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CASE DIGEST

BANKING: BANK GUARANTEE; AUTONOMY OF CONTRACT OF BANK GUARANTEE WILL NOT APPLY WHEN THERE IS FRAUD

STANDARD CHARTED BANK NIGERIA LIMITED v. REGAN RENAISSANCE LIMITED

COURT OF APPEAL
(LAGOS DIVISION)

(DANIEL-KALIO; SIRAJO; BANJOKO, JJ.CA)

Reagan Renaissance Limited (Respondent) a licensed importer of cement, entered into a contract with a foreign company known as He Trading Malta Limited, for the supply of 300,000 metric tonnes of bagged ordinary Portland cement into Nigeria. The supply was to be made in September, October, or November 2009. Pursuant to that contract, the Respondent entered into an agreement with Standard Chartered Bank Nigeria Limited (Appellant), to issue a Bank Guarantee on its behalf, to HC Trading Malta Limited in the initial sum of, $1 million, which sum was later increased to $2.36 million, so as to cover the financial exposure of HC Trading Malta Limited and any attendant demurrage costs. As consideration for issuing the said Bank Guarantee, the Respondent provided an equal cash collateral in its fixed deposit account with the Appellant. HC Trading Malta Limited however defaulted in supplying the cement. Within the supply period of the cement by HC Trading Malta Limited, the Respondent was informed that the Federal Government of Nigeria had banned the importation of bagged cement into Nigeria. As a result of the ban, the Respondent instructed the Appellant to cancel the Bank Guarantee. The Appellant however refused to do so and on 31/12/2009, notified the Respondent that it had debited its account in the sum of N47,068,875 in favour of HC Trading Malta Limited in adherence to the Bank Guarantee issued by the Appellant. The Respondent, by a letter, immediately demanded a refund of the debited money, which the Appellant refused to make. Consequently, the Respondent at the High Court (trial Court) prayed for an order directing the Appellant to credit the Respondent's account with the sum of N47,068,875.00 and interest on the sum till judgment and thereafter, till the final liquidation of the judgment sum. The Respondent also sought damages to the tune of N100,000,000.00. At the conclusion of the trial, the trial Court acceded to the claims of the Respondent. Dissatisfied with the decision of the trial Court, the Appellant appealed to the Court of Appeal. One of the issues for determination was *Whether the lower Court erred in law when it found that the Appellant's debit of the Respondent's account in the sum of N47,068,875.00 was wrongful, without making any finding that the Appellant was in breach of the terms of the contract dated 7th of September, 2009*

The learned Senior Counsel to the Appellant contended that the purported basis of the Respondent's entitlement to the reliefs sought at the trial Court was the ban on the importation of bagged cement into Nigeria by the Federal Government of Nigeria. It was submitted that the alleged breach of contract between the Respondent and HC Trading Malta Limited had nothing to do with the performance of the terms of the Bank Guarantee issued by the Appellant as it is a distinct and separate contract, and does not give the trial Court the legal or factual basis to hold that the contract between the parties was frustrated by the ban on importation of cement into Nigeria.

It was the further submission of the learned SAN, that from the evidence led by the parties, the Appellant acted well within its contractual rights when it debited the account of the Respondent in the sum of 47,068,875.00, and that the obligation of the Appellant and/or Standard Chartered Bank of London to pay, is not circumscribed in any way whatsoever by an alleged breach of the underlying contract between HC Trading Malta Limited and the Respondent, but is payable upon the written demand of HC Trading Malta Limited, provided the demand complies with the dictates of the guarantee. It was submitted that the action of Standard Chartered Bank, London is consistent with the principle of 'autonomy' of the contract of guarantee.

In response, the Respondent's learned Counsel contended that before the trial Court could order the refund of the debited sum of N47,068,875.00, it ought to have first decided that the Appellant breached the terms of the contract, that the trial Court did in fact, decide on the dishonest breach of the contract by the Appellant. It was further stated that as against the argument that the ban on the importation of bagged cement had nothing to do with the Bank Guarantee, it was submitted that the Exhibits before the Court shows that the ban frustrated the Bank Guarantee. As stated by Counsel, the trial Court had held that Standard Chartered Bank, London, was a stranger to the contract and that the current position of the Law, is that where the Bank pays on a Guarantee while aware of the dishonest instrument presented for payment, the Bank must refund the account owner.

In resolving the issue for determination, the Court of Appeal held that:

On the demand by HC Trading Malta Limited for payment being justified on the ground that it is consistent with the principle of autonomy of the contract of guarantee, the maxim jus ex injuria non otitur, comes to play, meaning: a right does not arise out of a wrong. The Appellant acknowledged the ban on bagged cement by the Federal Government of Nigeria. It expressed in its letter dated December 17, 2009, thus: "The bank fully understands the difficult situation your business is in given the recent Federal Government ban on the importation of bagged cement". **It is pleasing to note that the principle of autonomy of a Bank Guarantee will only apply in the absence of fraud.** Where a Bank pays on a Guarantee whilst being aware of a dishonest instrument presented for payment, the bank must refund the account of the owner. Nemo ex suo delicto meliorem suam conditionem facere protest - no one can improve his position by his own wrongdoing. Issue resolved against the Appellant.

Adeola Kembi for the Appellant
Clement Omwuenwunor SAN, with Edwin Okwonego for Respondent

This summary is fully reported at (2022) 12 CLRN