United States Court of Appeals,

Fourth Circuit.

COURTAULDS NORTH AMERICA, INC., Appellee,

v.

NORTH CAROLINA NATIONAL BANK, a National Banking Association, Appellant.

528 F.2d 802, 18 UCC Rep.Serv. 467

Decided Dec. 30, 1975.

BRYAN, Senior Circuit Judge:

A letter of credit with the date of March 21, 1973 was issued by the North Carolina National Bank at the request of and for the account of its customer, Adastra Knitting Mills, Inc. It made available upon the drafts of Courtaulds North America, Inc. ‘up to’ $135,000.00 (later increased by $135,000.00) at ‘60 days date’ to cover Adastra's purchases of acrylic yarn from Courtaulds. The life of the credit was extended in June to allow the drafts to be ‘drawn and negotiated on or before August 15, 1973.’

Bank refused to honor a draft for $67,346.77 dated August 13, 1973 for yarn sold and delivered to Adastra. Courtaulds brought this action to recover this sum from Bank.

The Bank denied liability chiefly on the assertion that the draft did not agree with the letter's conditions, namely, that the draft be accompanied by a ‘Commercial invoice in triplicate stating (inter alia) that it covers . . .100% acrylic yarn’; instead, the accompanying invoices stated that the goods were ‘Imported Acrylic Yarn.’

The District Court held defendant Bank liable to Courtaulds for the amount of the draft, interest and costs. It concluded that the draft complied with the letter of credit when each invoice is read together with the packing lists stapled to it, for the lists stated on their faces: ‘Cartons marked: — 100% Acrylic.’ After considering the insistent rigidity of the law and usage of bank credits and acceptances, we must differ with the District Judge and uphold Bank's position.

The letter of credit prescribed the terms of the drafts as follows:

‘Drafts to be dated same as Bills of Lading. Draft(s) to be accompanied by:

1. Commercial invoice in triplicate stating that it covers 100,000 lbs. 100% Acrylic Yarn, Package Dyed at $1.35 per lb., FOB Buyers Plant, Greensboro, North Carolina Land Duty Paid.

2. Certificate stating goods will be delivered to buyers plant land duty paid.

3. Inland Bill of Lading consigned to Adastra Knitting Mills, Inc. evidencing shipment from East Coast Port to Adastra Knitting Mills, Inc., Greensboro, North Carolina.'

The draft was dated August 13, 1973 and drawn on Bank by Courtaulds payable to itself. Bank received the documents on Thursday, August 16. Upon processing, Bank found these discrepancies between the drafts with accompanying documents and the letter of credit: that the invoice did not state ‘100% Acrylic Yarn’ but described it as ‘Imported Acrylic Yarn.’

On Monday, August 20, Bank called Adastra and asked if it would waive the discrepancies and thus allow Bank to honor the draft. In response, the president of Adastra informed Bank that it could not waive any discrepancies. Courtaulds was notified and on August 27 sent amended invoices to Bank which were received by Bank on August 27. They referred to the consignment as ‘100% Acrylic Yarn’, and thus would have conformed to the letter of credit had it not expired. On August 29 Bank wired Courtaulds that the draft remained unaccepted because of the expiration of the letter of credit on August 15. Consequently the draft with all the original documents was returned by Bank.

*Conclusion on Law*

‘The only issue presented by the facts of this case is whether the documents tendered by the beneficiary to the issuer were in conformity with the terms of the letter of credit.’

The letter of credit provided:‘Except as otherwise expressly stated herein, this credit is subject to the ‘Uniform Customs and Practice for Documentary Credits (1962 revision), the International Chamber of Commerce, Brochure No. 222’.

Of particular pertinence are these provisions of the UCP:

‘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.—In documentary credit operations all parties concerned deal in documents and not in goods. If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, that bank must determine, on the basis of the documents alone, whether to claim that payment, acceptance or negotiation was not effected in accordance with the terms and conditions of the credit.

‘Article 9.—Banks . . . do (not) assume any liability or responsibility for the description, . . . quality, . . . of the goods represented thereby. The description of the goods in the commercial invoice must correspond with the description in the credit. In the remaining documents the goods may be described in general terms.’

In utilizing the rules of construction embodied in the letter of credit—the UCP states that one must constantly recall that the drawee bank is not to be embroiled in disputes between the buyer and the seller, the beneficiary of the credit. The drawee is involved only with documents, not with merchandise. Its involvement is altogether separate and apart from the transaction between the buyer and seller; its duties and liability are governed exclusively by the terms of the letter, not the terms of the parties' contract with each other. Moreover, as the predominant authorities unequivocally declare, the beneficiary must meet the terms of the credit—and precisely—if it is to exact performance of the issuer. Failing such compliance there can be no recovery from the drawee. That is the specific failure of Courtaulds here.

Harfield, Bank Credits and Acceptances (5th Ed. 1974), at p. 73, commends and quotes aptly from an English case: ‘There is no room for documents which are almost the same, or which will do just as well.’ Equitable Trust Co. of N.Y. v. Dawson Partners, Ltd., 27 Lloyd's List Law Rpts. 49, 52 (1926).

At trial Courtaulds prevailed on the contention that the invoices in actuality met the specifications of the letter of credit in that the packing lists attached to the invoices disclosed on their faces that the packages contained ‘cartons marked: —100% acrylic’. On this premise it was urged that the lists were a part of the invoice since they were appended to it, and the invoices should be read as one with the lists, allowing the lists to detail the invoices. But this argument cannot be accepted. In this connection it is well to revert to the distinction made in the UCP between the ‘invoice’ and the ‘remaining documents', emphasizing that in the latter the description may be in general terms while in the invoice the goods must be described in conformity with the credit letter.

This is not a pharisaical or doctrinaire persistence in the principle, but is altogether realistic in the environs of this case; it is plainly the fair and equitable measure. (The defect in description was not superficial but occurred in the statement of the quality of the yarn, not a frivolous concern.) The obligation of the drawee bank was graven in the credit. Indeed, there could be no departure from its words. Bank was not expected to scrutinize the collateral papers, such as the packing lists. Nor was it permitted to read into the instrument the contemplation or intention of the seller and buyer. Adherence to this rule was not only legally commanded, but it was factually ordered also, as will immediately appear.

Had Bank deviated from the stipulation of the letter and honored the draft, then at once it might have been confronted with the not improbable risk of the bankruptcy trustee's charge of liability for unwarrantably paying the draft moneys to the seller, Courtaulds, and refusal to reimburse Bank for the outlay. Contrarily, it might face a Courtaulds claim that since it had depended upon Bank's assurance of credit in shipping yarn to Adastra, Bank was responsible for the loss. In this situation Bank cannot be condemned for sticking to the letter of the letter.

Finally, the trial court found that although in its prior practices Bank had pursued a strict-constructionist attitude, it had nevertheless on occasion honored drafts not within the verbatim terms of the credit letter. But it also found that in each of these instances Bank had first procured the authorization of Adastra to overlook the deficiencies which is standard practice and procedure of the banking industry and trade for a bank to attempt to obtain a waiver of discrepancies from its customer in a letter of credit transaction.

Following this practice, NCNB had checked all previous discrepancies it discovered in Courtaulds' documents with its customer Adastra to see if Adastra would waive those discrepancies noted by NCNB. Except for the transaction in question, Adastra waived all discrepancies noted by NCNB.

For these reasons, we must vacate the decision of the trial court. Reversed and remanded for final judgment.