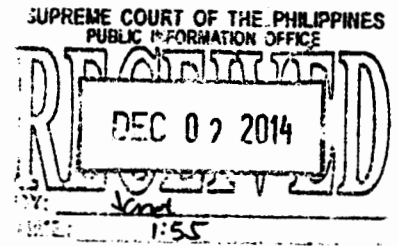




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **10 November 2014** which reads as follows:

**G.R. No. 207351 – Tentay Foods and Sauces, Inc., and Spouses Cesar and Velia Cruz v. Allied Banking Corporation.**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the October 23, 2012 Decision<sup>1</sup> and the May 31, 2013 Resolution<sup>2</sup> of the Court of Appeals (CA), in CA G.R. CV No. 92866, in an action for sum of money.

**The Facts:**

This case arose from the export transaction of various food products by Petitioner Tentay Foods and Sauces, Inc. (TFSI), a domestic corporation engaged in the production and/or export of various foodstuffs, with ABIM Trading of Brunei (ABIM). On September 20, 1994, to obtain the value of TFSI's export shipment to ABIM in advance, respondent Allied Banking Corporation (Allied Bank) purchased from TFSI a documentary draft<sup>3</sup> (Draft) with a face value amount of US\$19,022.03 with peso equivalent of ₱453,837.18 drawn against Hongkong and Shanghai Banking Corporation of Brunei (HSBC Brunei) to be chargeable to ABIM's account. As a condition for the purchase of the Draft, TFSI, through its officer respondent Cesar Cruz (Cesar), executed a letter of agreement<sup>4</sup> (LOA) stipulating, among others, that the purchase of the Draft was with recourse to TFSI in the event of non-payment for any reason; and that upon dishonor of the Draft, TFSI would refund to Allied Bank the amount stated in the Draft plus interests and charges.

Upon Allied Bank's presentment of the Draft, HSBC Brunei refused payment due to material discrepancies in the export documents. Subsequently, Allied Bank informed TFSI of the said refusal and demanded the reimbursement of the ₱453,837.18 plus 19.25% interest per annum and 36% service charge per annum. Meanwhile, Allied Bank applied the value of the check issued by ABIM in its favour in the amount of ₱100,000.00 and the amount the expected proceeds of TFSI's other export transactions in the

<sup>1</sup> *Rollo*, pp. 153-165. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

<sup>2</sup> *Id.* at 182-183.

<sup>3</sup> *Id.* at 39.

<sup>4</sup> *Id.* at 40.

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amount of ₱238,862.63 to the principal amount due from TFSI, thereby reducing TFSI's total balance to ₱238,300.74.

TFSI did not comply with Allied Bank's demand, thus Allied Bank filed a complaint for sum of money with an application for a writ of attachment before the Regional Trial Court, Makati City, Branch 56 (*RTC*).

For its part, TFSI admitted the execution of the Draft and the LOA. It also acknowledged their obligation to Allied Bank in the amount of ₱238,300.74. It claimed, however, that Cesar and his wife, respondent Velia Cruz (*Velia*) acted in a representative capacity only. TFSI signified its willingness to settle its outstanding obligation with Allied Bank were it not for the unreasonable interest rate and penalty charges imposed, the rates of which were not provided in the LOA.

TFSI further claimed that when ABIM refused to pay HSBC Brunei, Allied Bank instructed TFSI to collect directly from ABIM. Eventually, this led to ABIM issuing five (5) checks, the first of which amounting to ₱100,000.00 was cleared and credited to Allied Bank's own account. The subsequent checks, however, bounced. TFSI likewise claimed payment of the amount of US\$19,022.03, representing the value of the Draft since the non-payment of which was solely due to Allied Banks's fault; and the amount of US\$9,192.42, representing TFSI's export proceeds from a different export transaction which Allied Bank had no right to credit to its own account.

In its July 23, 2008 Decision,<sup>5</sup> the RTC dismissed Allied Bank's complaint and ordered Allied Bank to pay TFSI the peso equivalent of US\$19,022.03, representing the value of the Draft; and US\$9,192.42, representing TFSI's export proceeds from its transaction in Canada, at the prevailing exchange rate at the time of payment plus legal interest until full payment. The RTC stated that the LOA relied upon by Allied Bank was deemed abandoned through TFSI, which collected the amount of the Draft directly from ABIM instead of HSBC Brunei. It added that it was irregular for Allied Bank to credit to its own account the amount of US\$9,192.42, as this represented the export proceeds from a transaction separate and distinct from that with ABIM.

On appeal, the CA, in its October 23, 2012 Decision, *reversed* the RTC ruling. The dispositive portion of which reads:

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<sup>5</sup> Id. at 129-139.

**WHEREFORE**, the instant appeal is **GRANTED**. The decision dated July 23, 2008 of the Regional Trial Court, Branch 56, Makati City is **REVERSED** and **SET ASIDE**. Defendant-appellees Tentay Foods and Sauces, Inc. is ordered to pay plaintiff-appellant Allied Banking Corporation the sum of ₱353,837.18 plus interest of 12% per annum computed from April 6, 1999 until full payment thereof. Plaintiff-appellant Allied Banking Corporation is ordered to return to Tentay Foods and Sauces, Inc. the amount of US\$9,192.42 with conversion rate prevailing on January 22, 1996, plus interest of 12% from January 25, 1996 until the same is fully paid. The obligations of the abovenamed shall be legally compensated against each other pursuant to Articles 1278 and 1279 of the Civil Code.

**SO ORDERED.**

In reversing the RTC ruling, the CA stated that TFSI's admission regarding the execution of the Draft and the LOA negated any allegation of misrepresentation on Allied Bank's part. The CA observed that, based on the LOA, TFSI was barred from imputing negligence on the part of Allied Bank when the latter failed to proceed against HSBC Brunei because TFSI held itself liable in case of non-payment of the Draft pursuant to the "with recourse" agreement. The CA likewise noted that Allied Bank's right and TFSI's correlative obligation proceed from the right of recourse arrangement contained in the LOA. The CA declared that TFSI's liability under LOA was direct and primary, and independent from any other contractual relationship. The CA, however, stated that, from the pertinent provision<sup>6</sup> in the LOA, Allied Banks's application of TFSI's export proceeds from the latter's export transaction in Canada was not justified because the said application was beyond Allied Bank's authority and without TFSI's conformity.

Hence, this present recourse.

The central issue to be resolved is whether TFSI should be held liable to Allied Bank under the subject draft or the LOA.

TFSI argues that the non-payment of its exports to ABIM was solely due to Allied Bank's fault. Allied Bank abandoned its cause of action based on the LOA because it allowed ABIM to take possession of the export products without payment and it did not exert efforts to collect payment from HSBC Brunei.

The Court, however, finds no reversible error warranting the exercise of its appellate jurisdiction.

<sup>6</sup> Id. at 40. "xxx Likewise, should my/our draft be dishonoured for any cause whatsoever, I/We hereby authorize you, at your discretion and without any responsibility on your part, to sell, or cause to be sold, either publicly or privately, the underlying goods, wherever they maybe found, xxx." (Underscoring supplied.)

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At the outset, it must be noted that the due execution of the subject draft and its corresponding LOA is not in issue in this case. In fact, TFSI categorically admitted the genuineness and due execution of the said documents in their answer filed before the RTC.

TFSI's arguments revolve around its claim that the non-payment of the various food products they exported to ABIM was solely due to Allied Bank's fault because the latter, instead of demanding payment from HSBC Brunei, collected payment, through TFSI, directly from ABIM, through its Manila office. Essentially, TFSI is emphasizing Allied Bank's alleged failure to comply with the requirements of a notice of dishonor and protest under Sections 89<sup>7</sup> and 152,<sup>8</sup> respectively, of Act. No. 2031 or the Negotiable Instruments Law (*NIL*). Stated differently, TFSI is harping on Allied Bank's failure to comply with the NIL to consequently discharge itself from liability from the subject draft.

The Court, however, cannot subscribe to TFSI's proposition.

As aptly cited by the CA, in *Producers Bank of the Philippines v. Excelsa Industries, Inc.*,<sup>9</sup> the Court held that where the drawer executed a separate letter of undertaking in consideration for the bank's negotiation of its drafts, the said drawer can still be made liable under the letter of undertaking even if he is discharged due to the bank's failure to protest the non-acceptance or non-payment of the drafts. x x x It bears stressing that a letter of undertaking is a separate contract from the sight draft. The liability of petitioner under the letter of undertaking is direct and primary. It is independent from his liability under the sight draft. Liability subsists on it even if the sight draft was dishonored for non-acceptance or non-payment. The bank agreed to purchase the draft and credit petitioner its value upon the undertaking that he will reimburse the amount in case the sight draft is dishonored. The bank would certainly not have agreed to grant petitioner an advance export payment were it not for the letter of undertaking.

Moreover, it is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the

<sup>7</sup> SEC. 89. TO WHOM NOTICE OF DISHONOR MUST BE GIVEN. — Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser and any drawer or indorser to whom such notice is not given is discharged.

<sup>8</sup> SEC. 152. IN WHAT CASES PROTEST NECESSARY. — Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance, is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

<sup>9</sup> 605 Phil. 445 (2009), citing *Velasquez v. Solidbank Corporation*, 573 Phil. 266 (2008).

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contracting parties and should be complied with in good faith. Unless the stipulations in a contract are contrary to law, morals, good customs, public order or public policy, the same are binding as between the parties.<sup>10</sup>


In this case, while TFSI may have arguably been discharged from its liability under the sight draft it executed in favor of Allied Bank, the former can still be made liable pursuant to the independent LOA it bound itself to without the need for Allied Bank to proceed against HSBC Brunei. Pertinently, the “with recourse”<sup>11</sup> provision found in the LOA, which stated, among others, that Allied Bank’s purchase of the subject draft shall be with recourse to petitioners in the event of non-payment for any reason whatsoever, created an independent obligation on petitioners’ part separate and distinct from the subject draft. Parties are bound to fulfill what has been expressly stipulated in the contract,<sup>12</sup> which, in the case at bench, was the LOA. Thus, petitioners’ liability to Allied Bank still subsists.

To conform to current jurisprudence,<sup>13</sup> however, a modification of the legal rate of interest imposed by the CA is in order. Consequently, TFSI is ordered to pay Allied Bank the sum of P353,837.18, plus interest of 12% per annum computed from April 6, 1999 until June 30, 2013; and 6% per annum from July 1, 2013 until full payment thereof. On the other hand, Allied Bank is ordered to return to TFSI the amount of US\$9,192.42 with conversion rate prevailing on January 22, 1996, plus interest of 12% per annum from January 25, 1996 until June 30, 2013; and 6% per annum from July 1, 2013 until the same is fully paid.

**WHEREFORE**, the petition is **DENIED**. The assailed October 23, 2012 Decision and the May 31, 2013 Resolution of the Court of Appeals, in CA-G.R. CV No. 92866, is **AFFIRMED** with the following **MODIFICATIONS**: petitioner Tentay Food and Sauces, Inc. is ordered to pay respondent Allied Banking Corporation the sum of P353,837.18, plus interest of 12% per annum computed from April 6, 1999 until June 30, 2013, and 6% per annum from July 1, 2013 until its full payment. Respondent Allied Banking Corporation is ordered to return the amount of US\$9,192.42 to Tentay Food and Sauces, Inc. with conversion rate prevailing on January 22, 1996, plus interest of 12% per annum from January 25, 1996 until June 30, 2013 and 6% per annum from July 1, 2013 until the same is fully paid.

**SO ORDERED.**

Very truly yours,

  
MA. LOURDES CAPEFECTO  
Division Clerk of Court

<sup>10</sup> *Morla v. Belmonte*, G.R. No. 171146, December 7, 2011, 661 SCRA 717, 730.

<sup>11</sup> *Rollo*, p. 40.

<sup>12</sup> Article 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

<sup>13</sup> *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

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