binds himself or herself "to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." In this case, CityTrust bound itself to collect under the Letter of Credit in behalf of NSC.

One of the obligations of an agent is to carry out the agency in accordance with the instructions of the principal.¹²⁷ In ascertaining NSC's instructions to CityTrust, its letter dated January 18, 1994 is determinative. In this letter, NSC clearly stated that it "negotiated with CityTrust the export documents pertaining to LC No. HKH 239409 of HSBC and it was CityTrust which wrongfully treated the negotiation as 'on collection basis.'"¹²⁸ HSBC persistently communicated with CityTrust and consistently repeated that it will proceed with collection under URC 322. At no point did CityTrust correct HSBC or seek clarification from NSC. In insisting upon its course of action, CityTrust failed to act in accordance with the instructions given by NSC, its principal. Nevertheless while this Court recognizes that CityTrust committed a breach of its obligation to NSC, this carries no implications on the clear liability of HSBC. As this Court already mentioned, HSBC had a separate obligation that it failed to perform by reason of acts independent of CityTrust's breach of its obligation under its contract of agency. If CityTrust has incurred any liability, it is to its principal NSC. However, NSC has not raised any claim against CityTrust at any point

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

¹²³ *Republic v. Lorenzo Shipping Corporation*, G.R. No. 153563, February 7, 2005, 450 SCRA 550;

Padillo v. Court of Appeals, G.R. No. 119707, November 29, 2001, 371 SCRA 27.

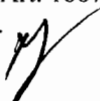
¹²⁴ *Padillo v. Court of Appeals*, *supra*.

¹²⁵ *Republic v. Lorenzo Shipping Corporation*, *supra*.

¹²⁶ *Id.*

¹²⁷ CIVIL CODE, Art. 1887.


¹²⁸ *Rollo*, p. 223.




in these proceedings. Thus, this Court cannot make any finding of liability against CityTrust in favor of NSC.

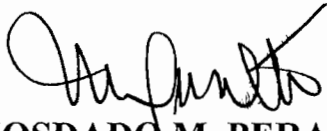
WHEREFORE, in view of the foregoing, the Assailed Decision dated November 19, 2007 is **AFFIRMED** to the extent that it orders HSBC to pay NSC the amount of US\$485,767.93. HSBC is also liable to pay legal interest of six percent (6%) per annum from the time of extrajudicial demand. An interest of six percent (6%) is also awarded from the time of the finality of this decision until the amount is fully paid. We delete the award of attorney's fees. No pronouncement as to cost.

SO ORDERED.


FRANCIS II JARDELEZA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



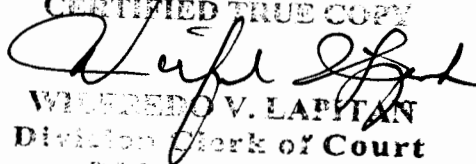
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAR 10 2016